

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
: KEWAUNEE COUNTY LAW ENFORCE- :
MENT EMPLOYEES LOCAL 1778, : Case 1
AFSCME, AFL-CIO : No. 35360 ME-37
: Decision No. 11096-C
Involving Certain Employees of :
: KEWAUNEE COUNTY :
: :

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220, appeared for the Petitioner.

Nash, Spindler, Dean & Grimstad, Attorneys at Law, 201 East Waldo Blvd., Manitowoc, Wisconsin 54220, by Mr. John Spindler, appeared for the Employer.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

Kewaunee County Law Enforcement Employees Local 1778, AFSCME, AFL-CIO having, on July 15, 1985, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified unit of law enforcement employees in the employ of Kewaunee County, to determine whether the positions of assistant traffic chief and traffic sergeant should be excluded from said unit; and hearing in the matter having been conducted on August 15, 1985, at Kewaunee, Wisconsin, before Examiner Deborah A. Ford, and a transcript of the proceedings having been received by August 30, 1985; and the parties having filed post-hearing briefs by September 20, 1985; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Kewaunee County Law Enforcement Employees Local 1778, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization which has its offices located in c/o P. O. Box 370, Manitowoc, Wisconsin 54220.

2. That Kewaunee County, hereinafter referred to as the County, is a municipal employer which has its offices located at 613 Dodge Street, Kewaunee, Wisconsin.

3. That in Kewaunee County, Dec. No. 11096 (WERC, 2/67), the Commission certified the Union as the exclusive collective bargaining representative of the following employees of the County:

All deputized employees of Kewaunee County employed in the County Traffic Department and the Sheriff's Department, but excluding the sheriff, the chief traffic officer and the undersheriff, supervisors, confidential and managerial employees.

4. That on July 15, 1985, the Union filed a Petition to Clarify Bargaining Unit requesting that the positions of assistant traffic chief and traffic sergeant be included in the bargaining unit; that the County contends that both positions should be excluded on the grounds that they are supervisory and/or managerial.

5. That the Kewaunee County Traffic Department employs 11 traffic officers including the traffic chief, the assistant traffic chief, the traffic sergeant and 8 patrol officers; that traffic officers are also designated as deputy sheriffs; that in their role as traffic officers and deputy sheriffs, officers of the traffic department are responsible for patrolling county highways, enforcing traffic laws, writing citations and investigating crimes committed off the road;

that the traffic department operates seven days a week, twenty-four hours a day; that traffic officers work four shifts -- 8:00 a.m. to 4:00 p.m., 10:00 a.m. to 6:00 p.m., 4:00 p.m. to 12 midnight, and midnight to 8:00 a.m. -- with generally two officers assigned to work on each of three shifts and the 10:00 a.m. - 6:00 p.m. shift used to insure coverage when officers are off duty; and that officers work a tour of duty consisting of six days on and three days off.

6. That the disputed positions of assistant traffic chief and traffic sergeant were created by the Kewaunee County Board in March, 1985 by a resolution designed to create a chain of command within the traffic department (i.e., traffic chief, assistant traffic chief, traffic sergeant, patrol officer) that to date, the traffic chief has been the only traffic officer excluded from the unit as an undisputed supervisor in the department; that the job descriptions for the positions of assistant traffic chief and traffic sergeant provide for the following:

ASSISTANT TRAFFIC CHIEF

CHARACTERISTIC OF THE CLASS

Nature: Under direction of the Traffic Chief, to be responsible for the administration of the Traffic Department, including the supervision of traffic patrolmen engaged in the enforcement of state and county laws, rules and regulations of the department, and to perform related work as required. Position reports to the Traffic Chief.

Example of Duties:

1. Acts as Chief when Traffic Chief is absent.
2. Assists with planning and supervision of work schedules of traffic patrolmen, and other members of the department.
3. Assists in policy making, reports misconduct to chief, and takes an active part in discipline. Can recommend hiring and firing of personnel.
4. Researches equipment needed.
5. Assists with the annual budget.
6. Supervises and monitors department activity.
7. In charge of all court records for the traffic department.
8. Assists in training of new department members.
9. Performs as traffic patrolman when necessary.
10. Analyzes reports, and disposes of administrative and enforcement problems.

QUALIFICATIONS

Essential Knowledges and Abilities:

1. Thorough knowledge of state and county laws, rules and regulations pertaining to highway traffic and operation of commercial vehicles.
2. Considerable knowledge of courtroom procedures and statutory provisions relating to the arrest and detention of prisoners.
3. Considerable knowledge of first aid, safety hazards, and safe practices.

4. Ability to plan and supervise the work of traffic patrolmen.

5. Ability to conduct lectures and demonstrations.

6. Ability to evaluate reports and investigations.

7. Ability to enforce, explain, and interpret state and county laws, rules and regulations.

8. Ability to establish and maintain effective working, and public relationships.

DESIRABLE TRAINING AND EXPERIENCE

1. Graduation from high school, supplemented by courses in crime detention and law enforcement, and administration.

2. Five or more years of law enforcement work, some of which included supervisory responsibility.

3. A Degree in Police Science, or related field.

TRAFFIC SERGEANT

CHARACTERISTIC WORK OF CLASS

Nature: Under the direction of the Traffic Chief, serves as the lead man of a shift, or tour of duty, supervising the work assignments relative to the operation of the department in the absence of the Chief, and Assistant Chief, conducting himself within prescribed departmental policies, rules and regulations; perform traffic officer duties.

Examples of Duties:

1. Assume charge of and supervision of a shift or tour of duty in the absence of the traffic chief, and assistant chief.

2. Independently resolves on contacts chief or assistant chief on major problems that occur during his assigned shift.

3. Inspects personnel and equipment, including squad cars.

4. Notes performance deficiencies and strives through training and counseling to correct them.

5. Enforces traffic laws, and other federal and state laws.

6. Investigates accidents, and complaints and collects evidence.

7. Issues tickets, and makes arrests.

8. Renders first aid and assistance.

9. May be assigned special program responsibilities.

10. Assists the sheriff or other law enforcement officers; such assistance shall be coordinated with the Traffic Chief or Assistant Chief.

11. Appears as a witness in court.

12. Maintains records and prepares reports.

13. Shift, or tour of duty, will be determined by the Traffic Chief.

QUALIFICATIONS

Essential Knowledge and Abilities:

1. Working knowledge of state and county laws and regulations relating to traffic laws and health and safety.

2. Working knowledge of departmental functions, procedures and practices.

3. Working knowledge of highway classification and of the various makes and types of motor vehicles.

4. Working knowledge of the methods and practices employed in the detention and apprehension of criminals.

5. Ability to supervise the work of others.

6. Ability to explain and enforce state and county laws and ordinances clearly and courteously.

7. Ability to maintain accurate and complete records and prepare clear and detailed reports.

8. Ability to render first aid and skill in the use of firearms.

9. Ability to establish and maintain effective working and public relationships.

10. Knowledge of departmental policies and procedures.

DESIRABLE TRAINING AND EXPERIENCE

1. Graduation from high school.

2. Some course work beyond high school in police science

3. Three or more years of law enforcement work.

7. That the position of assistant traffic chief is currently occupied by Dale LaCrosse; that LaCrosse was appointed to this position by the County Board's Personnel Committee effective April 1, 1985; that prior to being appointed assistant traffic chief, LaCrosse was employed as a patrol officer and deputy sheriff; that LaCrosse spends the majority of his time performing the regular duties of a patrol officer; that LaCrosse generally works the 8:00 a.m. to 4:00 p.m. shift together with another patrol officer or the traffic chief; however, he often works the 10:00 a.m. to 6:00 p.m. shift to insure adequate coverage; that one day a month LaCrosse spends 3-6 hours performing the duties of court officer

which include handling traffic citations that have been written, acting as liaison between the district attorney's office and traffic department, and, signing criminal complaints; that once or twice a week LaCrosse is responsible for filing all traffic tickets; that in addition to the foregoing duties LaCrosse has been involved in discussions with the Chief regarding the budgetary needs of the department; that LaCrosse does not prepare or sign the department's budget requests nor does he appear before the County Board to answer questions regarding the budget, but rather such responsibilities are handled by the Chief; that LaCrosse has the authority to sign purchase orders for small items such as office supplies and oil for patrol cars; that the most expensive purchase LaCrosse has authorized was a case of oil; that LaCrosse does not have the authority to make allocations of money different from that previously designated by the County Board; that, LaCrosse has on at least one occasion researched and prepared a grant application on behalf of the traffic department; that such application, although prepared by LaCrosse, was signed by both LaCrosse and the Chief; that the County Board Personnel Committee, not LaCrosse, hires, fires, lays off, disciplines, and suspends County personnel; that LaCrosse's job description states he can recommend hiring and firing of personnel and that he "takes an active part in discipline," however, he has never done so because no employee has been hired, discharged or disciplined since he assumed his current position; that there is no formal procedure for evaluating sheriff and traffic department employees and none of the patrol officers have been evaluated by anyone; that, when necessary, LaCrosse can assign officers to specific calls; that in the absence of the traffic chief, LaCrosse has the authority to grant requests for time off and to make decisions involving emergencies; that although LaCrosse receives the same fringe benefits as other patrol officers, he is paid on a salaried basis, unlike patrol officers or the traffic sergeant who are paid on an hourly basis; that by Board resolution, LaCrosse's annual salary is \$23,410.00 which is about \$300 more a month than patrol officers; that employees have been told LaCrosse is their supervisor; that LaCrosse does not possess supervisory authority in sufficient combination and degree to warrant a finding that he is a supervisor; that LaCrosse neither possesses sufficient authority to commit the employer's resources nor participates significantly in policy formulation or implementation so as to warrant a finding of managerial status.

8. That the position of traffic sergeant is currently occupied by Daniel Brusky; that Brusky has been employed by the County as a traffic officer for twelve years and has held the position of traffic sergeant since April 1, 1985, having been appointed to said position by the County Board Personnel Committee; that as traffic sergeant, Brusky spends at least 90% of his time performing the normal duties of a traffic officer, including patrolling county roads, enforcing traffic laws and conducting investigations; that Brusky works an overlapping shift from 7:00 p.m. to 3:00 a.m.; that in addition to his normal duties, Brusky can and does assign calls to the other patrol officers on duty when necessary and advises them on the proper procedure for handling calls; that such advice and assignment are of a routine nature; that Brusky does not have authority to hire, discharge, layoff, transfer, grant time off or adjust grievances, rather, the County Board Personnel Committee has such authority; that Brusky believes he has authority to make effective disciplinary recommendations but has not had occasion to exercise such authority; that on approximately two occasions Brusky has informally counseled officers about proper procedure or conduct, but that no written notation was made of such counseling; that Brusky receives the same fringe benefits as other officers but receives 2 $\frac{1}{2}$ more an hour than the highest paid patrol officer; that employees on the second and third shifts have been told to consider Brusky as their supervisor; and that Brusky does not possess any managerial responsibilities or supervisory authority in sufficient combination or degree to warrant a finding of supervisory or managerial status.

CONCLUSIONS OF LAW

1. That the occupant of the position of assistant traffic chief is neither a supervisory nor a managerial employee and, therefore, is a municipal employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act (MERA).

2. That the occupant of the position of traffic sergeant is neither a supervisory nor a managerial employee and, therefore, is a municipal employee within the meaning of Sec. 111.70(1)(i) Stats.

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

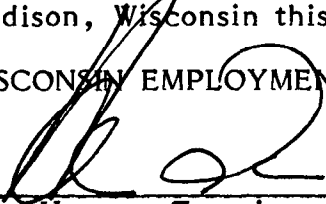
ORDER CLARIFYING BARGAINING UNIT 1/

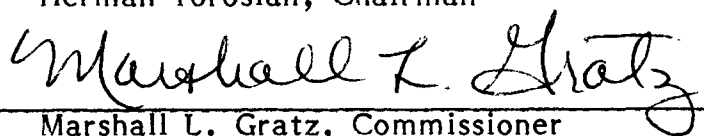
That the positions of assistant traffic chief and traffic sergeant are hereby included in the bargaining unit described above in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 7th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all

(Footnote 1 continued on Page 7)

(Footnote 1 continued)

parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

KEWAUNEE COUNTY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

POSITIONS OF THE PARTIES:

Union

The Union contends that inasmuch as patrol officers require little supervision in the course of their work, the assistant traffic chief and traffic sergeant spend very little time performing supervisory tasks. Moreover, the Union argues that what supervisory responsibilities they do possess are related to activities rather than personnel and thus are more analogous to back-up assistance rather than supervision. The Union also argues that most of the personnel decisions are made by the County Board rather than department personnel thus leaving very little authority vested in these men. Therefore, the Union contends, the assistant chief and the sergeant do not possess sufficient supervisory indicia to be excluded from the bargaining unit. With respect to the alleged managerial status of the assistant chief, the Union denies that he possesses any effective managerial authority.

County

The County contends that the instant positions should be excluded as supervisory because the occupants of the positions direct and assign work, have the power to recommend discipline, earn more money than other bargaining unit members and are perceived as supervisors by other department employees. Also the employer points out that failure to find them supervisors would leave two shifts without any supervisor.

The County also argues that based on their input into the annual budget, the assistant chief and sergeant should be excluded as managerial employees.

DISCUSSION

In determining whether a position is supervisory in nature, the Commission has consistently considered 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/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees;
7. The amount of independent judgement exercised in the supervision of employees. 2/

2/ Door County (Sheriff's Department), Dec. No. 20020 (WERC, 10/82); Laona School District, Dec. No. 22825, (WERC, 8/85).

The Commission has also held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, they will find an employee to be a supervisor. 3/

Assistant Traffic Chief

The assistant traffic chief spends a substantial amount of his time performing the regular duties of a patrol officer and tasks related to court appearances and administrative responsibilities. The record reveals that the County Board's Personnel Committee, not LaCrosse, is authorized to hire, fire, discipline, suspend and lay off employees. It appears from the record that LaCrosse can make recommendations in this regard. However, since no employee has been hired, fired, or otherwise disciplined since LaCrosse assumed the assistant traffic chief position, he has not had occasion to offer recommendations. In the absence of the traffic chief, LaCrosse does have authority to grant time off and to make decisions in cases of emergencies. However, given the significant role in personnel matters played by the County's Personnel Committee, the fact that LaCrosse spends the majority of his time performing work similar to that of his subordinates, and that there is only one patrol officer on duty when LaCrosse is on duty, requiring little supervision for LaCrosse, it does not appear that he possesses the requisite indicia in sufficient combination and degree to warrant a finding that he is a supervisor within the meaning of MERA. The fact that LaCrosse receives a higher salary than patrol officers is insufficient to alter our conclusion that he is not a supervisor within the meaning of MERA.

The County has also alleged that LaCrosse is a managerial employee. The Commission has consistently held that in order for an employee to be found to be a managerial employee, said employee must participate in the formulation, determination and implementation of policy to a significant degree or possess effective authority to commit the employer's resources. We have interpreted the authority "to commit the employer's resources" to mean the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 4/

LaCrosse, although informally involved in the budget process, does not participate significantly in the actual development of the budget or its components. Although he does possess the authority to make small expenditures, such authority is ministerial. While it is arguable that the writing of grant proposals has an impact on policy, we do not find the number of proposals or the nature of LaCrosse's involvement sufficient to confer managerial status. Therefore, we conclude that LaCrosse is not excluded from the bargaining unit as either a managerial or supervisory employee.

Traffic Sergeant

A review of the record reveals that the traffic sergeant spends at least 90% of his working time performing the normal duties of a patrol officer. Brusky has no authority to hire, fire, promote, grant time off or discipline employees. Although the job description makes reference to supervisory responsibilities, those responsibilities relate to supervising activities rather than supervising employees, (e.g. "assume charge of and supervision of a shift and tour of duty. . . ."). At hearing, Brusky testified that he has performed informal counseling of employees, however, such "counseling" essentially consisted of his verbal correction of deficiencies in performance, rather than disciplinary actions. While he does have authority to assign calls to officers, such decisions are of a somewhat routine nature and require little exercise of independent judgement. Although Brusky earns a higher hourly wage than other patrol officers, the difference is not great enough to support a finding of supervisory status. Although a finding of non-supervisory status would leave as

3/ Dodge County, Dec. No. 18076-A (WERC, 3/83).

4/ Manitowoc County (Highway Department), Dec. No. 20847 (WERC, 7/83)
Village of Brown Deer (Dept. of Public Safety), Dec. No. 28178 (WERC, 1/82).

many as two shifts with minimal supervision, it does not appear that given the small number of patrol officers assigned to a shift and the relative independence of the officers, that closer supervision is needed and therefore, we do not find this factor to be determinative. Based on the foregoing, we conclude that Brusky does not possess supervisory indicia in sufficient combination and degree to warrant exclusion on that basis.

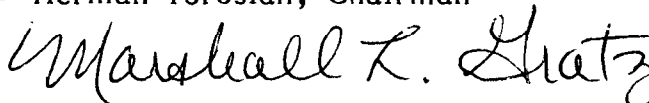
With respect to Brusky's alleged managerial status, there is no evidence in record which indicates that Brusky has any input into the budget process or policy formulation. We therefore conclude that the position of traffic sergeant is not a managerial one.

Dated at Madison, Wisconsin this 7th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman



Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner