

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 150, CTW, CLC
Involving Certain Employees of
CITY OF MILWAUKEE

Case 574
No. 70386
ME-4252

Decision No. 33289

Appearances:

Marianne Goldstein Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C. 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of Service Employees International Union, Local 150, CTW, CLC.

Troy Hamblin, Labor Negotiator, 200 East Wells Street, Room 706, Milwaukee, Wisconsin 53202, appearing on behalf of the City of Milwaukee.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION**

On December 7, 2010, the Service Employees International Union, Local 150, CTW,CLC filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain school crossing guards employed by the City of Milwaukee wish to be represented by Local 150 for the purposes of collective bargaining with the City.

By letter dated January 6, 2011, the City opposed the petition asserting that if the crossing guards wished to be represented for the purposes of collective bargaining, it should be as part of an existing City bargaining unit.

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On January 21, 2011, the Association of Law Enforcement Allied Services Personnel filed a petition with the Commission seeking a representation election among the same school crossing guards that Local 150 seeks to represent. On February 16, 2011, the Association withdrew its petition.

On February 17, 2011, the City and Local 150 entered into a factual Stipulation and subsequently filed written argument-the last of which was received March 18, 2011.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The City of Milwaukee, herein the City, is a municipal employer.
2. Service Employees International Union, Local 150, CTW,CLC, herein Local 150, is a labor organization that seeks to represent 226 City employees (221 School Crossing Guards, 2 School Crossing Guard Dispatchers and 3 School Crossing Guard Operators) for the purposes of collective bargaining.
3. There are currently 5760 City employees included in 19 City employee bargaining units ranging in size from 1822 employees (a unit represented by District Council 48, AFSCME) to seven employees (a unit represented by Local 494, IBEW). Since 1983, the Association of Law Enforcement Allied Services Personnel (ALEASP) has represented approximately 400 civilian employees of the Police Department in approximately 40 different job classifications. Small numbers of other civilian Police Department employees are located in other City employee bargaining units.

There are 524 City employees who could be but currently are not represented for the purposes of collective bargaining including the 226 employees that Local 150 seeks to represent through the instant proceeding.
4. The 226 employees holding the three Crossing Guard classifications, herein Crossing Guards unless otherwise specified, are employed within the Professional Standards Bureau, Training Division, Community Services Section of the City Police Department. A Lieutenant directs the Community Services Section and the Crossing Guards are directly supervised by two Safety Specialist-Seniors. The Safety Specialist-Seniors do not supervise any other employees in the Section or the Department. The remainder of the Section consists of one Sergeant, three Police Officers, one Office Assistant IV and one Office Assistant III.
5. School Crossing Guards are responsible for the safe passage of elementary students across City street intersections. School Crossing Guard Dispatchers verify that the School Crossing Guards are present at their assigned intersection and insure coverage by other employees if a School Crossing Guard is not present. School Crossing Guard Operators

provide operational support to the School Crossing Guard Dispatchers by recording and distributing information.

There are no other City employees with similar regular job duties.

6. Employees holding any of the three Crossing Guard classifications must be 18 years old and meet certain minimal physical requirements. Employees holding the Dispatcher or Operator classification must have experience as a Crossing Guard and have some clerical skills.

7. School Crossing Guards, School Crossing Guard Operators and School Crossing Guard Dispatchers receive no fringe benefits and are paid within the hourly wage range of \$12.02-\$15.22. The wage rates are established by City Common Council subject to approval by the Mayor.

8. School Crossing Guards work during the school year at a street intersection for one of the following split shifts:

7:00am-7:50am and 2:20pm -3:00pm
8:20am-9:10am and 3:40pm-4:20pm

School Crossing Guard Operators work during the school year in an office for one of the following split shifts:

6:00am-7:30am and 1:30 pm -3:00pm
6:30am-8:00am and 2:00pm-3:30pm

School Crossing Guard Dispatchers work during the school year in an office for one of the following shifts:

5:00am-11:00am
11:00am-4:00pm

There are no other City employees who have similar work schedules or split shifts.

9. Crossing Guard work is covered by a 30 page Department manual entitled "SCHOOL CROSSING GUARD POLICIES, REGULATIONS & PROCEDURES."

10. Crossing Guards have no right to transfer or be promoted into non-Crossing Guard positions.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. A collective bargaining unit consisting of all regular full-time and regular part-time School Crossing Guards, School Crossing Guard Operators and School Crossing Guard Dispatchers employed by the City of Milwaukee is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) 2.a. Stats.

2. A question concerning representation exists within the collective bargaining unit described in Conclusion of Law 1.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction in the collective bargaining unit consisting of all regular full-time and regular part-time School Crossing Guards, School Crossing Guard Operators and School Crossing Guard Dispatchers employed by the City of Milwaukee excluding supervisors and confidential, executive, and managerial employees who were employed on April 28, 2011, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining whether a majority of the voting employees wish to be represented by Service Employees International Union, Local 150, CTW, CLC for the purposes of collective bargaining with the City of Milwaukee, or whether such employees vote not to be so represented by said labor organization .

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of April, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

CITY OF MILWAUKEE

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION**

The issue before us is whether the Crossing Guard bargaining unit sought by Local 150 is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats. The City, contrary to Local 150, contends that the unit is not appropriate because there is an existing bargaining unit of non-sworn employees of the Police Department into which the Crossing Guards could be included if they wish to be represented for the purposes of collective bargaining. The City further asserts that it is inappropriate to add an additional bargaining unit to the 19 existing City bargaining units.

Legal Standards

When determining whether a sought unit is appropriate, we measure the facts presented by the parties against the statutory language of Sec. 111.70(4)(d)2.a., Stats., which provides, in pertinent part, as follows:

The commission shall determine the appropriate bargaining unit for the purposes of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groups constitute a collective bargaining unit.

We use the following factors, as interpretive guides to the statute:

1. Whether the employees in the unit share a “community of interest” distinct from that of other employees.
2. The duties and skills of employees in the unit sought, as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought, as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.

5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

ARROWHEAD UNITED TEACHERS V. WERC, 116 Wis. 2D 580 (1984).

We have used the phrase “community of interest”, as it appears in Factor 1, as a means of assessing whether the employees at issue participate in a shared purpose, through their employment. We also have used the phrase “community of interest” as a means of determining whether employees share similar interests, usually – though not necessarily – limited to those interests reflected in Factors 2-5. This definitional duality is long standing and has received the approval of the Wisconsin Supreme Court. ARROWHEAD UNITED TEACHERS V. WERC, *supra*.

Factor 6 reflects our statutory obligation, under Sec. 111.70(4)(d)2.a., Stats., to “avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force”.

Factor 7, pertaining to bargaining history, involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented in the past, an analysis of the development and operation of the employee/employer relationship. MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

It is well established that, within the factual context of each case, not all criteria deserve the same weight and a single criterion or a combination of criteria listed above may be determinative. *See, e.g.*, LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78) (bargaining history); COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79) (fragmentation); MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC, 11/83) (common purpose); MARINETTE SCHOOL DISTRICT, *supra* (similar interests).

It is also well-established that more than one bargaining unit may be appropriate for the employees at issue in a given situation, and that the Commission will direct an election in a petitioned-for bargaining unit as long as it is an appropriate unit, even if another unit placement may also be appropriate or even more appropriate. WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NO. 11076-C (WERC, 2/99).

DISCUSSION

As to Factor 1 (shared purpose), we conclude that the Crossing Guards do not have a shared purpose that distinguishes them from other City employees in the Police Department.

All Police Department employees share the purpose of preserving citizen safety and police officers share with Crossing Guards the more specific purpose of preserving the safety of children on their travels to and from school.

As to Factor 2 (duties and skills), the 221 School Crossing Guards do have distinctive duties and minimal basic qualifications. The 2 School Crossing Guard Dispatchers and 3 School Crossing Guard Operators have duties and skills which are shared by other employees within the Police Department.

As to Factor 3 (wages, hours and working conditions/fringe benefits), the 221 School Crossing Guards and 2 School Crossing Guard Dispatchers have distinctive school year/split shift/part-time schedules. The hours of the 3 School Crossing Guard Operators are somewhat less distinctive because they do not work split shifts. Review of the wage rates in Exhibit B establishes that the wage rates for Crossing Guards are not distinctive. Crossing Guards do not receive fringe benefits the absence of which distinguishes them from employees in the ALEASP unit but not from other City employees identified in Exhibit B.

As to Factor 4 (separate or shared supervision), the two Safety Specialists who directly supervise the Crossing Guards do not supervise any other employees in the Community Services Section or the Department.

As to Factor 5 (common or shared work location), the 221 School Crossing Guards have distinctive albeit separate work locations that are not shared by other City employees. The School Crossing Guard Operators and Dispatchers do not have a distinctive work location.

As to Factor 6 (fragmentation), the City has a large number of existing bargaining units and a large number of represented employees. The proposed Crossing Guard unit would include approximately 40% of the City employees who are currently unrepresented but are eligible for union representation. Civilian Police Department employees are already included in several existing bargaining units.

As to Factor 7 (bargaining history), the wages, hours and conditions of employment for Crossing Guards have been unilaterally established by the City as part an overall compensation ordinance.

Considering all of the foregoing, we conclude that the Crossing Guard unit is an appropriate one within the meaning of Sec. 111.70(4)(d)2.a., Stats. The vast majority of the employees in the proposed unit have distinctive duties, hours and work locations and are all supervised by the same two individuals who do not supervise any other Community Services Section or Department employees. We conclude those factors make them a cohesive group with a sufficient community of interest for the purposes of collective bargaining. Further, the number of employees in the proposed unit is large (it would be the seventh largest bargaining unit of City employees) and its creation would not unduly fragment the workforce given the large overall number of City employees eligible to be represented and the portion of the

currently unrepresented employees eligible for representation who would be included in the proposed bargaining unit.

We acknowledge that there is a large existing civilian employee Police Department unit and that inclusion of the Crossing Guards in said unit would not be inappropriate. However, as noted in the “Legal Standards” portion of our decision above, in the context of the statutory “an” appropriate bargaining unit standard, the presence of other appropriate unit compositions for the employees in question does not preclude the direction of an election in the bargaining unit sought so long as said unit is “an” appropriate unit.

Given all of the foregoing, we have directed an election in the unit Local 150 seeks to represent.

Dated at the City of Madison, Wisconsin, this 28th day of April, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner