

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK  
PROCESSORS, CANNERY, DAIRY EMPLOYEES  
AND HELPERS UNION LOCAL NO. 695,  
AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA

Case VII  
No. 14471 FF-426  
Decision No. 10318

To Initiate Fact Finding Between  
Said Petitioner and

CITY OF PORTAGE (POLICE DEPARTMENT)  
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Appearances:

Mr. Glen Van Keuren, Assistant Secretary-Treasurer, appearing  
on behalf of the Petitioner.

Mr. Lewis W. Charles, City Attorney, appearing on behalf of  
the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America having petitioned the Wisconsin Employment Relations Commission to initiate fact finding, pursuant to Section 111.70 of the Wisconsin Statutes, on behalf of law enforcement personnel of the City of Portage; and the Commission, by Hearing Officer Robert M. McCormick, having conducted a hearing on said petition on March 29, 1971; and the Commission having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Petitioner, is a labor organization having its offices at 1314 North Stoughton Road, Madison, Wisconsin.

2. That the City of Portage, hereinafter referred to as the Municipal Employer, is a city located in the State of Wisconsin, having its principal office at the City Hall, Portage, Wisconsin.

3. That at all times material herein the Municipal Employer maintains a Police Department wherein it employs a Chief of Police, two Lieutenants, one Detective, eleven Patrolmen, one part-time Clerk Dispatcher and two part-time Meter Maids; that on February 2, 1971, the Petitioner submitted five copies of the following "Representation Agreement" to the Municipal Employer's Attorney, which documents were individually executed by Patrolmen Charles W. Paske, Jerome D. Kutzke, James M. Swan, Marvin L. Raimer, Daryl W. Pfaff, John G. Kastner and E. Lavin Morgan:

## "REPRESENTATION AGREEMENT"

It is hereby understood and agreed by and between the undersigned employees of City of Portage employed as Patrolman and Local Union No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as follows:

1. Both parties recognize that recent legal developments permit the municipal employer to prohibit the undersigned from becoming or remaining members of Local 695 but entitle the employees to the benefits of its representation in collective bargaining and fact finding procedures as established in Section 111.70 of the Wisconsin Statutes.

2. That the undersigned employees hereby designate Local 695 as their exclusive representative for the purpose of negotiating a collective bargaining agreement with their municipal employer and authorize it to take all necessary steps to that end.

3. That in consideration of agreement by Local 695 to act as their representative as set forth above, each of the undersigned employees hereby agrees to pay to Local 695 the sum of \$7.00 per month as a representation or agency fee.

4. It is specifically understood that payment of the representation or agency fee shall not entitle the undersigned employees to any of the internal benefits incidental to membership in good standing in Local 695 or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."

4. That, however, the Municipal Employer refused to recognize the Petitioner as the representative of a majority of the non-supervisory law enforcement personnel in its employ, contending that the two Lieutenants were not supervisory officers and that, therefore, the total complement of the appropriate collective bargaining unit consisted of fourteen officers, and since the Petitioner had only been designated as the representative by seven of such officers that the Petitioner had not, in fact, been authorized by a majority of the law enforcement personnel to represent them in conferences and negotiations with the Municipal Employer.

5. That thereupon, and on March 8, 1971, the Petitioner filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting that the Commission initiate fact finding in the matter; that in said petition the Petitioner alleged that the appropriate unit consisted of "regular full-time patrolmen in the employ of the Police Department of the Municipal Employer, excluding the Chief of Police, Lieutenants and part-time employees"; that further in said petition the Petitioner alleged that the parties were deadlocked after a reasonable period of negotiations and that the Municipal Employer refused to recognize the Petitioner as the representative of a majority of the non-supervisory law enforcement personnel in the employ of said Police Department, and that the Municipal Employer's position in that regard was predicated on its argument that the Petitioner did not represent a majority of the members of said Police Department, contending that the Lieutenants were not supervisory officers and that the Clerk Dispatcher and two

Meter Maids were "members" of the Department since they had been sworn and had the powers of arrest, and that, therefore, according to the position of the Municipal Employer, the seven authorizations obtained by the Petitioner did not constitute a majority of the seventeen "members" of the Police Department of the Municipal Employer.

6. That during the course of the hearing herein the parties agreed that the part-time Clerk Dispatcher and the two part-time Meter Maids should not properly be included in the unit consisting of law enforcement personnel, but that, however, the Detective should properly be included.

7. That the two Lieutenants are separately in charge of separate shifts, one from 4:00 p.m. to midnight and the other from midnight to 8:00 a.m., and that, as such, are in charge of three Patrolmen on each shift; that the Lieutenants perform essentially the same duties performed by the Patrolmen on their shift, such as responding to calls, making arrests, investigating accidents and reporting crimes; that the Lieutenants exercise independent judgment in carrying out verbal and written instructions of the Chief in making assignments to the Patrolmen on their shifts; that the Lieutenants may report rule infractions to the Chief, but otherwise have no role in the discipline or evaluation of the Patrolmen; that only the Chief has the authority to call in extra help, grant vacations or leaves of absence, recommend discipline or evaluate the performance of the Patrolmen; that in two of every eight days a Patrolman relieves a Lieutenant and such relief is also provided during the Lieutenant's vacations; that there is no differential in the form of compensatory time off or extra straight-time pay for overtime work by either the Lieutenants or the Patrolmen; that the wages of the Lieutenants are \$40 per month higher than that of a Patrolman; that on occasions a Lieutenant, in the absence of the Chief, acts as the acting Chief with limited powers; and that the Lieutenants spend approximately 90 percent of their time in performing the same duties and responsibilities as those performed by the Patrolmen.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

#### CONCLUSIONS OF LAW

1. That the members of the Police Department of the City of Portage holding the rank of Lieutenant are not supervisory personnel and are, therefore, properly to be included in the collective bargaining unit consisting of law enforcement personnel in the employ of the Police Department of the City of Portage for the purposes of fact finding within the meaning of Section 111.70(4)(j), Wisconsin Statutes.

2. That, since the Lieutenants are properly included within the collective bargaining unit of law enforcement personnel of the Police Department of the City of Portage, the total complement of non-supervisory law enforcement personnel in said Police Department consists of fourteen law enforcement personnel, and since only seven of said law enforcement personnel have designated Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as their representative for the purposes of conferences and negotiations on wages, hours and conditions of employment for said law enforcement personnel, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of

Teamsters, Chauffeurs, Warehousemen and Helpers of America has not been designated as the representative by a majority of such non-supervisory law enforcement personnel and, therefore, said Labor Organization cannot constitute the representative of the non-supervisory law enforcement personnel employed in the Police Department of the City of Portage for any purpose set forth in Section 111.70, Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

That the fact finding petition filed in the instant proceeding be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 17<sup>th</sup>  
day of May, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

[Signature]  
Zel S. Rice II, Commissioner

[Signature]  
Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In January 1971, seven Patrolmen in the employ of the Police Department of the City of Portage, in writing, executed documents authorizing the Union to represent the law enforcement personnel in the employ of the Police Department for conferences and negotiations on wages, hours and conditions of employment. The Union, on its belief that there were only twelve non-supervisory law enforcement personnel in the Department, since it had received authorizations from seven of such personnel, claimed to represent a majority of the non-supervisory members in the Department, and, therefore, contended that it was the duly authorized representative of such non-supervisory officers for the purposes of conferences and negotiations with respect to wages, hours and working conditions as contemplated in Section 111.70. The original contention of the Municipal Employer was to the effect that all the employees in the Department with the exception of the Chief should be in the bargaining unit. The personnel would include, in addition to the eleven Patrolmen and the one Detective, two Lieutenants, one part-time Clerk Dispatcher and two part-time Meter Maids. As a result of the refusal of the Municipal Employer to recognize the Union as the representative of the members of the Department the Union filed a petition requesting the Commission to initiate fact finding.

During the course of the hearing on the petition the parties agreed that the part-time Clerk Dispatcher and Meter Maids should properly be excluded from any unit of law enforcement personnel. However, no agreement was reached with respect to the inclusion or exclusion of the two Lieutenants. The Municipal Employer indicated that should the Commission find that the Lieutenants were supervisory employees then it would recognize the Union as the authorized representative of the law enforcement personnel for then, in fact, the Union had been authorized by seven of twelve law enforcement officers. However, if the Commission would determine that the Lieutenants were not supervisors, the Municipal Employer contended the appropriate bargaining unit would be increased to fourteen, and since at least up until the time of the hearing, the Union had obtained authorizations for representation from only seven of the law enforcement personnel, such authorizations were not executed by a majority of the members in the appropriate unit.

The Commission in the past has held that supervisory police officers are agents of the municipality involved and have no right to proceed to fact finding, 1/ and since they have no right to fact finding they cannot be included in an appropriate collective bargaining unit consisting of law enforcement personnel. Therefore, the hearing in the matter was primarily devoted to adducing evidence with respect to the duties of the two Lieutenants in order that the Commission could make a determination with respect to whether said Lieutenants were or were not supervisors and whether they were to be included or excluded from the bargaining unit, and finally, whether the Union involved herein had been authorized by a majority of the members of the Police Department for representation.

In determining whether an employee is a supervisor the Commission considers the following factors:

- "1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees." 2/

The duties of the Lieutenants involved herein are described in the Findings of Fact. Such duties and the authority or lack of authority delegated to the Lieutenants are not identical to the authority set forth in the rules and regulations of the Police Department, which rules and regulations appear to grant the Lieutenants greater authority than they have in practice been authorized to carry out. When questions arise over the supervisory status of employees or law enforcement personnel, the Commission will look beyond job titles and job descriptions and the like in making its determination as to whether or not the individuals involved are supervisors. 3/ Primary consideration is given to the actual authority and duties performed by those individuals rather than to their job descriptions and job titles. In reviewing the duties and responsibilities of the

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1/ City of Milwaukee (8950) 3/69.

2/ City of Milwaukee (6960) 12/64.

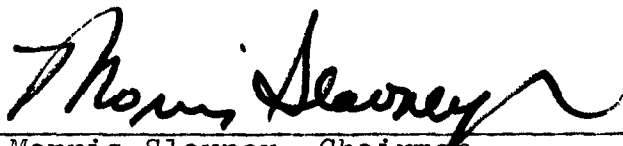
3/ Village of Shorewood (6552) 11/63.

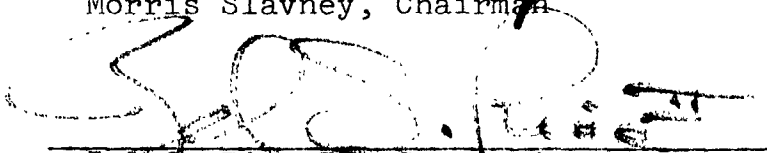
Lieutenants involved herein, as they pertain to the criteria noted above, we find that the evidence established in this proceeding indicates that the Lieutenants have no authority to either hire or fire, promote, transfer, discipline or discharge employees or to effectively recommend such action. Their authority to direct and assign the work force is performed after instructions are received from the Chief of Police. If we were to find that the Lieutenants involved herein were supervisors, the Department would consist of three supervisory personnel and fifteen non-supervisory personnel. Such a ratio of supervisors to non-supervisory personnel is not realistic. While the Lieutenants receive \$40 per month more than the Patrolmen, it is significant to note that the differential amounts to only 6.4 percent per month. The evidence further discloses that approximately 90 percent of the Lieutenants' time is occupied in performing the same tasks as are performed by the Patrolmen, and, therefore, any supervision performed by the Lieutenants is performed as a working supervisor, since he spends an insignificant portion of his time in supervising personnel. Finally, there is an insignificant amount of independent judgment and discretion exercised by the Lieutenants in their relationship with the Patrolmen. We, therefore, have concluded that in the Police Department involved herein the Lieutenants do not perform such supervisory functions so as to exclude them from a bargaining unit consisting of law enforcement personnel. Therefore, they would be entitled to representation as contemplated in Section 111.70 and are included in the bargaining unit with rank and file law enforcement officers. Their inclusion in such unit increases the complement of the unit to fourteen individuals, and since the Union has obtained the authorization of only seven members in the Department, the Union has not been authorized by a majority of the members in that Department to represent them, and, therefore, the Union has no status to represent the law enforcement personnel involved. It is on that basis that we are dismissing the fact finding petition.


Dated at Madison, Wisconsin, this 17<sup>th</sup> day of May, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner