STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

BAYFIELD COUNTY

Involving Certain Employees of

BAYFIELD COUNTY

Case 91
No. 71957
ME(u/c)-1336

Decision No. 34209

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 Bayfield County.

Roger W. Palek, Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713, appearing on behalf of the Bayfield County Deputy Sheriff's Local 216/Wisconsin Professional Police Association/LEER Division.

ORDER CLARIFYING BARGAINING UNIT

On January 24, 2013, Bayfield 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 Bayfield County Deputy Sheriff's Local 216/Wisconsin Professional Police Association/LEER Division. The parties thereafter filed written argument-the last of which was received July 9, 2013.

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

ORDER

The employees Bayfield County has classified as "general" employees are hereby removed from the existing public safety employee bargaining unit represented by the Bayfield County Deputy Sheriff's Local 216/Wisconsin Professional Police Association/LEER Division.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of August, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/
James R. Scott, Chairman

Rodney G. Pasch /s/
Rodney G. Pasch, Commissioner

BAYFIELD 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 January 18, 2013, Bayfield 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. [1] Because the parties do not agree on whether the now excluded

[1] 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

employees should become a new free-standing "general employee" bargaining unit or become part of an existing "general employee" bargaining unit, that issue remains to be resolve through additional litigation if necessary. Pending resolution of that issue, the employees continue to be represented by the Association/WPPA/LEER.

Dated at Madison, Wisconsin, this 7th day of August, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/
James R. Scott, Chairman

Rodney G. Pasch /s/
Rodney G. Pasch, Commissioner

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 resolve by the Commission.

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