

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

In the Matter of the Petition of

**OZAUKEE COUNTY**

Involving Certain Employees of

**OZAUKEE COUNTY**

Case 95  
No. 71973  
ME(u/c)-1338

**Decision No. 34205**

---

**Appearances:**

**Andrew T. Philips, Daniel J. Borowski and Jacob J. Curtis**, Phillips Borowski, S.C., 10140 North Port Washington Road, Mequon, Wisconsin 53092, appearing on behalf of Ozaukee County.

**Benjamin Barth**, Labor Consultant, N116 W16033 Main Street, Germantown, Wisconsin and **Linda S. Vanden Heuvel**, Vanden Heuvel & Dineen, S.C., W 175 N11086 Stonewood Drive, Germantown, Wisconsin 53022-0550, appearing on behalf of the Ozaukee County Correctional Officers/Labor Association of Wisconsin, Inc..

**ORDER CLARIFYING BARGAINING UNIT**

On February 1, 2013, Ozaukee County filed a petition with the Wisconsin Employment Relations Commission asking the Commission to exclude certain employees from an existing bargaining unit of public safety employees employed by the County and represented for the purposes of collective bargaining by the Ozaukee County Correctional Officers/Labor Association of Wisconsin, Inc. The parties thereafter filed written argument-the last of which was received July 10, 2013.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

No. 34205

**ORDER**

The employees Ozaukee County has classified as “general” employees are hereby removed from the existing public safety employee bargaining unit represented by the Ozaukee County Correctional Officers/Labor Association of Wisconsin, Inc.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of August, 2013.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Scott /s/

---

James R. Scott, Chairman

Rodney G. Pasch /s/

---

Rodney G. Pasch, Commissioner

**OZAUKEE COUNTY**

**MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT**

Section 111.70(4)(d)2.a., Stats. provides in pertinent part:

The commission may not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both public safety employees and general municipal employees . . . .

Section 111.70(1)(mm), Stats. defines “public safety employee” in pertinent part as:

1. Classified as a protective occupation participant under any of the following:
  - a. Section 40.02(48)(am) 9., 10., 13., 15., or 22.

Section 111.70(1)(fm), Stats. defines “General municipal employee” as:

. . . a municipal employee who is not a public safety employee or a transit employee.

Pursuant to Sec. 40.06(1)(d), Stats., on or about February 1, 2013, Ozaukee County reported to the Wisconsin Department of Employee Trust Funds (DETF) that certain employees in an existing “public safety employee” bargaining unit were not “protective occupation participants” within the meaning of Sec. 40.02(48)(am) 9., 10., 13., 15., or 22, Stats. The employee status reported by the County remains in effect unless reversed pursuant to an appeal filed with the Department of Employee Trust Funds Board (DETFB)

Because “public safety employee” status is dependent on an employee’s classification as a “protective occupation participant”, if an employee is not classified as a “protective occupation participant” the employee is not a “public safety employee” but is instead a “general municipal employee.” By virtue of the County’s report to ETF, the employees in dispute are now “general municipal employees”. Because Sec. 111.70(4)(d) 2.a., Stats. prohibits the inclusion of “general municipal employees” in the same bargaining unit as “public safety employees”, we are obligated to exclude them from the existing “public safety employee” bargaining. <sup>1</sup> Because it is unclear whether the parties agree that the now excluded

---

<sup>1</sup> County of LaCrosse v WERC, 170 Wis. 2d. 155, 488 N.W. 2d 94 (Ct.App. 1992) and LaCrosse County, Dec. No. 28773 (WERC, 6/96) make it clear that whether employees meet the determinative “active law enforcement” definition found in Sec. 40.02(48)(a), Stats. is a decision reserved to the County initially and on appeal to DETF and DETFB. However, should the status of any of the employees be reversed on appeal, the employees will be automatically return to the existing public safety employee bargaining unit and any other labor relations ramifications of the reversal will be resolved by the Commission.

employees should automatically become a new free-standing “general employee” Correctional Officers/LAW bargaining unit, that issue remains to be resolved through additional litigation if necessary. Pending resolution of that issue, the employees continue to be represented by Correctional Officers/LAW.

Dated at Madison, Wisconsin, this 6th day of August, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

---

James R. Scott, Chairman

Rodney G. Pasch /s/

---

Rodney G. Pasch, Commissioner