

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
BAYSIDE POLICE AND FIREMEN'S ASSOCIATION:	:	Case III
	:	No. 16023 ME-838
Involving Certain Employes of	:	Decision No. 11514
	:	
VILLAGE OF BAYSIDE	:	
	:	

ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

Bayside Police and Firemen's Association having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify a voluntarily recognized collective bargaining unit consisting of certain law enforcement - fire fighting personnel employed in the Department of Public Safety of the Village of Bayside, more specifically whether Sergeants should be included with Patrolmen in said voluntarily recognized unit; and a hearing on said petition having been held at Bayside, Wisconsin, on October 16, 1972, before Marshall L. Gratz, Hearing Officer; and the Commission having reviewed the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following

ORDER

That the appropriate collective bargaining unit of law enforcement - fire fighting personnel in the employ of the Department of Public Safety of the Village of Bayside consists of all regular full-time employes of the Department of Public Safety of the Village of Bayside, including those holding the rank of Patrolman and Sergeant; but excluding those holding the rank of Lieutenant, and Chief, and excluding volunteers or Village employes regularly employed in other capacities, whose principal occupations are not the performance of police and fire services for the Village of Bayside, but who may do so from time to time.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


 Morris Slawney, Chairman


 Zel S. Rice II, Commissioner


 Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

The Municipal Employer voluntarily recognized the Petitioner as the bargaining representative for all Public Safety officers of the Village of Bayside who were "certified" by the Petitioner to be within the bargaining unit. Sergeants were within the "certified" group for the purposes of the calendar 1971 collective bargaining agreement between the parties, but Sergeants were not so "certified" with respect to the 1972 collective bargaining agreement. At the hearing, the parties stipulated to the unit description set forth in the Order except for a dispute as to whether the Sergeant position should be included or excluded from the unit.

The police and fire services of the Municipal Employer are performed by individuals employed in its Public Safety Department. The Department is headed by a Chief, who is primarily responsible for the supervision of the employes in said Department with respect to both their law enforcement and fire fighting activities. Besides the Chief, there are presently fifteen regular full-time Public Safety Officers employed in the Department who engage in police and fire fighting functions; these include one Lieutenant, three Sergeants and eleven Patrolmen. In addition, there are approximately sixteen volunteer firefighters and eleven Public Works employes of the Municipal Employer who assist in the work of the Department in the event of fires or other emergencies.

The work of the Department is performed in three eight-hour shifts. The Chief, the Lieutenant and two Patrolmen are generally assigned to the day (second) shift. A Sergeant and two Patrolmen are assigned to the first shift, and a second Sergeant and two Patrolmen are assigned to the third shift. The third Sergeant generally alternates between the first and third shifts, either filling in for the Sergeant ordinarily assigned to a shift or serving as the fourth man on a shift. Although the number of employes on any one shift may vary when circumstances require, in no case are there less than three employes on any particular shift.

The Chief is the shift commander for the second shift. In addition to functioning as shift commander, he assigns the personnel to shifts. In the Chief's absence on the second shift, the Lieutenant acts as shift commander, and when both of them are absent, a Patrolman is delegated shift-commander status by the Chief. Sergeants serve as shift commanders of the first and third shifts. However, in a very few instances (e.g., seven of ninety shifts), no Sergeant is assigned to such a shift and in that case a Patrolman would be delegated shift-commander status by the Chief.

The shift commander, in his discretion, deploys the men assigned to his shift as he sees fit in order to complete the shift's work satisfactorily. The shift's work normally consists of continuous patrolling by two cars, completion of routine and special maintenance and cleaning projects assigned to the shift by the Chief, the disposition of police (or fire) calls or patrol car observations, etc., and the filing with the Chief of a written report of the shift's activities by the shift commander. The Sergeants on the first and third shifts ordinarily patrol for four hours and work four hours in the station,

though they have on occasion chosen to spend their entire eight-hour shift on in-station work. Even when on patrol, however, the Sergeants retain shift-commander status and are in constant radio contact with all other Department personnel on duty. Patrolmen generally patrol for six hours and work two hours in the station. The shift commander checks the cleaning and maintenance work which he has assigned to be sure that it is done properly. Shift commanders also conduct periodic fire drills and "break in" trainees on the methods of patrolling. Except in cases where a Patrolman is the shift commander, the shift commander directs the employes on his shift in the investigation of major crimes, has the authority to call in other officers in the event of absences or emergencies, may impose verbal reprimands or one-day suspensions and file written reports of breaches of discipline which reports are made a part of the offender's personnel record and may make recommendations of more serious discipline which recommendations are "pretty well" relied upon by the Chief, though the Chief may add to or reduce any recommended penalty. When a Patrolman is the shift commander, on the other hand, he must communicate with the highest ranking officer available to get authorization for or instructions concerning the investigation of major crimes, the filling of personnel shortages, etc.; Patrolman-shift commanders in no way recommend discipline.

The Chief assigns to Sergeants investigations of complaints from the public concerning the conduct of Public Safety personnel in the performance of their duties. A Sergeant receiving such an assignment reports his findings to the Chief and may make recommendations for the Chief's consideration. Sergeants are also responsible for planning (subject to the Chief's approval) and conducting in-service training presentations for Department personnel. Sergeants meet weekly as a group with the Chief and Lieutenant, at which meetings Department policy and procedures are discussed; topics for discussion are raised by Sergeants as well as by the Lieutenant and the Chief.

Sergeants have no particular hiring responsibilities; instead the hiring procedure involves tests administered only by the Chief. Promotion from within has been the rule of the Department, but up to the time of the hearing, the Chief has neither asked for nor relied upon Sergeants' recommendations along those lines.

Grievances which are not of a highly personal nature are first presented to the shift commander although such commander generally transmits them to the Chief rather than adjusting them himself. Grievances of a highly personal nature are taken up with the Chief directly.

On the basis of the foregoing facts and the Commission's recent decision in City of Madison, 1/ the Commission is convinced that the Sergeants should be included in the collective bargaining unit. In reaching this conclusion, the Commission does not find the special firefighter definition of "supervisor" in Sec. 111.70(1)(o)(2) applicable. 2/ Instead, the Commission applies the general definition of supervisor expressed in Sec. 111.70(1)(o)(1) of the Municipal

1/ Dec. No. 11078-A (12/72)

2/ See Village of River Hills, Dec. No. 10972, 4/72 (by implication).

Employment Relations Act 3/ in view of the fact that over ninety percent of the Public Safety Officers' time is spent on law enforcement work and less than ten percent is spent on fire fighting-related activities.

In applying that definition to the evidence presented, the Commission is satisfied that the Sergeants frequently perform work normally performed by "working foremen". Nevertheless, these employes are not vested with sufficient supervisory authority as to require their exclusion as supervisors. Their role in assignment of work in the field is often routine as is their "checking up" on their men's performance of in-station assignments. They have no input whatever as to hiring, and have not, to date, effectively recommended other employes for promotion. Though entries in Sergeants' daily reports or other written reports concerning subordinates are occasionally considered by the Chief in making certain personnel decisions, the Chief's own discretionary input and other facts apparently far outweigh the effects of such reports.

In dealing with subordinates, the Sergeants exercise little or no independent judgment in excess of that which might be expected from experienced officers in the Department. The Sergeants' power to unilaterally suspend an officer during a shift has never been exercised in practice. Sergeants do not have the authority to formally discipline a subordinate in any other way, and may only make recommendations in this regard. The only direct "disciplinary" authority actually exercised by the Sergeants relates to the administration of verbal praise or criticism, which is the necessary concomitant of the Sergeant's advanced training and leadership activities. Similarly, their training activities of new recruits and volunteers and their presentation of in-service programs to Department personnel also follow as much from their advanced training as from their supervisory authority.

Sergeants do not adjust grievances, but rather serve only as a conduit of same to the Chief. In addition, their investigations of complaints from the public concerning an officer's performance of duty amounts to a reporting of the facts for the Chief's consideration with little emphasis on the Sergeant's own analysis of the situation and recommendations for resolution thereof.

It is also noted that if the Sergeants were not included within the bargaining unit, the ratio of supervisory to nonsupervisory regular employes would be 1:2; inclusion makes that ratio a more appropriate 1:6.5.

3/ Sec. 111.70(1)(o)1 reads as follows:

"(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."