

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Grievance Between
CITY OF JEFFERSON POLICE OFFICER'S ASSOCIATION

and

CITY OF JEFFERSON

Case ID: 456.0002

Case Type: MA

(Recruits Grievance)

AWARD NO. 8006

Appearances:

Roger W. Palek, Attorney, 660 John Nolan Drive, Suite 300, Madison, Wisconsin, appearing on behalf of the City of Jefferson Police Officer's Association.

James M. Carroll and Lauren E. Burand, Attorneys, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the City of Jefferson.

ARBITRATION AWARD

The City of Jefferson Police Officer's Association (hereinafter "the Association") and the City of Jefferson (hereinafter "the City"), are parties to a 2025-2026 Collective Bargaining Agreement (CBA). Pursuant to that agreement, the Wisconsin Employment Relations Commission assigned the undersigned to arbitrate this grievance. A hearing was held on March 11, 2026. The hearing was transcribed. The parties filed their initial briefs on April 24, 2026. The parties filed response briefs on May 8, 2026. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to frame the issue as follows:

Did the City violate the collective bargaining agreement between the parties when it did not include recruits attending the law enforcement academy within the bargaining unit, and if so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2025-2026 CBA contain the following pertinent provisions:

ARTICLE II – RECOGNITION

Section 1: The Municipal Employer recognizes the City of Jefferson Police Officer's Association as the exclusive bargaining representative for all regular full-time employees in the Police Department *having the power of arrest*, excluding the Chief of Police, Captain and Lieutenant, for the purposes of negotiating in relation to wages, hours and conditions of employment.

Exhibit J-1, p. 3 (emphasis added).

ARTICLE V – PROBATIONARY PERIOD

Section 1: Each new employee shall be on probation for the first eighteen (18) months of employment. City sponsored basic law enforcement recruit training shall not be counted towards the probationary period. Upon completion of the probationary period, the employee shall be entered on the seniority list as of the date of hire as a full-time employee.

Exhibit J-1, p. 5.

FACTS

The City hires recruits (sometimes referred to as "cadets") as employees of the Police Department. (Tr. 30:5-9.) Upon hire, recruits are formally sworn in by the City to serve the citizens of Jefferson and uphold the laws and ordinances of the community. (Tr. 32:6-12.)

Recruits then attend the police academy with the purpose of completing training and obtaining Law Enforcement Standards Board (LESB) certification. (Tr. 28:4-6.) During their time in the academy, recruits are under the authority and supervision of the Police Department. The Police Department does not permit recruits to make arrests prior to LESB certification. (Tr. 31:3.) If a recruit was to attempt to make an arrest prior to certification, the Police Department would investigate the conduct and potentially discipline the recruit. (Tr. 27:13-28:6.)

When recruits graduate from the academy and obtain certification, the City issues them a badge, gun, and standard uniform. (Tr. 29:1-13.) Upon graduation, the Association provides recruits with the paperwork to join the union if they choose and begins collecting union dues. (Tr. 15:14-16).

Prior to August 2025, the City hired recruits as part-time employees. (Reply Brief of Appellant at 5.) In August 2025, Wisconsin Professional Police Association Representative Dennis LeCaptain learned that the City had hired recruits as full-time employees and was not paying them in accordance with the CBA. (Tr. 16:7-20.) LeCaptain reached out to the chief to see if they could fit them into the contract through a letter of understanding or a side letter, and he insisted that they be paid according to the CBA. (Tr. 11:19-23.) LeCaptain and the City failed to reach an agreement, and LeCaptain filed the grievance that led to this arbitration. (Tr. 12:1-4.)

DISCUSSION

Article II establishes two requirements for inclusion in the bargaining unit: 1) regular full-time employment, and 2) the power to arrest. Neither party disputes that the August 2025 recruits are full-time employees. The crux of this dispute is whether recruits have the power to arrest. The WERC uses the power of arrest as the determinative factor as to whether an employee belongs to a law enforcement bargaining unit. *Walworth County*, 11686 (1973); *Trempealeau County* 12005 (1963); *Marquette County*, 12625 (1974).

The power of arrest is conferred by statute.

When the plain language of a contract is clear and unambiguous, the arbitrator must enforce and apply the language as written by the parties. *Green Cnty.*, WERC MA-12705 (2005) (McGilligan). Words are given their ordinary meaning unless they are technical terms. Technical terms are given their technical meaning. *Sch. Dist. of Lancaster*, WERC MA-13521 (2007) (Michelstetter).

In Wisconsin labor relations and law enforcement statutes, "power to arrest" is a well-established technical term with a specific meaning: the legal authority to make arrests as conferred *by statute*. Therefore, under the plain meaning of "power of arrest" in Article II, whether full-time employees may be included in the bargaining unit starts and ends with Wisconsin law.

Recruits have the power of arrest by operation of law.

Wisconsin law grants the power of arrest to recruits. Wis. Stat. § 165.85(4)(a)(3) expressly grants the power of arrest to recruits on their first day of employment. It provides: "A recruit may exercise law enforcement power during an original period of temporary or probationary employment that, except as provided in subd. 6. or as otherwise authorized by law, may not exceed 12 months from the recruit's first date of employment." Law enforcement power includes the power of arrest. Therefore, on recruits' first day of employment, they possess the power to arrest by operation of law.

The City contends that recruits do not have the power of arrest because the Police Department does not authorize recruits to make arrests. In other words, the City argues that although recruits possess the power of arrest by operation of law, they are not allowed to exercise it. However, it is the possession, not the exercise, of the power of arrest that delineates whether an

employee belongs to a law enforcement bargaining unit. *Outagamie Cnty. Prof'l Police Ass'n v. WERC*, Case No. 90-CV-318, Dec. No. 23203-A (1990). Recruits possess the power to arrest as granted by statute, regardless of whether the City allows them to exercise that power. The Police Department may limit how and when recruits are allowed to exercise that authority, but the authority itself is conferred by the legislature, not by the City or Police Department.

The City argues that the legislature left room for employer discretion over granting law enforcement power in Wis Stat. § 165.85(4)(a)(3) when it stated that “a recruit *may* exercise law enforcement power” rather than “a recruit *must* or *shall* exercise law enforcement power.” The City interprets the word “may” to mean that recruits “may” possess the power to arrest only if the City decides to grant it. The City misreads the statute. The legislature’s use of the word “may” refers to the discretion that recruits have in deciding when it is appropriate to make an arrest. Although the City has discretion over when and how recruits may make arrests via internal departmental policies, it does not have discretion over whether that power may exist at all. Under the City’s interpretation of Wis Stat. § 165.85(4)(a)(3), municipalities could withhold law enforcement powers already granted by state law from employees in order to limit the scope of law enforcement bargaining units.

The City limits recruits’ ability to exercise their power of arrest by not issuing a badge, gun, or standard uniform until graduation and certification, and by conducting internal investigations and discipline if a recruit makes an arrest. The City is within its rights to create these internal policies. But these policies do not eliminate recruits’ power of arrest. It simply regulates when and how recruits may exercise it. Similarly, the City points to liability concerns and lack of training as justifications for limiting recruits’ arrest authority. While these may be valid concerns, whether the legislature’s decision to grant the power of arrest to recruits was a wise one is not up to the City or the arbitrator. The fact of the matter is that the legislature expressly gave this power to recruits from their first day of employment. The City’s practical and policy considerations do not change the statutory reality.

The City references Article V to claim that Jefferson recruits do not meet the standard set in Wis. Stat. § 165.85(4)(a)(3). Article V of the CBA states that “city sponsored basic law enforcement recruitment training shall not be counted towards the probationary period.” In other words, Article V states that academy time does not count toward completion of probation. Article V’s mention of recruits’ probationary period concerns employees’ status for internal departmental policies such as seniority, discipline, benefits, and wage progression. It has nothing to do with requirements for inclusion in the bargaining unit, nor does it override the statutory provision granting the power of arrest. Article V’s provision that recruits’ time in the academy does not count towards their probationary period does not erase the fact that recruits receive the power of arrest from their first day of employment with the City.

The City fails to establish that Article II is ambiguous.

The City claims that the language of Article II is ambiguous. Contract language is ambiguous when it is susceptible to being given more than one meaning by reasonable people. *Columbia Cnty. Sheriff's Dep't. Emps. Union*, WERC Dec. No. 32883-A (2/24/2010) (Gordon). In

order to prove that the language is ambiguous, the City has the burden of providing evidence that reasonable minds could differ as to the meaning of “power to arrest.” The City does not point to any exhibits or testimony that demonstrates that “power of arrest” could be given multiple meanings by reasonable people. The only evidence the City provides is testimony from Chief Alan Richter, who stated that his understanding of the City’s interpretation of “power of arrest” is when a student goes through training and the City authorizes them to make arrests. (Tr. 23:9-18.) However, ambiguity does not arise from a mistaken interpretation or subjective belief about a term’s meaning. Ambiguity is an objective standard that arises only from reasonable differing interpretations. The term “power of arrest” has a well-established meaning in labor and law enforcement. The City’s interpretation that the power is granted by the City and not by statute is a mistaken belief, not a reasonable one.

The City argues that the language of Article II is ambiguous because the CBA does not define “power of arrest” or state that the definition is supplied by statute. While it is true that the CBA does not define “power of arrest,” that does not mean that the term is ambiguous. The standard for ambiguous language is whether it could be given more than one meaning by reasonable people, not whether the contract explicitly provides a definition or cites to a statute. The absence of a definition does not create ambiguity, especially for words with well-established meanings. Under the City’s argument, employers could contest the meaning of any contractual term not explicitly defined to unilaterally alter the scope of the bargaining unit.

Further, the City argues that the parties’ disagreement on whether “power of arrest” is ambiguous is evidence in and of itself that the term is ambiguous. The City also claims that the Association’s arguments in the alternative are further evidence that the language is ambiguous. This is flawed reasoning. Just because parties put forth different definitions of a term does not automatically render it ambiguous. Following the City’s logic, a party in any given contract dispute could manufacture ambiguity by suggesting an alternative interpretation, effectively eliminating the plain language rule.

Even if Article II were ambiguous, the City has not established a binding past practice of excluding full-time recruits.

The City has failed to establish that Article II is ambiguous. However, even if Article II were ambiguous, the City has failed to establish a binding past practice from which the parties’ intent can be discerned regarding the scope of the bargaining unit. When the language of a contract is ambiguous, arbitrators look to the past practices of the parties to discern their intent. *Green Cnty.*, WERC MA-12705 (2005) (McGilligan). For a past practice to be binding, it must be clear, consistent, and mutually accepted. *City of Wausau Fire Dept.*, WERC MA-7432. (1993) (Yaeger). Here, the past practices are not consistent and thus not binding.

The City argues that the Association’s past practices demonstrate that the Association did not consider recruits to be eligible bargaining unit members. The City points to the facts that the Association did not collect dues from recruits, that the Association provided recruits with the paperwork to join the union only upon graduation and certification, and that until now the

Association has never filed a grievance over the exclusion of recruits despite the language of Article II remaining unchanged for years.

However, these past practices do not control because recruits were only hired as part-time employees at the time of these practices. Under Article II, members of the bargaining unit must be full-time employees. Prior to August 2025, the City hired recruits as part-time employees. Although they had the power of arrest, they were not full-time employees. They failed to meet both Article II requirements. As such, the Association could not offer paperwork or collect dues from part-time recruits. The Association could not file a grievance against the City prior to August 2025 because excluding part-time recruits does not violate Article II.

In August 2025, the City began hiring recruits as full-time employees. These new full-time recruits meet both Article II requirements. So, the Association is justified in only now viewing recruits as eligible members and only now filing a grievance against the City. In sum, the City changed their practice of hiring part-time recruits to full-time, and as a result the Association changed their practice of not treating them as eligible bargaining unit members. Thus, even if Article II were ambiguous, there is no consistent past practice to bind the parties.

In light of the above and foregoing, the evidence and the arguments of the parties, I issue the following award:

AWARD

The City of Jefferson should apply the contract to the recruits hired as full-time employees on or after August 2025.

Issued at the City of Madison, Wisconsin, this 25th day of June 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Anfin J. Wise
Anfin J. Wise, Arbitrator