

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF MILWAUKEE

Involving Certain Employees of

CITY OF MILWAUKEE

Case ID: 251.0036

Case Type: UC_ME

DECISION NO. 38809

Appearances:

Benjamin J. Roovers, Assistant City Attorney, City of Milwaukee, 200 E. Wells Street, Room 800, Milwaukee, Wisconsin, appearing on behalf of the City of Milwaukee.

Brendan P. Matthews, Attorney, Cermele & Matthews, S.C., 6310 W. Bluemound Road, Suite 200 Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Police Association.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On May 3, 2019, the City of Milwaukee (City) filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a bargaining unit of City employees represented by the Milwaukee Police Association (MPA) by excluding those employees the City asserts are not “public safety employees” within the meaning of Wis. Stat. § 111.70(1)(mm). Commission Examiner Peter G. Davis was assigned to hear the matter. The MPA filed a motion to dismiss the petition, and also opposes the petition on its merits. Pursuant to multiple requests from Examiner Davis, the parties thereafter provided supplemental argument and factual stipulations, the last of which was received February 11, 2021.

Having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. The City of Milwaukee, herein the City, is a municipal employer that provides law enforcement services through its Police Department.

2. The Milwaukee Police Association, herein the MPA, is a labor organization that serves as the collective bargaining representative of certain employees of the City's Police Department including those employees in the rank of Police Officer and Detective.

3. The City has its own employee retirement system created by Chapter 36 of the City Charter. The retirement system is administered by the Annuity and Pension Board. City employees classified as "Policeman" receive a higher level of retirement benefits. Chapter 36 of the City Charter states in pertinent part:

POLICEMAN for the purposes of this act shall mean a person first employed on or after July 30, 1947, in the police department whose duty it is to preserve peace and good order of the city, having the power of arrest without warrant, including the chief and all other policemen, officers and police aides hired on or before October 2, 2011.

4. When a new City employee is hired, the City advises the retirement system if the employee is to be classified as a "policeman" for the purposes of determining the applicable level of retirement benefits.

5. By its petition, the City seeks to exclude from the MPA bargaining unit those employees who have worked in a limited duty assignment for more than two years.

6. All of the employees the City seeks to exclude from the MPA bargaining unit have the power of arrest without warrant and are classified as "policeman" under the City's retirement system.

7. All of the employees the City seeks to exclude from the MPA bargaining unit have the duty to preserve the peace and good order of the City.

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

CONCLUSION OF LAW

The employees at issue in this proceeding are "public safety employees" within the meaning of Wis. Stat. § 111.70(1)(mm).

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

ORDER

1. The motion to dismiss is denied.¹
2. The employees at issue in this proceeding shall continue to be included in the collective bargaining unit represented by the Milwaukee Police Association.

Issued at the City of Madison, Wisconsin this 15th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹The MPA contends that the City's unit clarification petition should be dismissed because there are no limited duty "positions," and the unit clarification form asks that the "positions" in dispute be identified. However, as reflected in the Commission's analysis of the City's petition, the City seeks to exclude certain employees holding the positions of "police officer" and "detective." Thus, it is clear the City's petition is valid.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Wisconsin Stat. § 111.70(4)(d) 2. a. prohibits the inclusion of “public safety employees” and “general municipal employees” in the same collective bargaining unit. Contrary to the MPA, the City asserts that certain employees in the MPA bargaining unit are no longer “public safety employees” because of their limited duty status.

Wisconsin Stat. § 111.70(1)(mm) defines a “public safety employee” in pertinent part as “any municipal employee who is employed in a position that, on July 1, 2011, is one of the following:

1. Classified as a protective occupation participant under any of the following:
 - a. Section 40.02(48)(am) 9., 10., 13., 15., or 22.
 - b. A provision that is comparable to a provision under subd. 1. a. that is in a county or city retirement system.

Wisconsin Stat. § 40.02(48)(am) referenced in Wis. Stat. § 111.70(1)(mm) 1. a. is applicable to employees covered by the Wisconsin Retirement System (WRS). For such employees, qualifying as a “public safety employee” requires both that the employee be certified by the employer as entitled to a higher retirement benefit level as a “protective occupation participant” and also meet any applicable statutory definition of the occupation. *See WPPA v. WERC*, 2012AP2721 (Ct.App. Dist. IV 2013).

City employees are not covered by the WRS but rather by the City’s own retirement system. Thus, it is the definition of a “public safety employee” provided in Wis. Stat. § 111.70(1)(mm) 1. b. that is applicable here. As specified in Wis. Stat. § 111.70(1)(mm) 1. b., the task is to apply the “provision” in the City’s retirement system “that is comparable to a provision” in the WRS when determining whether the disputed employees are “public safety employees.”

The City’s retirement system provides a higher retirement benefit for those City employees who meet the definition of “policeman” found in the City Charter. That higher retirement benefit structure is “comparable” to the higher benefit received by “protective occupation participants” under WRS. Under the City’s retirement system, the City certifies to the City’s retirement system which employees meet the City Charter definition of “policeman.” That certification procedure is “comparable” to the portion of Wis. Stat. § 40.02(48)(am) that requires an employee be certified by the employer to WRS as being entitled to the higher benefit level.

Here, the employees in dispute have all been certified by the City as meeting the City Charter definition of “policeman” for the purpose of receiving the higher retirement benefit available under the City’s retirement system. As noted earlier herein, for WRS protective occupation participants to qualify as “public safety employees” they must not only be certified by their employer as eligible for the higher retirement benefit but also must meet an applicable statutory definition. Under the applicable “comparable” to WRS standard established by Wis. Stat.

§111.70(1)(mm) 1. b., the employees the City has certified as qualifying for the higher retirement benefit must therefore also meet any applicable definition of “policeman” if they are to qualify as “public safety employees.”

As argued by the City, that applicable definition is found in the City Charter and is the same definition that is utilized by the City when determining that an employee qualifies for the higher retirement benefit. That definition states:

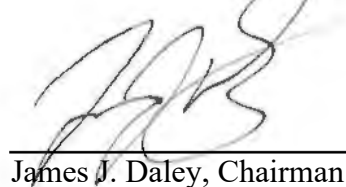
POLICEMAN for the purposes of this act shall mean a person first employed on or after July 30, 1947, in the police department whose duty it is to preserve peace and good order of the city, having the power of arrest without warrant, including the chief and all other policemen, officers and police aides hired on or before October 2, 2011.

That City Charter definition has two components: (1) duty to preserve peace and good order; and (2) power of arrest without warrant. The City acknowledges that the employees have the power of arrest without warrant but asserts their limited duty status means they no longer have the duty to preserve peace and good order.

First, the Commission notes the anomaly of the City’s continued willingness to certify that the employees meet the Charter definition for the purposes of retirement benefits but to then claim the employees do not meet that same definition for the purpose of “public safety employee” status. But more importantly, a review of the job descriptions for “Police Officer” and “Detective” that continue to be applicable to the limited duty employees satisfies the Commission that those employees continue to have a duty to preserve the peace and good order of the City of Milwaukee. Therefore, the limited duty employees continue to be “public safety employees” and continue to be appropriately included in the MPA bargaining unit. When reaching that conclusion, the Commission acknowledges the City’s contention that a hearing is needed to examine the specific duties that the employees in question are currently performing. However, because the Charter definition in question is a broad and general one, the Commission has concluded that an application of the job descriptions to the language of the Charter is sufficient to resolve the issue at hand.

Issued at the City of Madison, Wisconsin this 15th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman