STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF NEENAH PROFESSIONAL POLICEMEN'S ASSOCIATION

Involving Certain Employes of

CITY OF MEENAH (Police Department)

Case IX
No. 14407 DR(M)-16

Decision No. 10147-A

DECLARATORY RULING

City of Neenah Professional Policemen's Association having requested the Wisconsin Employment Relations Commission to issue a Declaratory Ruling to determine whether certain police personnel in the Police Department of the City of Neenah, Wisconsin, holding the rank of Sergeant should be included in or excluded from a bargaining unit consisting of police officers, for the purpose of the exercise of rights under Section 111.70(4)(j), Wisconsin Statutes; and a hearing having been held in the matter on March 9, 1971, George R. Fleischli, Hearing Officer, being present; and the Commission having reviewed the evidence and the arguments of Counsel, and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

- 1. That City of Neenah Professional Policemen's Association, hereinafter referred to as the Association, is an organization of law enforcement personnel employed by the Police Department of the City of Neenah, Wisconsin.
- 2. That the City of Neenah, Wisconsin, hereinafter referred to as the Municipal Employer, inter alia, operates a Police Department.
- 3. That until November 4, 1970, the Association has been the recognized representative of all police officers employed by the Municipal Employer's Police Department in the ranks below and including Sergeant; and that on or about November 4, 1970, the Municipal Employer withdrew said recognition with regard to police officers holding the rank of Sergeant and has excluded them from the current collective bargaining agreement covering police officers in its employ.
- 4. That the Municipal Employer has ten police officers in its employ holding the rank of Sergeant; that one of said Sergeants is employed as a Traffic Sergeant, whose duties do not include supervision of any police personnel; that four of said Sergeants are employed as Investigative or Detective Sergeants, whose duties consist primarily of investigative police work and do not regularly perform duties associated with the supervision of police personnel; that four of said Sergeants are employed as Patrol or Desk Sergeants, whose duties include some of those duties normally performed by supervisory personnel but do not perform sufficient supervisory duties to make them supervisors; and

that one of said Sergeants is employed as a Relief Sergeant, whose duties sometimes include the duties performed by Patrol or Desk Sergeants.

CONCLUSION OF LAW

That the Sergeants in the employ of the Municipal Employer in its Police Department are not supervisors of police officers and are eligible for inclusion in the collective bargaining unit of police personnel for the purpose of exercising their rights under Section 111.70(4)(j) of the Wisconsin Statutes.

DECLARATORY RULING

That for the purpose of exercising the rights granted law enforcement personnel under Section 111.70(4)(j) of the Wisconsin Statutes, the appropriate collective bargaining unit of law enforcement personnel in the employ of the Municipal Employer's Police Department consists of all law enforcement personnel having the power of arrest, including Patrolmen and Sergeants but excluding the Chief, Captains, supervisors and all other employes.

> Given under our hands and seal at the City of Madison, Wisconsin, this 244 day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Morris Slavney, Chairman

Commissioner

Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCOMSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF NEENAH PROFESSIONAL POLICEMEN'S ASSOCIATION

Francisco Starpe

IOM :

Case IX No. 14407 DR(A)-16 Decision No. 10147-A

Involving Certain Employes of

CITY OF NEENAH (Police Department)

ر. - المجاهر المجا

MEMORANDUM ACCOMPANYING DECLARATORY MULING

Prior to November 4, 1970, the Association was the voluntarily recognized representative of all police officers employed by the Municipal Employer up to and including the rank of Sergeant and the parties have entered into collective bargaining agreements covering Patrolmen and Sergeants. 1/ On November 4, 1970, the Municipal Employer's Common Council passed a resolution declaring that Sergeants were supervisors and should be excluded from future collective bargaining agreements entered into pursuant to Section 111.70(4)(j) of the Wisconsin Statutes. After this action by the Common Council a dispute arose between the Municipal Employer and the Association over the question of whether or not the Sergeants employed in the Municipal Employer's Police Department were, in fact, supervisors as alleged by the Municipal Employer. On January 27, 1971, the Association filed a petition with the Commission seeking a Declaratory Ruling on the question of the alleged supervisory status of the Sergeants.

This Commission has previously held that it is inappropriate to include supervisors of law enforcement personnel in a unit of law enforcement personnel for the purpose of exercising the rights extended to law enforcement personnel under Section 111.70(4)(j). $\underline{2}$ / In deciding the question of whether or not an employe is a supervisor the Commission considers the following factors.

- The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes.
- 2. The authority to direct and assign the work force.
- 3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes.
- 4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes.

In 1970 the parties participated in a fact finding proceeding concerning wages, hours and working conditions for police personnel up to and including the rank of Sergeant. City of Neenah (Police Department), (9488) 2/70.

^{2/} City of Wauwatosa (Police Department), (7106) 4/65.

- 5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.
- 6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes.
- 7. The amount of independent judgment and discretion exercised in the supervision of employes. 3/

In order to find that an employe is a supervisor it is not necessary that the Commission find that all of the above factors are present but these factors should appear in sufficient combination in a given case to clearly establish that an employe is a supervisor.

Applying these factors to the case at hand it appears that none of the Sergeants in the employ of the Municipal Employer are, in fact, supervisors. The Municipal Employer's Police Department is, like most police departments, organized according to a paramilitary structure. The police personnel are advised that in the absence of the Chief, the "ranking officer" is in command and that when there are officers of equal rank present the most senior ranking officer is in command. This paramilitary structure existed both prior to and subsequent to the Common Council's resolution of November 4, 1970, and no major changes in the organization of the Police Department were made as a result of that resolution.

In spite of the paramilitary structure of the Police Department, supervision does not strictly follow the theoretical chain of command. In fact, certain police officers serving in the rank of Sergeant seldom if ever are in a position to perform supervisory functions over other personnel even though they may exceed other personnel in seniority.

The Chief of Police has two captains working directly under his supervision, the Station Captain and the Field Captain. The Station Captain has the responsibility for supervising the four Investigative or Detective Sergeants. The Field Captain exercises direct supervisory authority over the four Patrol or Desk Sergeants. The hours worked by the two Captains nearly coincide with the hours worked by the Chief, those being daytime hours Monday through Friday. The Traffic Sergeant works directly under the supervision of the Chief although he is sometimes subject to the supervision of the Station Captain. The Traffic Sergeant supervises four non-police personnel who perform maintenance and stenographic functions. His job primarily deals with traffic engineering and accident reporting and he does not supervise any Patrolmen in the performance of those functions. The one remaining Sergeant is a Relief Sergeant who relieves Patrolmen and Patrol Sergeants alike.

It is clear that the Traffic Sergeant exercises no supervisory authority over other police officers even though he is the most senior Sergeant. This is because his hours preclude the possibility that he would be the senior ranking officer on most occasions.

The Investigative or Detective Sergeants spend most of their time in the field or in the police headquarters pursuing investigative work for which they assume primary responsibility. While it is true that

^{3/} City of Milwaukee (Engineers), (6960) 12/64.

Detective Sergeants are sometimes in police headquarters during the nours when the Chief and Captains are absent, they do not normally get involved in handling problems that arise among the patrolmen unless they are asked for help by the Desk Sergeant or go to the scene of an emergency or unusual occurrence. Although they are senior to the Desk Sergeants, their work is separate and distinct from the work of the Desk Sergeants.

The Desk Sergeants perform certain functions which are ordinarily performed by supervisory personnel. They direct and assign the work force in the sense that if an assigned patrolmen fails to appear during the hours when the Chief and Captain are not present they follow set procedures in order to make up for his absence either by calling in a Patrolmen or reassigning the Patrolmen who are present. During the hours when the Chief and Captain are not present there are normally four patrolmen on duty, two walking a beat and two driving cars. It is obvious that the Desk Sergeant spends very little time in the capacity of directing and assigning a work force of this size in a normal workday especially since they work on their own. When an emergency or unusual occurrence arises the Desk Sergeant has the responsibility of reassigning the four patrolmen to cover the emergency. In such a case the Desk Sergeant might call upon a Detective Sergeant for advice if he thought the situation warranted it. After having made any necessary reassignment of personnel the Desk Sergeant is expected to call the Chief or Captain.

On the other hand, Desk Sergeants do not have the responsibility of evaluating patrolmen nor do they have authority to discipline or effectively recommend their discipline. The pay differential between Sergeants and Patrolmen is not so substantial as to be indicative of substantially increased responsibility. The Desk Sergeants spend the majority of their time working either at their desk or in the field. The duties of the men in the field are sufficiently clear that they do not require direct supervision so that the majority of the time spent by the Desk Sergeants in the field is in the capacity of performing patrol duties. Desk Sergeants exercise little or no independent judgment or discretion insofar as it relates to their relationship with the patrolmen. What little independent judgment and discretion they do exercise is primarily in the area of handling emergencies or unusual occurrences and does not deal with personnel practices.

The Relief Sergeant only Performs supervisory functions to the extent that he sometimes acts in the capacity of a Desk Sergeant. Since Desk Sergeants do not perform sufficient supervisory functions to be classified as supervisors, the Relief Sergeant is clearly not a supervisor.

For the above and foregoing reasons the undersigned conclude that the ten Sergeants in the employ of the Municipal Employer in its Police Department are not supervisors as that term is employed in the field of labor relations and should not be excluded from the unit of law enforcement personnel recognized by the Municipal Employer for the purpose of exercising their rights under Section 111.70(4)(j).

Dated at Madison, Wisconsin, this 24th day of August, 1971.

. . .

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Morris Slavney, Chairman

S. Rice II,

Kerkman, Commissioner