

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	Case II
CALUMET COUNTY HIGHWAY EMPLOYEES,	:	No. 15917 ME-827
LOCAL #1362, AFSCME, AFL-CIO	:	Decision No. 11368
Involving Certain Employes of	:	Case III
CITY OF KIEL	:	No. 15918 ME-828
	:	Decision No. 11369
	:	Case IV
	:	No. 15919 ME-829
	:	Decision No. 11370

Appearances:

Mr. Michael J. Wilson, District Representative, appearing on behalf of the Petitioner.

Mr. Edward D. Evans, Consultant, and Mr. Fred Hazlewood, City Attorney, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTIONS

Calumet County Highway Employees, Local #1362, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct elections among employes of the City of Kiel employed in three alleged appropriate bargaining units; and hearing having been conducted in the matter at Kiel, Wisconsin, on September 14, 1972, Kay Hutchison, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being satisfied that questions have arisen concerning representation for certain employes of the above named Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the following three collective bargaining units among certain employes who were in the employ of the City of Kiel on September 14, 1972, except such employes as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining whether the employes in each of said separate collective bargaining units desire to be represented for the purposes of collective bargaining by Calumet County Highway Employees, Local #1362, AFSCME, AFL-CIO:

UNIT NO. 1

All City Hall employes of the City of Kiel, including Secretary-Bookkeeper, Deputy Clerk and Radio Operators, but excluding custodians, all supervisory, confidential and managerial employes and all elected officials.

UNIT NO. 2

All employes of the City of Kiel in its Streets, Park, Cemetery and Water Departments, including laborer,

No. 11368  
 No. 11369  
 No. 11370

Operator and Foreman, and City Hall Custodian, but excluding craft, supervisory, confidential, and managerial employes, specifically, the Director of Public Works, and the Superintendent of Waste Water Treatment Plant.

UNIT NO. 3

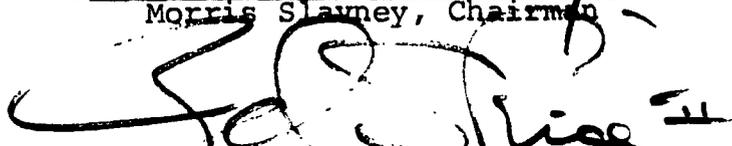
All police officers of the Kiel City Police Department excluding the Chief of Police, and all other employes.

Given under our hands and seal at the City of Madison, Wisconsin, this 18<sup>th</sup> day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
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Morris Slawney, Chairman

  
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Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING  
DIRECTION OF ELECTIONS

The Union filed three petitions with the Commission seeking elections in three separate alleged collective bargaining units. The Commission docketed said petitions in the following cases:

Case II

The Union sought an election among all city hall employes, including secretaries, Clerk, Deputy Clerk and Radio Operators.

Case III

The Union sought an election among all employes of the City Streets, Park and Water Departments, including laborer, operator and foreman, but excluding the Director of Public Works.

Case IV

The Union sought an election among all members of the Police Department including Lieutenants, Sergeants and Patrolmen, but excluding the Chief of Police and Radio Operators.

During the course of the hearing, the City presented a list of the classifications employed by the City as follows: The employes employed in the City Hall include one Deputy Clerk and one billing and bookkeeper as well as one custodian. Those employed in the Streets, Park and Water Departments include the classifications of treatment plant operator, foreman and laborer.

The law enforcement uniformed personnel in the Police Department, other than the Chief of Police, include one lieutenant, one sergeant, two corporals and one patrolman. In addition, there are five non-uniformed dispatchers who are also employed in the Police Department. With respect to the determination of appropriate collective bargaining units, Section 111.70(4)(d)2a provides as follows:

"2. a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot."

In establishing bargaining units the Commission will include in separate units employes employed in related classifications and duties together with similar educational and/or training and background and aspirations.<sup>1/</sup> There is no doubt that the uniformed non-supervisory

police personnel who have the power of arrest constitute an appropriate unit separate and apart from other employes of the City. It is likewise clear that the clerical employes in the employ of the City have separate and distinct training and duties from the "blue-collar" employes employed in the Streets, Park and Water Departments, as well as the custodian in the City Hall. Although during the course of the hearing the parties stipulated to include the custodian, who performs his duties in the City Hall with the clerical employes employed in the City Hall, the Commission is of the opinion that the custodians' duties are more related to the "blue-collar" employes in the employ of other departments of the City. Therefore, we have included the City Hall custodian in Unit No. 2 rather than Unit No. 1. Since the radio operators are employed in the Police Department and as such have no power of arrest, we conclude that their community of interest lies with the clerical employes. Therefore, we have placed the radio operators in Unit No. 1.

During the course of the hearing issues arose with regard to the eligibility of the deputy clerk and as to the eligibility of the Lieutenants and Sergeants in the employ of the Police Department. The Municipal Employer contends that the individuals occupying such classifications are supervisors and therefore should be excluded from any of the units.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act reads:

"'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."

The City Clerk's office is staffed by the City Clerk, Deputy Clerk and Secretary-Bookkeeper (Billing and Bookkeeper). The office makes preparations for the council meetings, is responsible for the bookkeeping system, acts as public liaison for the water, electric and sewer utilities and performs sundry tasks. Calvin Petzold, Deputy Clerk, assumes the duties of the City Clerk in the latter's absence. Testimony established that the Deputy Clerk neither hires nor discharges employes.

Based on the record, the Commission is not persuaded by the evidence that the position of Deputy Clerk should be excluded from the bargaining unit. Therefore, we conclude that the Deputy Clerk is eligible to vote in Unit No. 1.

The police force of the Municipal Employer consists of the Chief of Police, one Lieutenant, one Sergeant, two Corporals and one Patrolman. At the hearing, the parties stipulated that the Radio Operators, none of whom are deputized, would be excluded from any alleged appropriate unit within the Police Department.

The Police Department functions on a seven day, twenty-four hour basis. The day shift runs from 7:00 a.m. to 8:00 p.m. and is manned solely by the Chief. The Chief is replaced by the Lieutenant on the Chief's two days off per week. The Sergeant, Corporals and Patrolman

are permanently assigned a shift from 3:00 p.m. to 11:00 p.m. or 11:00 p.m. to 7:00 a.m.--two officers to a shift. The Lieutenant serves as a "swing man". He singly substitutes for the Chief on the Chief's days off. In addition, he is scheduled to fill in the Sergeant's 3-11 assignment on the Sergeant's day off. Likewise, he replaces the off-duty Patrolman on the 11-7 shift.

Whereas all uniformed members of the Police Department engage in the patrolling function, the Lieutenant is specifically assigned the following duties:

"Under the direction of the Chief of Police, perform a wide variety of police patrol duties, act as Juvenile Officer and assist Chief in the administration of the office. . .

Administrative duties include preparation of monthly work schedules, assist and instruct lower level classification when necessary or become acting Chief in absence of Chief of Police.

Responsible for performing police/patrol duties. Patrol the streets. . .on regularly assigned hour to check windows and doors. . .make investigations. . .subject to emergency call.

Direct traffic and pedestrians. . .Issue tickets and make arrests. Render first aid. Present evidence in court. . . Perform escort duties. Operate radar. . .Maintain records and prepare reports. . .

May be required to catch animals. . ."

In light of the Lieutenant's role as Acting Police Chief and his scheduling duties, the Municipal Employer alleges that said position is supervisory and, thus, should be excluded from an appropriate bargaining unit.

The Sergeant's position description contains the following:

"Under the direction of the Chief, perform a wide variety of police patrol duties and act as Court Officer. . ."

The description goes on to include the same duties which appear in the Lieutenant's description under the categories of: police patrol duties, direction of traffic and pedestrians, and dog catching.

During the hearing, the Chief testified that the Sergeant substitutes for the Chief in the absence of the Police Chief and Lieutenant. The Municipal Employer contends that the Sergeant, as an alleged supervisor, should be excluded from the appropriate bargaining unit.

Evidence indicates that both the Lieutenant and Sergeant participate in substantially the same duties as those performed by the Corporals and Patrolman. The numerical limitations of the force require even the Chief to perform duties which are customarily assigned to Patrolmen. All ranks participate in patrolling, investigation, filling out reports, exercising of traffic control and making of court appearances. Furthermore, testimony adduced during the hearing suggests that the ranks of Lieutenant and Sergeant were established in response to seniority considerations rather than to levels of supervisory responsibility.

Neither the Lieutenant nor the Sergeant appear to have a determinative role in the hiring or discharge of fellow officers.

Although the opinions of all the department's members were solicited by the Chief when a new officer was hired, the Chief and Police-Fire Commission (composed of three aldermen) are responsible for such action, pending city council approval. The Chief testified that he is solely responsible for the day-to-day operation of the department. Any non-routine occurrence is reported directly to the Chief even when he is off duty.

The Lieutenant constructs and adjusts the monthly schedule with the advice and approval of the Chief. In the instant proceeding, the Commission regards such scheduling as largely routine and clerical in nature.

The Commission has previously asserted that it will not be bound by job titles in the determination of supervisory status.<sup>2/</sup> It will examine the duties of alleged supervisory positions on a case-by-case basis. In the instant proceeding, the Commission is not satisfied that the duties of the Lieutenant and Sergeant have been sufficiently differentiated from those of the Corporal's and Patrolman to justify their exclusion from the collective bargaining unit. The size of the Kiel Police force and nature of the 24-hour policing function gives credence to the proposition that there is minimal supervisory interaction between the ranks.

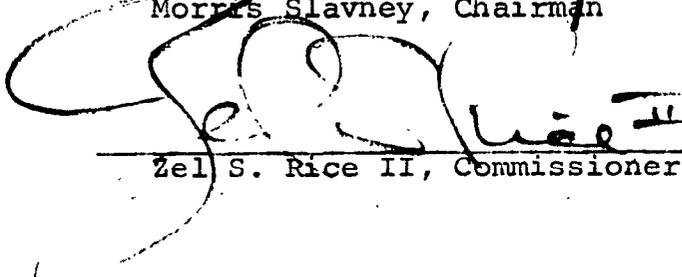
Based on the foregoing and record as a whole, the Commission is satisfied that neither the Lieutenant nor the Sergeant are supervisory employes within the meaning of Section 111.70 and, therefore, are included among the eligibles in Unit No. 3.

Dated at Madison, Wisconsin, this 18<sup>th</sup> day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

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<sup>2/</sup> Village of Shorewood (6552) 11/63