

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

GENERAL DRIVERS, DAIRY EMPLOYEES AND :
HELPERS LOCAL UNION 579, affiliated with: :
the INTERNATIONAL BROTHERHOOD OF :
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & :
HELPERS OF AMERICA :

Case I
No. 16164 ME-855
Decision No. 11580

Involving Certain Employes of :
CITY OF MONROE (POLICE DEPARTMENT) :

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, and Mr. Leonard Schoonover, Secretary-Treasurer, appearing on behalf of the Petitioner.
Mr. William F. Shutz, City Attorney, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

General Drivers, Dairy Employees and Helpers Local Union 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein referred to as the Petitioner, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70, Wisconsin Statutes, among certain employes of the City of Monroe (Police Department), herein referred to as the Municipal Employer; and a hearing on such petition having been conducted at Monroe, Wisconsin on December 20, 1972, Kay Hutchison, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties and being satisfied that a question has arisen concerning representation for certain employes of the above named Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all law enforcement officers of the City of Monroe, including probationary officers and sergeants but excluding the Chief of Police, Captain, Meter Maids, clerical and all other employes, who were employed by the City of Monroe (Police Department) on December 20, 1972, except such employes who quit their employment or are discharged for cause prior to the election, for the purpose of determining whether a majority of such employes desire to be represented by General Drivers, Dairy Employees and Helpers Local 579, affiliated

No. 11580

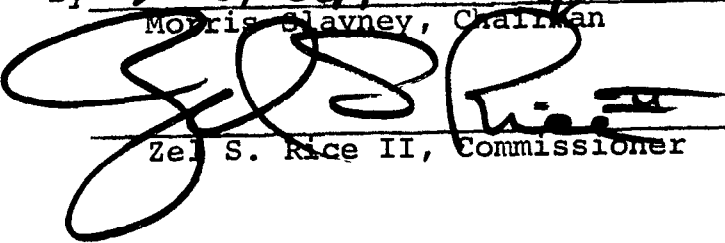
with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, for the purposes of collective bargaining on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

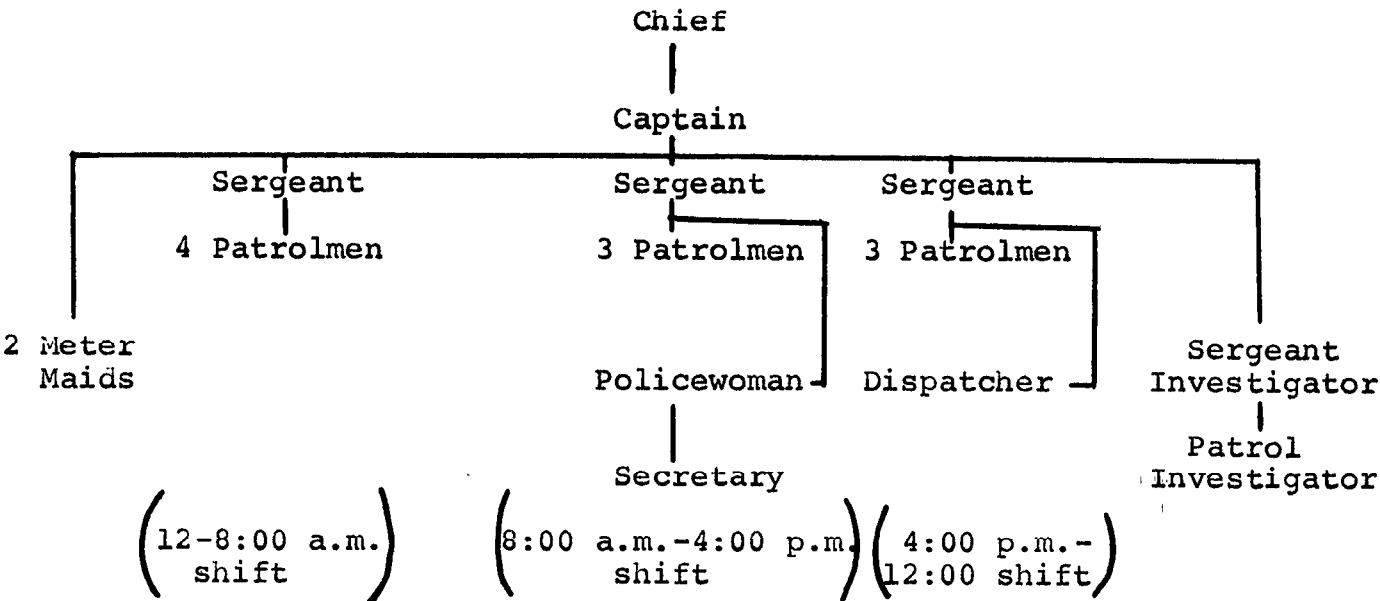

Morris Blavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

General Drivers, Dairy Employees and Helpers Local Union 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, timely filed a petition with the Wisconsin Employment Relations Commission requesting an election among certain employees of the City of Monroe (Police Department). Prior to the initiation of the instant proceeding, the voluntarily recognized bargaining representative, 1/ Monroe Police Department Employees, was abandoned by its members and thereby rendered defunct. We conclude that none of the employees are presently represented by any organization. Thus, in the instant proceeding, there is neither a contract bar nor a currently recognized or certified bargaining representative.

The Monroe Police Department is organized as follows: 2/



Twelve patrolmen and four Sergeants are employed by the City of Monroe. The Police Department operates on a three shift basis. Each shift is manned by a Sergeant and three or four patrolmen. A patrolman is assigned one of the following duties: car patrol, "square patrol", 3/ communications-desk or relief. Either the Police Chief or the Captain are on duty during the various shifts.

During the course of the hearing, issues arose as to the inclusion or exclusion of several positions from the alleged appropriate collective bargaining unit. 4/

- 1/ Article II of the expired collective bargaining agreement stated, "The EMPLOYEES shall be recognized as the bargaining representative unit so long as the bargaining unit represents a majority of the Police Department employees . . ." (Exhibit 2).
- 2/ Effective 5/71.
- 3/ Patrolling of the downtown area.
- 4/ The Police Chief and Captain were agreed by the parties to be excluded.

The Municipal Employer argues that the Sergeants in the Department should be excluded from the collective bargaining unit due to their supervisory status. Furthermore, the Municipal Employer, in contrast to the Petitioner, contends that the probationary police officers and meter maids should be excluded from the collective bargaining unit because they do not have a sufficient community of interest to be included in the collective bargaining unit.

Sergeants

The Sergeants' duties, including those of Patrol Sergeants and the Sergeant Investigator, are as follows:

1. Each Sergeant shall be directly responsible to the Captain of Police, or in his absence, to the Chief, for the operation of his shift.
2. These responsibilities include the supervision of all subordinates working on his shift, their conduct, discipline, work and uniform appearance. Department Rules and Regulations shall be enforced.
3. All reports filed by the shift shall be checked for accuracy and conformity to office records procedure. Records not in conformity with proper procedure shall be re-made by the originating officer.
4. The Sergeant shall be constantly alert to act on requests of his subordinates, solving as many of the problems that he can himself. Others he will refer to the Captain of Police or to the Chief.
5. Sergeants shall see that Department property is properly used and maintained, and never abused.
6. Sergeants shall relay all pertinent information of pending cases or pending situations to the relieving shift. The Sergeant of the relieving shift shall formally relieve the Sergeant of the relieved shift, after all requirements of this paragraph have been complied with.
7. Sergeants shall, through proper guidance and leadership, create and maintain harmony and esprit de corps among all personnel and between shifts. Sergeants shall make recommendations or action(s) which may be of benefit to the Department or City, whether they be of their own origin or referred to them by their subordinates.
8. Each Sergeant shall have appointed a senior patrolman to accept his responsibilities when on his days off, sick leave, vacation, or other leave. 5/

Each of the three Patrol Sergeants is assigned to one of the three shifts. The Sergeant Investigator is assigned to a regular shift and occasionally fills in for an absent Patrol Sergeant.

5/ Duties and responsibilities of Sergeants, 1/69, Exhibit 1.

The Captain compiles the monthly master schedule which denotes the assignment of personnel to the three shifts. In addition to regular patrol duties, the Sergeant assigns the various policing functions to the three or four patrolmen working the particular shift. Several Sergeants construct monthly schedules for patrolmen whereas another Sergeant works from a weekly schedule. Patrolmen on a given shift may be directly reassigned by the Sergeant on duty. However, call-in of additional manpower may be initiated only with the approval of the Chief or Captain.

The Municipal Employer cites the participation of the Sergeant at the first step of the grievance procedure as further justification of said position's exclusion from the bargaining unit. Testimony indicated that no grievances have been filed within the department to date. The Petitioner also cites the previous agreement and past bargaining history which have included the Sergeants in the bargaining unit and under the provisions of the contract. The Petitioner argues that the Sergeants should be included in the appropriate unit.

Section 111.70(o)(1) of the Wisconsin Statutes, Municipal Employment Relations Act, defines supervisor as:

" . . . any individual who has authority in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively 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." (emphasis added)

Having considered the evidence and testimony, we find the Sergeants' assignment and transfer duties to be largely routine and conclude that said positions are not supervisory within the meaning of Section 111.70 and thereby, properly included in the collective bargaining unit.

Probationary Police Officers

Newly hired police officers serve a one year probationary period. There are currently two probationary employes in the Department. The authority to hire and fire such employes resides with the Police-Fire Commission.

Initially, the probationary employe's terms and conditions of employment are not the same as those of a regular police officer. The probationary police officers are scheduled for a regular shift from date of hire. At first, they are assigned to work with an experienced officer. Within six months, the probationary officer is responsible for manning his own patrol. Such employes have the power of arrest and carry a firearm after one or two months of on-the-job training. The probationary employes receive the same employment benefits as other officers in the Department.

The Municipal Employer argues that because probationary officers are in training, do not initially assume the full duties of police officers, and may be summarily dismissed by the Police-Fire Commission, they should be excluded from the collective bargaining unit.

The Petitioner asserts that such employes have a reasonable expectation of continuation of employment, and receive the same benefits

as tenured officers. Thus, the Petitioner reasons that the probationary officers should be included in the bargaining unit.

The Commission has previously found probationary employees to be eligible to participate in a representation election where they have a reasonable expectation of continued employment. 6/ Moreover, eligibility is established upon consideration of continued employment expectations rather than upon determination of similarity of employment conditions between probationary and regular employees. Present hiring standards and subsequent police training substantiate the probationary officer's employment commitment and reasonable expectation for continuation. We conclude that said probationary officers are appropriately included in the collective bargaining unit.

Meter Maids

The City of Monroe employs two meter maids who are responsible for the issuance of courtesy tickets for minor parking violations and expired parking meter tickets. Hiring and primary funding for the positions are provided by the City of Monroe Parking Utility. The meter maids have been paid according to the rates set forth in the contract covering the employees of the Police Department.

The meter maids report to the Police Department upon arriving for work. The Parking Utility and Police Chief have determined the duties of the meter maids. The Chief supervises and assigns duties to said positions. The meter maids do not possess arrest powers. They work only in metered areas - issuing expired meter and courtesy tickets. In the event that a meter maid comes upon a parking violation which requires more than a warning courtesy ticket (i.e., parking in front of a fire hydrant) she calls a sworn police officer to issue a ticket.

The Municipal Employer asserts that the meter maids are not employees of the Monroe Police Department in that the Parking Utility provides funding for said positions. Furthermore, the Municipal Employer argues that the duties and interests of meter maids differ drastically from those of uniformed personnel. Thus, the Municipal Employer contends that meter maids should be excluded from the appropriate bargaining unit.

The Petitioner argues that the meter maids are operationally part of the Monroe Police Department. The meter maids have previously been included under the terms of the collective agreement. The Petitioner concludes that the meter maids should be included in the unit.

During the course of the hearing, the Petitioner indicated an interest in a separate election among the meter maids to ascertain whether they desire to be included in the overall unit in the event that the Commission finds their inclusion without such election to be inappropriate on the basis of the funding of said positions.

Only in situations involving the inclusion of professional or craft employees in an overall unit, will the Commission direct a self determination election among such municipal employees. 7/ No testimony

6/ Taylor County (8178) 9/67.

7/ Section 111.70(4)(d)2.a.

or evidence was adduced during the hearing to substantiate that the meter maids are either professional or craft employees.

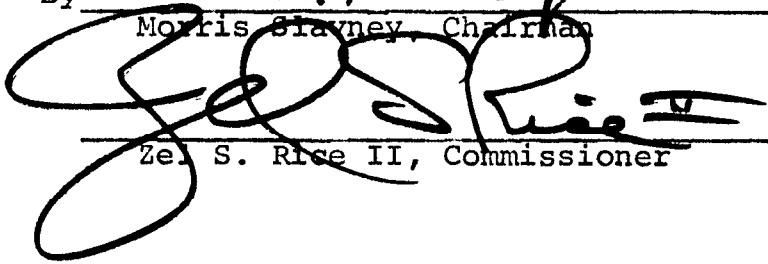
The Commission, in establishing appropriate law enforcement units, considers the "power of arrest" to be the determinative factor for inclusion. 8/ In that the meter maids do not possess the power of arrest, the Commission is satisfied that said positions are properly excluded from the collective bargaining unit.

Dated at Madison, Wisconsin, this 2nd day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

8/ City of Greenfield (7252), 8/65; City of Milwaukee (8605), 7/68;
Village of Fox Point (9959-A), 2/71; Douglas County (10993), 5/72.