

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
CITY OF MADISON	:	Case XXIX
	:	No. 15729 DR(M)-35
For a Declaratory Ruling With Respect	:	Decision No. 11087-A
to the Appropriate Unit of Law	:	
Enforcement Personnel	:	
	:	
	:	

Appearances:

Mr. William A. Jansen, Principal Assistant City Attorney, and
Mr. Barry Ott, Employee Relations Manager, appearing for the
 Petitioner.
Mr. Roth C. Watson, President, appearing on behalf of the Madison
 Professional Policemen's Association.

DECLARATORY RULING

The City of Madison having petitioned the Wisconsin Employment Relations Commission to issue a Declaratory Ruling to determine whether law enforcement personnel in the Police Department of the City of Madison, Wisconsin, holding the rank of Sergeant, Detective Supervisor and Lieutenant should be included or excluded from a bargaining unit consisting of law enforcement personnel; and hearing having been held in the matter on July 20 and 27, 1972, and August 28, 1972, Chairman Morris Slavney being present; and Madison Professional Policemen's Association having been permitted to intervene in the matter; and the Commission having reviewed the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That the City of Madison, Wisconsin, hereinafter referred to as the Municipal Employer, operates a Police Department and therein employs a number of commissioned law enforcement personnel.
2. That Madison Professional Policemen's Association, hereinafter referred to as the Association, which at least since July 27, 1967 has been the voluntarily recognized collective bargaining representative of all law enforcement personnel employed by the Municipal Employer, except those serving in the rank above Lieutenant, for the purposes of conferences and negotiations on questions of wages, hours and conditions of employment.
3. That the Municipal Employer employs in its Police Department the following commissioned law enforcement personnel; a Chief, three Inspectors, seven Captains, nine Lieutenants, thirty-three Detective Supervisors, twenty-eight Sergeants, eight Special Investigators, nine Policewomen, and one hundred sixty-six Patrolmen and Police Officers; that the three Inspectors are in charge of

three separate divisions, to wit: the Inspection Division, the Field Division and the Service Division; that the Field Division consists of four bureaus, each headed by a Captain, to wit: the Patrol Bureau, the Detective Bureau, the Traffic Bureau and the Crime-Prevention Bureau; that the Service Division consists of three bureaus, each headed by a Captain, to wit: Special Services Bureau, Records and Communications Bureau and Planning and Training Bureau.

4. That the nine Lieutenants are in charge of separate details or shifts in five of said bureaus, to wit: the Patrol Bureau (four details), the Detective Bureau (two shifts), the Traffic Bureau (one shift), the Records Bureau (one shift), and the Planning and Training Bureau (one shift).

5. That the thirty-three Detective Supervisors are assigned to two of said bureaus, to wit: the Detective Bureau and the Crime Prevention Bureau; that nineteen of the Detective Supervisors are assigned to the Detective Bureau on the day shift and have no employees under their immediate supervision; that eight Detective Supervisors are assigned to the Detective Bureau on the night shift, and have no employees under their immediate supervision; that three Detective Supervisors perform their duties in the Crime Prevention Bureau on the day shift and have no employees under their immediate supervision; and that three Detective Supervisors work in the Crime Prevention Bureau on the night shift and have no employees under their immediate supervision.

6. That the twenty-eight Sergeants work in five of said bureaus, to wit: the Patrol Bureau, Traffic Bureau, Special Services Bureau, Records Bureau, and Planning and Training Bureau; that thirteen Sergeants who are assigned to the Patrol Bureau including three on the first detail (first shift), four on the second detail (second shift), two on the third detail (special assignment) and four on the fourth detail (third shift); that each Sergeant in the Patrol Bureau works with a squad of Police Officers, which squads may vary from eight to eleven men; that five Sergeants are assigned to the Traffic Bureau, including two in the Traffic and Law Enforcement section (first shift), two in the Traffic and Law Enforcement section (second shift), and one in the Traffic Safety section; that the four Sergeants in the Traffic and Law Enforcement section each work with fourteen-man squads, and the one Sergeant in the Traffic Safety section works with two Police Officers and coordinates the activities of fifty-eight crossing guards; the latter not being included in the unit; that two Sergeants work in the Special Services Bureau, including one Sergeant who is assigned to the court section and coordinates the work of eight policemen and one Cadet, and one Sergeant, who works in the Services section, coordinates the activities of five policemen and four civilians who handle animal patrol, lakes patrol and motor maintenance; that six Sergeants are assigned to the Records Bureau, including one who works with problems of criminal identification and coordinates the activities of four policemen, two typists and two cadets; that one Sergeant handles statistics with regard to traffic violations and coordinates the activities of eight civilians and three cadets, and four Sergeants who handle communications and work with an average of two to four police and civilian personnel in performing that function; that two Sergeants are assigned to the Planning and Training Bureau, one of whom handles planning problems and works with the polygraph operator and the other Sergeant who works with three Police Officers in the training section.

7. That the law enforcement personnel serving in the rank of Lieutenant perform administrative and supervisory work only, and do not normally engage in routine police work in the field; that Lieutenants exercise considerable influence over the contents of six-months evaluations and other documents used for grading officers for promotion purposes, and are called upon in the course of their employment to exercise considerable discretion with regard to the assignment of personnel within their Bureau and shift; that Lieutenants conduct regular inspections of the appearance and deportment of Patrolmen and Police Officers assigned to their bureau and shift; that Lieutenants are, in the course of their work, frequently called upon to make decisions with regard to the handling of police matters and personnel problems, which are not of a routine nature and require the exercise of independent judgment; that although Lieutenants spend a considerable amount of their time performing administrative activities involving the handling of paper work, they do spend a large proportion of their time performing supervisory activities, particularly during shifts when the Inspectors and Captains are not in the station.

8. That the Detective Supervisors were formerly known as Detectives and were recently renamed Detective Supervisors with a view toward the creation and manning of a new rank of Detective below that of Sergeant and equal to that of Special Investigator; that there are currently no employes serving in the rank of Detective, and the Detective Supervisors are not called upon in the course of their employment to supervise any employes; and that the primary duties of Detective Supervisors involve police work of an investigative or preventative nature.

9. That the Sergeants in the employ of the Municipal Employer who work in the Patrol Bureau and Traffic Bureau are frequently called upon to perform work commonly performed by working foremen including on-the-job training, offering verbal praise and criticism and the reassignment of personnel to other areas within their section of the City with the approval of their Lieutenant; that Sergeants prepare written six-month evaluations of men assigned to their squad for the approval of their Lieutenants and Captains and, when requested, they investigate allegations of questionable behavior on the part of men assigned to their squad; that the majority of the time of the Sergeants is spent in the handling of routine police matters either individually or in support of the Patrolman or Police Officer in whose area the matter arises; that Sergeants have never been called upon to participate in discussions or conferences involving formal grievances, and they have no authority to enter into binding resolution of formal grievances on behalf of the Municipal Employer; that although Sergeants have the express authority to temporarily suspend a Police Officer for gross misconduct under exceptional circumstances, no Sergeant has ever exercised such authority and would be expected to consult his Lieutenant or Captain before taking such action, unless he happened to be the acting Lieutenant, due to the occasional absence of a Lieutenant or Captain from the station during vacation periods or due to illness.

CONCLUSIONS OF LAW

1. That the Lieutenants in the employ of the City of Madison in its Police Department are supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and are therefore excluded from the collective bargaining unit of law enforcement personnel.

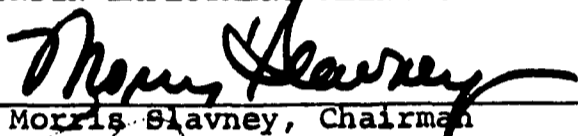
2. That the Detective Supervisors and Sergeants in the employ of the City of Madison in its Police Department are not supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act and should be included in the collective bargaining unit.

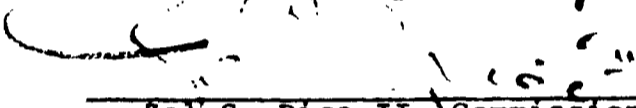
DECLARATORY RULING

That, within the meaning of Section 111.70(1)(e) of the Municipal Employment Relations Act, the appropriate collective bargaining unit of law enforcement personnel in the employ of the Police Department of the City of Madison consists of all commissioned law enforcement personnel, including Patrolmen, Police Officers, Policewomen, Special Investigators, Detectives, Sergeants and Detective Supervisors, but excluding Lieutenants, Captains, Inspectors, and the Chief.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
DECLARATORY RULING

Since July 27, 1967, the Association has been the voluntarily recognized representative of all commissioned law enforcement personnel employed by the Municipal Employer up to the rank of Captain, and the rank of Sergeant, Detective Supervisor and Lieutenant have been covered by all prior collective bargaining agreements negotiated pursuant to that recognition. On June 13, 1972, the Municipal Employer petitioned the Commission requesting that a Declaratory Ruling be issued excluding Sergeants, Detective Supervisors and Lieutenants from the bargaining unit on the claim that they are supervisors within the meaning of Section 111.70(1)(o)1 1/ of the recently enacted Municipal Employment Relations Act. The basis of the Municipal Employer's claim is that the officers holding said ranks are sometimes called upon to handle "grievances" and participate in the evaluation of personnel and the handling of formal and informal disciplinary action. The Municipal Employer does not claim that said employes have the power to hire, transfer (between bureaus), suspend (except in emergencies), lay off, recall, promote, discharge or formally discipline employes or adjust formal grievances. Most of said powers are vested by statutes in the Chief or Police and Fire Commission.

The Association maintains that the duties of the Sergeants, Detective Supervisors and Lieutenants were not sufficiently supervisory in nature to exclude them from the collective bargaining unit at the time that recognition was extended and that their duties have not changed sufficiently to warrant their exclusion now.

Even though Section 111.70 of the Wisconsin Statutes as it read prior to November 11, 1971, did not specifically authorize collective bargaining between Municipal Employers and law enforcement personnel, it did provide that law enforcement personnel could obtain the recommendations of a fact finder regarding proposed changes in their wages, hours and working conditions. In a number of cases involving petitions for fact finding or petitions of declaratory rulings, the Commission made determinations with regard to the alleged supervisory status of law enforcement personnel prior to the enactment of the Municipal Employment Relations Act. 2/

1/ Section 111.70(1)(o)1

"(o) 'Supervisor' means:

1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

2/ City of Milwaukee (7069) 3/65; City of Wauwatosa (7106) 4/65;
City of Greenfield (7252) 8/65; City of Milwaukee (8950) 3/69;
City of Sun Prairie (9345) 11/69; City of Edgerton (10134) 1/71;
City of Green Bay (9834-A) 2/71; Village of Fox Point (9959-A) 2/71;
City of Portage (10318) 5/71; City of Neenah (10147-A) 8/71.

Therefore, the creation of Section 111.70(1)(o)1 which defines the term "supervisor" did not change the law with regard to the inclusion or exclusion of law enforcement personnel on the basis of alleged supervisory status, it merely recognized statutorily the Commission's practice in that regard. The question for determination is whether the Sergeants, Detective Supervisors and Lieutenants are supervisors within the meaning of that term as it is employed in labor relations and set out in Section 111.70(1)(o)1 of the Wisconsin Statutes.

The Commission recognizes that the quasi-military organization of police and fire departments presents a somewhat unique problem in making determinations with regard to alleged supervisory status. The rules and regulations of the Madison Police Department are typical in that they reflect the quasi-military concepts frequently employed in police departments. Of particular significance is the concept that an officer is subordinate to every other officer on the force to the extent that his rank or date of rank is below that of the other officers. If this concept were relied upon by the Commission for making determinations of alleged supervisory status, it would inevitably result in the conclusion that all but the lowest ranking personnel are supervisors. In the case of the Madison Police Department, such a rule would establish a ratio of officers to management and supervisory personnel of approximately two to one. If only those officers which the Municipal Employer claims are "immediate" supervisors are so found (Detective Supervisors and Sergeants), the resulting ratio would be 2.7 to 1.

On the other hand, if the Commission were to totally disregard the quasi-military structure of police departments and strictly apply the criteria traditionally utilized in determining supervisory status, the Commission might in a given case "split a rank" within the department because of a finding that some Lieutenants or some Sergeants perform supervisory duties while others do not. Such a conclusion would undoubtedly cause difficulty both in terms of collective bargaining and police operations. For that reason the Commission has, where possible, attempted to avoid the splitting of ranks when making supervisory determinations involving law enforcement personnel. ^{3/} In this case, neither party to the proceeding has asked the Commission to split a rank and it does not appear necessary under the evidence to do so.

LIEUTENANTS

The Lieutenants perform sufficient supervisory duties to warrant their exclusion from the collective bargaining unit particularly in light of the fact they generally remain in the station, and are frequently called upon to exercise considerable discretion with regard to the handling of supervisory problems and police problems in general. They do not become involved in the normal day-to-day police problems and, therefore, do not fit the characterization of "working foremen". Although their supervisory powers are limited as a result of statutory limitations which vest most supervisory functions in the Police and Fire Commission or the Chief. It is reasonable, under the facts in this case, to conclude that the Lieutenants are supervisors, which creates a ratio of employes to supervisors of approximately eleven to one.

^{2/} The Legislature adopted this approach in the case of firefighting personnel by enacting Section 111.70(1)(o)2.

DETECTIVE SUPERVISORS

It is clear on the evidence presented that Detective Supervisors perform no supervisory duties under the present arrangement, and it is doubtful that the Detective Supervisors will be called upon to perform substantial supervisory duties in the future. Unless the ratio of Detective Supervisors to Detectives becomes substantial, it is doubtful that the Detective Supervisors will be required to spend a significant portion of their time performing duties of a supervisory nature, as opposed to investigative and preventative police activities. 4/

SERGEANTS

On the evidence presented, the Commission is satisfied that a number of the Sergeants, particularly in the Patrol and Traffic Bureau, are frequently called upon to perform work normally performed by "working foremen". Even so, these police officers are not vested with sufficient supervisory authority as to require their exclusion as supervisors. Their participation in the evaluation procedure is clearly limited by the exercise of considerable control over the content of the evaluations by their superiors. Most of their time is spent in the field in direct support of the police functions performed by the Patrolmen and Police Officers. In their dealing with Patrolmen and Police Officers, the Sergeants exercise little or no independent judgment in excess of that exercised by experienced Police Officers in the force. The power to suspend an officer in the field is of a theoretical nature and is contradicted by the actual practice. In fact, if a Sergeant in the field were confronted with a situation which in his judgment called for such drastic action, he would consult either his Lieutenant or Captain before attempting to suspend an officer. The only "disciplinary" authority exercised by the Sergeants relates to the administration of verbal praise or criticism, which is the necessary concomitant of the Sergeant's training and leadership activities. He has no power or authority to formally discipline an officers on his own account and, like other officers, is only in a position to make recommendation in that regard.

As for the Sergeants who perform their duties in the station, we are satisfied that the evidence adduced during the hearing establishes that a majority of their time is spent in performing those duties performed by officers of lesser rank and/or by civilian personnel, and that they exercise limited "supervisory" functions.

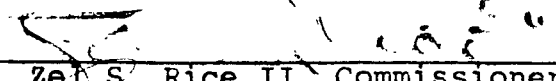
For the above and foregoing reasons, the Commission concludes that the Sergeants and Detective Supervisors are not, however that the Lieutenants are, supervisors within the meaning of the Act.

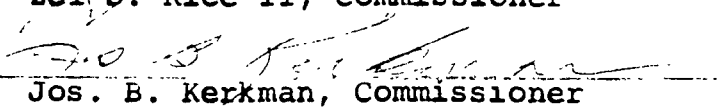
Dated at Madison, Wisconsin, this 28th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zeh S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

4/ It is interesting to note that if the Commission were to conclude that some or all of the Sergeants perform sufficient supervisory duties to be classified as supervisors, it would create a split between the ranks since under no circumstances could any of the Detective Supervisors be presently classified as supervisors within the meaning of the Act.