

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Appearances:

Mr. Lowell D. Holtz, Vice-President, Milwaukee Police Supervisors' Organization, 749 West State Street, Milwaukee, Wisconsin, appearing for the Organization.

The City of Milwaukee having, on May 14, 1980 filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of supervisory personnel in the employ of the Milwaukee Police Department, represented by the Milwaukee Police Supervisors' Organization; and hearing in the matter having been conducted at Milwaukee, Wisconsin, on June 25, 1980 William C. Houlihan, Examiner, being present; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby issues the following

3. That the collective bargaining unit represented by MPSO consists of the following supervisory law enforcement positions in the employ of said Police Department:

No. 11971-D

employed by the City of Milwaukee (Police Department), but excluding the Chief of Police, Captain (Personnel Bureau), Deputy Inspector of Police (Administrative Bureau), Inspector of Police, Deputy Inspector of Police (Training and Special Services), Secretary-Police Department, Deputy Inspector-Police Identification, Superintendent of Police Communications, First Deputy Inspector of Police, Inspector of Detectives, Detective, Chief Document Examiner.

4. That in the instant proceeding the City urges the Commission to exclude the classification of Deputy Inspector-Bureau of Internal Affairs from the above noted unit of supervisory law enforcement personnel, contending that the occupant of said position performs confidential duties; and that MPSO, to the contrary, claims that the occupant of said position does not perform confidential duties.

5. That the Deputy Inspector-Bureau of Internal Affairs lacks access to, and is not privy to, any matters relating to collective bargaining or labor management relations of a confidential nature.

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

CONCLUSION OF LAW AND ORDER CLARIFYING
SUPERVISORY BARGAINING UNIT

1. That the position of Deputy Inspector-Bureau of Internal Affairs in the employ of the Police Department is, within the meaning of Sec. 111.70(8) of the Municipal Employment Relations Act, not a confidential supervisory employe, and is therefore properly included in the supervisory law enforcement collective bargaining unit involved herein.

Given under our hands and seal at the
City of Madison, Wisconsin this 25th
day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary Covelli
Gary Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

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

The City of Milwaukee has petitioned the Commission to remove the position of Deputy Inspector of Police-Bureau of Internal Affairs, Milwaukee Police Department, from a collective bargaining unit consisting of supervisory police personnel, on the claim that the position is confidential in nature. The Milwaukee Police Supervisors' Organization, certified as the exclusive collective bargaining agent of the unit, contends that the position lacks confidential status and should remain in the supervisor unit.

In determining whether a position is "confidential" and therefore should be excluded from the bargaining unit, the Commission has consistently held that the occupant thereof must have access to, have knowledge of, or participate in confidential matters relating to the employer's strategy or position in collective bargaining, contract administration, and litigation or other similar matters pertaining to labor relations between the bargaining representative and the employer, and further, that such matters are not available to the bargaining representative or its agents. 1/

It is the contention of the City that the Deputy Inspector is privy to personnel matters and shares a confidential relationship with the Chief of Police. The incumbent reports directly to the Chief, deals with complaints of misconduct brought against police department members, is responsible for securing background information on job candidates, reports complaint and background information secured to the Chief and to the Fire and Police Commission, serves on an Evaluation Board which grades past job performances of promotional candidates, and has access to personnel records of unit members.

Access to personnel and/or payroll records has historically not been considered an adequate basis for concluding that a position is confidential in nature. 2/ The City acknowledges the foregoing standard, but seeks to enlarge the scope of tasks considered confidential, to include access to personnel records, on the basis that Chapter 339, Laws of 1979, effective May 21, 1980, creating Section 103.13, Wis. Stats., has changed the law relative to employee access to personnel files.

The Police Department has an established procedure for dealing with complaints against members of the Department. Complaints, typically alleging misconduct, are referred to Command officers. The Command officer, or his designee, conducts an investigation of the matter. The results of this investigation are provided to the Deputy Inspector-Bureau of Internal Affairs, who reviews the investigation for thoroughness and conformance to internal rules and regulations. The Deputy Inspector then submits the investigation results to the Inspector of Police, who reviews the materials, and passes them on, with a recommendation, to the Chief.

The Deputy Inspector does not supervise the investigation, nor does he personally perform investigations. The information he receives is supplied by the Command officers. He has no authority to halt an investigation, nor is he expected to make recommendations with respect to investigation results.

The Deputy Inspector oversees background investigations of job candidates. The actual investigation is conducted by a detail of Sergeants, who provide the Deputy Inspector with the results of their

1/ Wisconsin Heights School District (17182) 8/79.

2/ City of Menasha (14523) 4/76.

efforts. The Deputy Inspector submits these materials to the Chief, who submits the materials, along with hiring recommendations, to the Fire and Police Commission.

The Evaluation Board, composed of officers of high rank, but which does have bargaining unit members on it, reviews the performance records of promotional candidates and awards each candidate a composite score. The scores are passed on to the Chief, who has the authority, not typically exercised, to modify them. The Chief then submits the scores to the Fire and Police Commission, for consideration in promotional decisions.

The information available to the Deputy Inspector in the area of complaints against officers, and background investigations is supplied by Command officers and by Sergeants, all of whom are in bargaining units. Since bargaining unit members sit on the evaluation boards, information available to, or produced by, such boards is also available to those in the bargaining unit.

The Commission finds nothing in Section 103.13, Wis. Stats. to form the basis for altering the existing policy relative to access to personnel files. The statute opens most personnel file contents to employees, and, under certain circumstances to their collective bargaining representatives.

The duties and responsibilities of the Deputy Inspector-Bureau of Internal Affairs are not such as to constitute said position as "confidential" within the meaning of MERA, and therefore said position is not excluded from the supervisory law enforcement bargaining unit involved here.

Dated at Madison, Wisconsin this 25th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner