

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

CITY OF KIEL,

Involving Certain Employees of

CITY OF KIEL (POLICE DEPARTMENT)

Case 4  
No. 15919 ME-829  
Decision No. 11370-A

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Appearances:

Mr. John L. Laun, City Attorney, 514 Fremont Street, P.O. Box 156, Kiel, Wisconsin 53042, appearing on behalf of the City.

Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2323 North 29th Street, Sheboygan, Wisconsin 53081, appearing on behalf of the Union.

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

City of Kiel having filed a petition on May 23, 1984, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of all police officers of the Kiel City Police Department except the Chief of Police by excluding from the unit the position of Lieutenant; and a hearing having been held on June 25, 1984, in Kiel, Wisconsin before Examiner James W. Engmann, a member of the Commission's staff; and a stenographic transcript having been prepared and forwarded to the parties on July 9, 1984; and the parties having filed briefs in the matter, the last of which was received on August 9, 1984; and both parties having waived reply briefs due on August 27, 1984; and the Commission having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That City of Kiel, hereinafter referred to as the City, is a municipal employer and has its offices at Kiel City Hall, 621 - 6th Street, Kiel, Wisconsin 53042; and that among its municipal functions the City maintains and operates a Police Department.

2. That the Kiel Police Department Employees Unit, Local 1362, AFSCME, AFL-CIO, is a labor organization representing municipal employes for the purposes of collective bargaining, and that it has its offices at 2323 North 29th Street, Sheboygan, Wisconsin 53081.

3. That since 1977, Local 1362 has been the certified representative of the collective bargaining unit consisting of all police officers of the Kiel City Police Department, excluding the Chief of Police and all other employes; 1/ that at the time of said certification the City employed five police officers other than the Chief of Police who held the following ranks: one Lieutenant, one Sergeant, two Corporals and one Patrolman; that during said certification proceeding the City attempted to have the positions of Lieutenant and Sergeant excluded from said unit as supervisors; and that the Commission found both positions to be municipal employes.

4. That on May 23, 1984, the City filed the instant petition to clarify the instant bargaining unit to exclude the position of Lieutenant from the bargaining unit on the ground that said position was supervisory.

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1/ Dec. No. 11370 (WERC, 11/72).

5. That the City currently employs four full-time police officers other than the Chief of Police who hold the following ranks: one lieutenant and three patrol officers; that the City also employs four part-time patrol officers, five full-time and three part-time persons in the Alarm Center, and an unspecified number of persons in the police reserve; that Ricky K. Sloan was the Lieutenant from October 1974, to June 1, 1975, and that he has been Chief of Police since June 1, 1975; that Ronald S. Meyer was the Sergeant from October 1974 to June 1, 1975 and that he has been Lieutenant since June 1, 1975; that the position of Sergeant has been vacant since June 1, 1975, and that the three patrol officers are Larry Wodach, William Goethe and Russ Pfifferle.

6. That all five full-time police officers work a cycle of six days on--two off--six on--three off; that Chief Sloan works a shift from 7:00 a.m. to 3:00 p.m.; that one patrol officer works each of the following shifts: 3:00 p.m. to 11:00 p.m., 8:00 p.m. to 4:00 a.m. and 11:00 p.m. to 7:00 a.m.; and that Lieutenant Meyer works a varied shift, working 7:00 a.m. to 3:00 p.m. on the five days in the 17 day cycle that the Chief has off, working 12 noon to 8:00 p.m. two days, working 3:00 p.m. to 11:00 p.m. five days, with five days off.

7. That Lieutenant Meyer performs all of the duties of a patrol officer; that he spends part of his time on duties that patrol officers do not have, but these duties are either routine and clerical in nature or consist of supervising activities rather than supervising employees; that he does recommend changes in departmental procedures to the Chief; and that the Chief on occasion has incorporated these changes, but that Lieutenant Meyer does not have authority to make such changes on his own.

8. That Lieutenant Meyer has little if any contact with Patrol Officer Pfeifferle and little contact with Patrol Officer Goethe; that the vast majority of time on the job he works by himself; that the Lieutenant is paid \$1,690 per month and the Patrol Officers are paid \$1,598 per month.

9. That Lieutenant Meyer is responsible for annual Safety Patrol trips to Washington, D.C., and for designating the street corners on which the Safety Patrol operates; that he coordinates safety programs for schools and groups; that he serves as the Department's Juvenile Officer; that in that capacity he supervises an activity rather than employees; and that he is responsible for the preparation and submission of the monthly Uniform Crime Report, but that the secretary fills out the report forms and he reviews them, and that said duty is routine and clerical in nature.

10. That Lieutenant Meyer has authority to call in employees, to approve overtime, to change work schedules and to approve days off in the absence of Chief Sloan; that on occasion a secretary has called in employees and then informed the Chief or Lieutenant; that approving overtime involves comparing the overtime request with the schedule; that Lieutenant Meyer's authority in this area is of a routine or clerical nature not requiring the use of independent judgment; that directives to the patrol officers are signed by Chief Sloan and not Lieutenant Meyer; and that Lieutenant Meyer is in charge of investigations and delegates the follow up on investigations to the patrol officers, but much, if not all, of this delegation occurs because of the time frame the various officers, including the Lieutenant, work, which causes the officer receiving the complaint to be unable to complete the investigation.

11. That Lieutenant Meyer authorizes expenditures of small amounts of money for supplies; that he authorizes minor repairs of vehicles in the absence of Chief Sloan; that he approves bar tender licenses in absence of the Chief; that he opens department mail and answers it in absence of the Chief.

12. That Lieutenant Meyer does not have authority to effectively recommend the hiring, disciplining or discharging of employees; that he has not been involved in the hiring process of full-time police officers, including the officer most recently hired in 1979; that Chief Sloan does consult with Lieutenant Meyer regarding the hiring of part-time police officers but that Chief Sloan also consults with the three patrol officers regarding the hiring of part-time police officers; that Lieutenant Meyer has no authority to discipline other employees; that he was not involved in the only discharge of an employee that has occurred while he has been a Lieutenant; that Chief Sloan keeps the personnel records and Lieutenant Meyer does not; and that Lieutenant Meyer was not involved in an investigation that took place concerning alleged misconduct by a police department employee.

13. That Lieutenant Meyer does not exercise supervisory responsibilities in sufficient combination and degree to make him a supervisory employee.

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

CONCLUSION OF LAW

That the position of Lieutenant currently occupied by Ronald Meyer is not a supervisory position within the meaning of Sec. 111.70(1)(a)(1), Stats., and therefore, Meyer is a municipal employee within the meaning of MERA and appropriately included in the bargaining unit described in Finding of Fact 3 above.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission issues the following

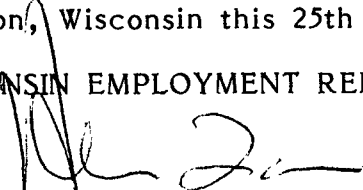
ORDER CLARIFYING BARGAINING UNIT


That the position of Lieutenant shall continue to be included in the above described bargaining unit.

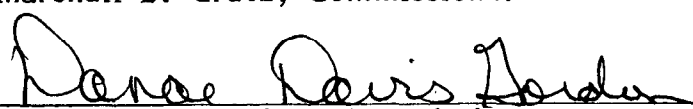
Given under our hands and seal at the City of  
Madison, Wisconsin this 25th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

## CITY OF KIEL

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

On November 28, 1972, Local 1362 became the certified representative of a bargaining unit consisting of all police officers of the Kiel City Police Department, excluding the Chief of Police and all other employees. Prior to conducting the election in that matter, the Commission found that the holder of the position of Lieutenant, as it then existed, was a municipal employee and not a supervisor. On May 23, 1984, the City filed a Petition to Clarify Bargaining Unit of municipal employees seeking to exclude the position of Lieutenant from the bargaining unit on the basis of supervisory status.

#### POSITIONS OF THE PARTIES

The basic position of the City is that a number of new activities have been added to the Lieutenant's duties in the past ten years and that these new duties are supervisory in nature which requires that the Lieutenant be excluded from the bargaining unit. Specifically, the City asserts that the Lieutenant effectively recommends courses of action to the Chief of Police which promote the activities of the department, that the Lieutenant is consulted by the Chief in the hiring of part-time police officers, and that the Chief discusses departmental policies and procedures with the Lieutenant who has original and important input concerning changes in procedure.

In addition, the City asserts that the Lieutenant acts as Chief in the Chief's absence and therefore he develops work schedules, approves time cards, opens and answers correspondence.

Finally, the City asserts that the Lieutenant, as Chief Investigator in the department, delegates work to the patrol officers, that he has attended two supervisory courses, that he has his own desk, that he is in charge of the School Safety Patrol, that he prepares and submits the monthly Uniform Crime Report, that he has authority to make certain purchases for the department and that he processes complaints in municipal and circuit courts.

The basic position of the Union is that the Lieutenant does not exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisor and, thus, the Lieutenant properly belongs in the bargaining unit.

Specifically, the Union asserts that the Lieutenant does not effectively recommend hiring but merely is asked by the Chief, as are all police officers, for information regarding local applicants. The Union also argues that the Lieutenant is not involved in discipline of employees; does not act for the City in the grievance procedure; cannot be said to assign or direct the work force given the small size of the force and his lack of contact with other employees; receives a higher salary only because he is more senior; performs different duties than the patrol officers only because of the shifts his seniority allows him to choose; spends most of his time doing duties similar to patrol officers; does no additional work that is not of a routine or clerical nature; and uses little independent judgment in supervisory functions in that most things are cleared with the Chief.

#### DISCUSSION

In the first election proceeding, the Commission found that the Lieutenant's duties were not sufficiently differentiated from those of the patrol officers to justify exclusion from the collective bargaining unit. Specifically, the Commission found that the Lieutenant participated in substantially the same duties as those performed by the patrol officers and that the rank of Lieutenant was established in response to seniority considerations rather than to levels of supervisory responsibility, that the Lieutenant did not appear to have a determinative

role in the hiring or discharge of fellow officers, and that the size of the Kiel Police Force suggested minimal supervisory interaction between the ranks. The City argues that a change of circumstances has occurred sufficient to now warrant excluding the Lieutenant from the bargaining unit.

The Commission considers the following factors in determining if a position is supervisory in nature: 2/

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 spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

The City does not dispute that the Chief has the primary authority for hiring, disciplining or discharging of employees. While the Chief testified that he talked to the Lieutenant about applicants for part-time police officer jobs, the Chief also testified that he also talks to the patrol officers for that purpose.

While the Lieutenant may have some authority to direct and assign the work force, it appears from the record that the authority is of a routine and clerical nature, such as the passing of information or the assignment of ongoing investigations from shift to shift. In fact, the record reflects only one time when the Lieutenant has given an order to a patrol officer in the past nine years. The extra duties possessed by the Lieutenant in the absence of the Chief, are of a routine or clerical nature, for the record is clear that if something out of the ordinary occurs or a major decision must be made, the Chief is contacted even if he is out of the state on vacation. The record also shows that if the work force needs directing or assigning, it is the Chief who does so.

Because the five-person force operates a 24 hour-a-day, seven day-a-week operation, the Lieutenant's contact with any of the officers is minimal. Much of the time the Lieutenant works alone but even when he is on duty with another officer, the contact between them is minor because the Lieutenant prefers foot patrol and the patrol officer uses a squad car. As the Commission said in its previous decision regarding this unit: "The size of the Kiel Police force and nature of the 24-hour policing function gives evidence to the proposition that there is minimal supervisory interaction between the ranks." The record would suggest that, if anything, there is less interaction now that the department is even smaller than it was.

The Lieutenant does receive approximately \$92 per month more in salary than the patrol officers, but the record does not persuade us that the salary differential is for supervising subordinates as opposed, for example, to supervising

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2/ City of Manitowoc (Police Dept.), Dec. No. 20696 (WERC, 5/83).

activities and for other non-supervisory responsibilities. Indeed, the Lieutenant performs essentially all the duties of a patrol officer and much of the time his duties are indistinguishable from those of a patrol officer.

The City relies heavily on the Lieutenant's supervision of the School Safety Patrol, including the Patrol's yearly trip to Washington, D.C. But this is supervision of an activity and not supervision of employees. The City also stresses the fact that the Lieutenant has the title and duties of Juvenile Officer and Chief Investigator. As for these titles, as well as the title of Lieutenant, the Commission has previously asserted that it will not be bound by job titles in the determination of supervisory status; instead, it will examine the duties of the alleged supervisory position. 3/ While the Lieutenant may have more responsibility in juvenile matters than the patrol officers, the record shows this is primarily related to the shift the Lieutenant works; in any case, there is little if any supervision of employees in the carrying out of these duties. As for the title of Chief Investigator, much of this duty involves passing on information from shift to shift rather than supervising employees. Although the Lieutenant does delegate investigations to other officers, such is done primarily on the basis of availability of the officers so that it involves less independent judgment than the title might otherwise suggest.

Also the City contends that the Chief and Lieutenant talk about departmental procedures; yet, the record contains only two instances in nine years where such discussions led to some action. In one case the Chief issued a memorandum telling police officers to remove candy wrappers from the squad car at the end of the shift. In the other case, the Chief issued a memorandum directing that if two officers are on duty at the same time, one should be on foot patrol instead of both officers being on squad patrol. Since foot patrol is the Lieutenant's preference, this memorandum gave him permission to do so; however, the record is clear that the Lieutenant did not nor could he have issued these memorandums on his own authority.

The City cites City of Verona (Police Department), Dec. No. 14776-C (Hawks with final authority for WERC, 7/80) aff'd Dec. No. 80-CV-4806 (CirCt Dane, 1/82) to support its argument that the Lieutenant's position is supervisory. The City argues that both cities have small police departments, that the Sergeant in question in Verona assigned overtime, scheduled part-time employees, discussed department operations with the Chief and acted in the Chief's absence, and that all of these elements are present in this case. Even if the Lieutenant actually did these activities in a meaningful way in this case, several crucial elements of the Commission finding of supervisory status in City of Verona are not present in this case. In Verona the Sergeant prepared written evaluations concerning the performance of the full-time employees on his shift, which might have had a significant impact on the subordinates' employment; evaluated the performance of probationary employees and made effective recommendations concerning the termination or continuation of their employment; evaluated the performance of 60 percent of the part-time employees, including the authority to make effective recommendations concerning changes in their employment status; and investigated alleged misconduct and administered discipline to employees under him. These types of duties are not present in the position of Lieutenant in the Kiel City Police Department.

The City also cites School District of Waunakee, Dec. No. 15620-A (WERC, 6/83) and Sheboygan County Handicapped Children's Education Board, Dec. No. 20217 (WERC, 1/83) to support its claim that the Lieutenant is a supervisor. While there are similarities between some facts in those cases and some facts in this case, we are nonetheless satisfied that unlike those cases, the Lieutenant herein does not possess indicia of supervisory status in sufficient combination and degree to warrant a conclusion that his position is a supervisory one. He has no unique input into hiring, disciplining or discharging employees. While he does supervise some activities, the Department is so small, his duties so similar and his contact with employees so minimal that he does not supervise them and his exercise of independent judgment in the supervising of others is limited to such an extent that we do not conclude that he is a supervisor.

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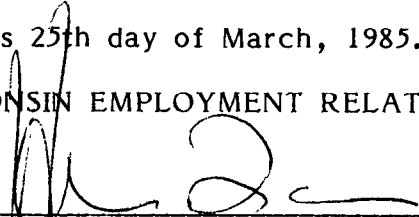
3/ Village of Shorewood, Dec. No. 13675 (WERC, 5/75).

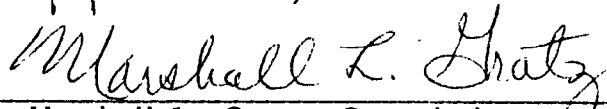
In summary, the arguments presented by the City do not persuade the Commission to find the position of Lieutenant to be supervisory. Any changes that have occurred in the Lieutenant's duties are routine or clerical in nature or, if supervisory, are supervisory of activities and not employees. Therefore, we find that the above described unit shall continue to include the Lieutenant.

Dated at Madison, Wisconsin this 25th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner