

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XV
No. 16022 ME-837
Decision No. 12020

Mr. Robert Due, Association President, appearing on behalf of the Petitioner.

Mr. Russ R. Mueller, Attorney at Law, appearing on behalf of the Municipal Employer.

West Allis Professional Policemen's Protective Association having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among certain employees of the Police Department of the City of West Allis; and hearings on said petition having been conducted at West Allis, Wisconsin, on October 24 and December 11, 1972, Marshall L. Gratz, Hearing Officer, being present; and the Commission having considered the evidence and being satisfied that a question of representation has arisen concerning certain employees of the Municipal Employer;

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all sworn law enforcement personnel of the City of West Allis holding the rank of Detective Sergeant or below, but excluding all employees with a rank of Lieutenant or above, supervisory, managerial and confidential employees, who were employed by the Police Department of the City of West Allis on July 18, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the West Allis Professional Policemen's Protective Association for the purposes of collective bargaining with the City of West Allis on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 18th
day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

~~Morris Slavov~~ Chairman

Zeigler S. Rise II, Commissioner

Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Since at least February 8, 1977, the Association has been the voluntarily recognized representative of all sworn law enforcement personnel employed by the Municipal Employer holding the ranks of Detective and below, but excluding Sergeants and above. On September 15, 1973, the Association filed the instant petition requesting that an election be conducted to determine the representational desires of all sworn law enforcement personnel of the Municipal Employer, except the Chief of Police and Inspector of Police.

At the hearing, the Municipal Employer contended that personnel employed in the ranks of Captain, Lieutenant of Detectives, Lieutenant of Police, Detective Sergeant, and Sergeant are supervisory employees and should not be included in the bargaining unit. The Petitioner asserted that employees in said ranks are not supervisory since only the Chief and the Fire and Police Commission are authorized by statute to hire, transfer, suspend, promote, discharge, assign and discipline the Municipal Employer's law enforcement personnel. The parties have stipulated that the Municipal Employer will continue to voluntarily recognize the Association as the exclusive representative of the unit if it is unchanged by the Commission's determination of the issues noted above. In the event that any ranks are added to the unit pursuant to the Commission's decision herein, however, the parties have stipulated that a representational election should be conducted among the newly constituted unit.

The Municipal Employer's Police Department employs some 143 sworn personnel and some 59 civilians. The sworn personnel work within a paramilitary organizational structure similar to that established by many police departments. The ranks (in descending order) in the chain of command and the numbers of officers holding each is as follows:

- 1 - Chief
- 1 - Inspector of Police
- 7 - Captains of Police
- 1 - Lieutenant of Detectives
- 1 - Lieutenant of Police
- 3 - Detective Sergeants
- 12 - Sergeants
- 21 - Detectives
- 3 - Traffic Investigators
- 11 - Corporals
- 72 - Patrolmen
- 1 - Policewoman

The work of the department is allocated to various subdivisions within it. The following table lists those subdivisions and indicates the number of employees in each rank who are normally assigned to each subdivision during each of the department's three shifts.

	First Shift	Second Shift (Chief)	Third Shift
	(Midnight to 8:00 a.m.)	(8:00 a.m. to 4:00 p.m.)	(4:00 p.m. to Midnight)
<u>PATROL DIVISION</u>			
Inspector	0	1	0
Captain	0	0	1
Lieutenant of Police	1	0	0
Sergeant of Police	3	3	3
Corporal	1	3	3
Patrolmen	20	20	23
<u>TRAFFIC BUREAU</u>			
Captain of Traffic	0	1	0
Sergeant of Police	0	1*	0
Traffic Investigators	0	3*	0
Corporal	0	1	1
Patrolmen	0	5	2*
Parkettes (Civilian)	0	3	0
Crossing Guards (Civilian)	0	41	0
<u>DETECTIVE BUREAU</u>			
Captain of Police	0	1	0
Lieutenant of Detectives	0	0	1
Detective Sergeant	0	1	1
Detectives	3	6	7
<u>YOUTH GUIDANCE BUREAU</u>			
Captain of Police	0	1	0
Detectives	0	3	2
Policewoman	0	1	0
<u>SPECIAL ASSIGNMENT BUREAU</u>			
Captain of Police	0	1	0
<u>TRAINING BUREAU</u>			
Captain of Police	0	1	0
Sergeant of Police	0	1	0
<u>IDENTIFICATION BUREAU</u>			
Detective Sergeant	0	1	0
<u>EQUIPMENT & COMMUNICATIONS</u>			
Captain of Police	0	1	0
Sergeant of Police	0	1	0
Corporal	0	1	1
Patrolmen	1	0	0
Civilian	2	2	2
<u>RECORDS</u>			
Civilian Clerks and Secretaries	0	8	1

* Denotes employes whose hours of work normally extend into the following shift.

In determining whether certain law enforcement personnel are supervisory or nonsupervisory, the Commission applies the criteria found in Section 111.70(1)(o)1 of the Municipal Employment Relations Act. 1/ The Commission has recognized, however, that strict application of such criteria might, in a given case, "split a rank" because of a finding that some employees of a given rank perform supervisory duties while others do not. Therefore, in an effort to avoid the difficulties in terms of collective bargaining and police operations which such rank splitting would likely create, the Commission, in an effort to serve the purposes underlying the Municipal Employment Relations Act has, where possible, attempted to avoid the splitting of ranks when making supervisory determinations involving law enforcement personnel. 2/

In the instant case, neither party to the proceeding has asked the Commission to split a rank, and it does not appear necessary under the evidence to do so. Upon reviewing the evidence presented 3/ and the briefs of the parties, the Commission has reached the following conclusions with respect to each of the ranks at issue.

CAPTAINS

The Captains are responsible to the Chief for the entire operation of their respective organizational subdivisions (e.g., bureaus). 4/ They prepare budgets for their bureaus as well as direct the day-to-day operations thereof. They serve as shift commanders, directly responsible for the proper performance of their bureau personnel working on their shift, and they seldom leave the station to perform routine police work. In the area of personnel relations, the Captains establish work and vacation schedules for the men assigned to their bureau by the Chief. They also file with the Chief formal evaluations of the fitness and work performance of each officer in their bureau, or at least of each such officer on their shift, and some of them form part of the team which conducts oral examinations of candidates for promotion and reports the results thereof. The Chief relies upon the evaluations and examination results submitted to him in making promotion decisions.

1/ Section 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 employees, 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."

2/ See, City of Madison, (11087-A) 12/72.

3/ The Municipal Employer's Motion for Leave to Reopen the Record for Receipt into Evidence of Post Hearing Exhibit (which Motion the Association did not oppose) is hereby granted, and the three-page document marked as Exhibit 7 is received and has been considered as a part of the record herein.

4/ In the Patrol Division, the Captain performs many of the above duties and assumes many of the responsibilities by delegation from the Inspector or in the latter's absence.

The Captains in the Special Assignment Bureau and the Training Bureau exercise some supervisory authority with respect to often-changing groups of employees assigned to them, and each has responsibilities making his position closely allied to the interests of the Municipal Employer.

In view of the above, the Commission concludes that the Captains are supervisory, and, in any event, so closely allied to the Municipal Employer as to require that they be excluded from the bargaining unit.

LIEUTENANT OF POLICE AND LIEUTENANT OF DETECTIVES

These two men serve as shift commanders in their respective bureaus during the third shift. As such, they perform most of the supervisory functions served by Captains with respect to the men on their shift. Like the Captains, the Lieutenants seldom leave the station to perform day-to-day police work, and their pay ranges are considerably higher than those of the subordinates whose work they direct.

The Commission, therefore, concludes that the Lieutenant of Police and Lieutenant of Detectives positions should be excluded from the unit as well.

DETECTIVE SERGEANT

The Detective Sergeant in the Identification Bureau is in charge of the specialized (often scientific) identification work performed within the department. He often requires assistance in collection of samples in the field or in analysis of specimens or data. When detectives are detailed to him, he directs their work and may verbally reprimand them for failure to carry out his assignments properly. Yet, most of his time is spent in identification and related work, rather than supervision of the work of others. Furthermore, it can reasonably be concluded that he is more in charge of the activity of identification than in charge of the personnel assigned to him from time to time. Based on the foregoing, the Commission concludes that the Detective Sergeant in the Identification Bureau does not perform sufficient supervisory duties to call for his exclusion from the bargaining unit, and he is, therefore, included therein.

The Detective Sergeants in the Detective Bureau assist the Captain and Lieutenant in supervising the work of the bureau and substitute for them in their absence due to regular off days, vacations or illness, etc. They receive calls from the public, and assign (in the absence of their superior officer) worthy cases to detectives for investigation. Moreover, in the station, they assist their superior in interrogation of suspects or witnesses or conduct such interrogations themselves in their superior's absence. ~~A major portion of their work constitutes reading the reports of detectives and assigning any continuation or follow-up investigative work which they deem appropriate under the circumstances.~~

Although they are authorized to hear and adjust "gripes" of their subordinates in the Detective Bureau, the Captain and Lieutenant in that bureau are also available (unless absent) at the same time to serve the same supervisory purpose. Moreover, a ratio of two "supervisors" to six or seven detectives, most of whom are presumably away from their superior officers throughout most of their shift, seems unrealistically high. Furthermore, the responsibility for assigning

*The S-D is responsible for the assignment & coordination of investigative work; & 2020
SM 1020 as a clearing*

follow-up based upon an evaluation of the work theretofore performed is a responsibility that is as much related to the advanced skill and experience of the Detective Sergeant~~s~~ as to their supervisory authority.

In view of the above considerations, the Commission concludes that all of the Detective Sergeants should be included in the bargaining unit.

SERGEANTS

The Sergeants in the Patrol Division serve as shift commanders in the absence of their superiors and exercise all of the supervisory responsibilities with respect to division personnel at such times. Even when their superior officers are present, the Sergeants conduct roll call and inspection (the Captain, Lieutenant or Inspector stays in his office and is not involved in this activity) and may reprimand patrolmen and correct deficiencies in their uniform and grooming. The Sergeants present patrol assignments for each squad at roll call and draw to the attention of their men any special orders or circumstances relevant to their duty. Thereafter, the Sergeants spend much of their time in patrol cars observing the work of the patrolmen first hand. When patrolmen are called by radio to a problem area, the Sergeants will, at their discretion, drive to the scene of the problem. Upon arrival, the Sergeant will assess the situation, call for more men or release some squads present and generally direct the work of the patrolmen on the scene. Sergeants also investigate complaints about patrolman conduct received by the department from the community and report the results to their shift commander.

The Commission notes that the Patrol Sergeants spend a substantial portion of their time in actual patrolling of the streets and in answering police calls. While it is true that the calls are often assigned to patrolmen squads and that the Sergeant observes, directs and, where necessary, corrects (and investigates complaints about) the patrolmen in their performance of duty, the Sergeants are, in essence, performing police work in a manner commensurate with their advanced skills and experiences more than they are exercising supervisory authority. Moreover, there are calls assigned directly to Sergeants where their superior knowledge of the law or sensitivity to community concerns is required. Furthermore, much of their inspection and roll-call work is routine; and, at such sessions, the Sergeants are, to a considerable extent, serving as a conduit for the orders and information passed down from their shift commanders. Under all of the circumstances, then, the Commission concludes that the patrol sergeants are not supervisory, and they are, therefore, included within the bargaining unit.

The Sergeant in the Traffic Bureau ordinarily works the last four hours of the second shift and the first four hours of the third shift. During the first half of his normal day, the Sergeant is on the road investigating special traffic problems and observing the handling of traffic by bureau personnel. He normally returns to the station at 4:00 p.m. and assumes the role of shift commander for the two corporals then on duty, receiving any unusual traffic complaints and assigning the two shift personnel to cover them and reviewing accident reports and assigning follow-up when necessary. On days when his Captain does not work, however, the Sergeant serves as shift commander of the bureau throughout the second shift and does not work during the third shift at all.

During the State Fair, the Sergeant in the Traffic Bureau is responsible for the training, equipping and assigning responsibilities to twelve special police whom the department hires to ease the traffic pressures arising from the Fair. The Sergeant is also responsible for the planning and coordination of Traffic Bureau work during parades, etc.

Except at times when he substitutes for the Captain of Traffic and when he is supervising the special police at State Fair time, the Sergeant's duties include those which might be expected to be assigned to an officer with advanced skill and experience, rather than to one whom the Municipal Employer believes is a skilled supervisor of others. Many of his duties are routine, as well. So, under all of the circumstances, the Commission concludes that his array of duties is not sufficient to require that the rank of Sergeant be split. The Traffic Sergeant is, therefore, included within the bargaining unit.

The Sergeant in the Training Bureau has two major functions. First, he is responsible for the "emergency government" (formerly civil defense) activities, e.g. being prepared to set up and staff community shelters within the City or to organize radiation monitoring teams, etc. In fulfilling his emergency government role, the Sergeant (and the Captain to a lesser extent) trains and is responsible for the recruitment and preparation of a civilian volunteer group who are to be available to assist the department in times of emergencies such as natural disasters. At present, the volunteer group, known as the West Allis Auxiliary Police, is composed of some one hundred twenty-five persons.

The Training Bureau Sergeant's other major function is the conduct of some of the department's recruit training and in-service training classes. During the time that personnel are in his class, the Sergeant directs their activities, corrects their mistakes and has the authority (never exercised to date) to eject an uncooperative trainee (regardless of rank) from class, send him home for the day and require him to report to the Chief the following day. The Sergeant submits reports on the progress of recruits in training to the Captain and Chief, and such reports are considered in determining the recruit's fitness for permanent appointment to the department.

Since volunteers are not regularly "employed" by the Municipal Employer in the traditional sense, this Sergeant cannot be said to be their "supervisor" in an employment relations context. Moreover, it is necessary for the Sergeant, acting solely as a teacher, to maintain order in the classroom, to correct the mistakes of his "students," to assign learning experiences to them and to evaluate their ability to learn and level of skill development. Thus, the discipline, work assignment, and promotion (evaluation) functions served by the Sergeant seem more related to his responsibility for the training activity and less to his role as a supervisor of the employees assigned to his classes.

It is, therefore, the Commission's conclusion that the Training Bureau Sergeant does not perform sufficient supervisory duties to require that he be excluded from the unit. His position is, therefore, included in the bargaining unit.

The Sergeant in Equipment and Communications works in the department garage. He performs various duties and assumes various responsibilities as delegated to him by his Captain. Those duties regularly include the assignment to the corporals of mechanical repair and maintenance work to be performed on department equipment. Besides preparing work schedules, he inspects the work of the mechanics, and assists in the bureau work of assigning squad cars to department personnel daily. While the Captain spends most of his time performing "administrative work" in his office at the garage, the Sergeant is out in the shop assigning work and making certain it has been performed properly. In view of the small mechanical work force of the Equipment and Communications group, however, it is difficult to believe that the Sergeant spends the majority of his time supervising the one corporal and two civilians on the second shift, or in preparing instructions for the personnel working on other shifts in that organizational subdivision. Moreover, the evidence indicates that the Captain's office is physically close to the work area of the corporal mechanic so that the former is able (and does at times) inspect and comment on the quality of the work performed. In view of the close availability of additional supervision from the Captain, the Commission concludes that the Sergeant in Equipment and Communications is not excluded from the unit as a supervisor.

The conclusions reached above that Sergeants should, as a rank, be included in the bargaining unit is supported by the fact that there is little difference in the compensation of Sergeants and the non-supervisory rank of Detective. As the Municipal Employer noted in its brief,

"ranks below Sergeant are remunerated for all overtime hours at time and one-half whereas the ranks of Sergeant and above do not receive the overtime premium rate until after they have worked a total of 40 overtime hours or 60 hours computed on an overtime basis . . . The ranks in issue [Sergeants and above] receive a 3% salary premium in lieu of receiving the time and one-half overtime premium for the first 40 hours of overtime . . ." 5/

Thus, the amount of compensation for Detectives and for Sergeants is substantially the same, though it differs in form in the respect noted above. The differences between the pay of Lieutenants or Captains and that of Detectives is much more substantial and more indicative of recognition of the supervisory responsibilities of the former two ranks.

In its brief, the Municipal Employer placed great emphasis upon statements in the department rulebook characterizing the Sergeants as supervisors and certain of their duties as supervisory. In that regard, the Commission gives much greater weight to the duties actually performed and the authority actually exercised by particular personnel than it does to expressions in job descriptions, job titles and the like. 6/

5/ Municipal Employer's Brief, p. 6.

6/ See, City of Portage, (10318) 5/71; Village of Shorewood, (6552) 11/63.

The Municipal Employer also stressed the fact that all officers with ranks of Sergeant or higher submit annual evaluation forms 7/ concerning the subordinates on their shift and that the Chief considers such evaluations in making promotion decisions. We note, in this regard, however, that the Chief also considers the results of oral exams given by a team consisting of the Inspector and four shift commanders as well as the evaluation forms supplied by Lieutenants and Captains in reaching such decisions with respect to any given prospective promotee. Moreover, the Chief testified that he doubted very much whether the results of the above-described examination would differ from the evaluations of an officer's Sergeant. 8/ Thus, it appears that although they receive consideration by the Chief, the evaluations of the Sergeants are seldom the critical factor upon which a promotion hinges.

Finally, we note the Municipal Employer's considerable stress on the possible effects of inclusion of any of the ranks at issue in the bargaining unit upon its present practice of monthly staff meetings involving the Chief and officers from the rank of Sergeant and up. We have held, however, that the existence of such a practice does not, in and of itself, establish that all officers invited to such meetings must be excluded from the bargaining unit. 9/

Since we have concluded that two of the ranks at issue, Detective Sergeant and Sergeant, should be included in the unit as it previously existed, we have ordered that an election be conducted to determine the representational desires of the newly constituted bargaining unit.

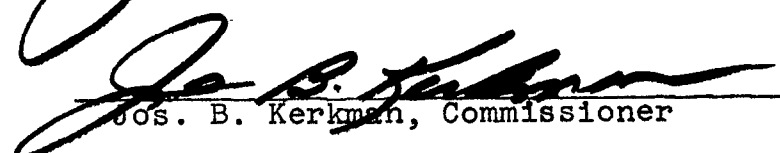
Dated at Madison, Wisconsin, this 18th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

7/ Evaluations are submitted quarterly with respect to subordinates in their first year of employment.

8/ Tr. 22.

9/ See, Village of Bayside, (11514) 1/73.