

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES, AFSCME, AFL-  
CIO  
Involving Certain Employes of  
VILLAGE OF NIAGARA  
- - - - -

Case I  
No. 17375 ME-992  
Decision No. 12446

Appearances:

Mr. James W. Miller, Staff Representative, WCCME, AFSCME, AFL-CIO,  
appearing on behalf of the Petitioner.  
Mr. David J. Herrick, Attorney at Law, appearing on behalf of the  
Village of Niagara.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, requesting that a representation election be conducted among police personnel in the employ of the Village of Niagara for the purpose of determining what, if any, representation such employes desire for the purpose of collective bargaining pursuant to the Municipal Employment Relations Act; and hearing on such petition having been conducted at Niagara, Wisconsin on November 20, 1973, Sherwood Malamud, Hearing Officer, being present and during the course of the hearing, the parties having entered into the stipulation with respect to the matter, and the Commission being satisfied that a question of representation has arisen among the employes involved;

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 of the date of this Direction among all police officers, and excluding the Marshal, in the employ of the Village of Niagara, Wisconsin, who were employed by said Municipal Employer on November 20, 1973, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented for the purpose of collective bargaining by the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

Given under our hands and seal at the  
City of Madison, Wisconsin this 30<sup>th</sup>  
day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

At the commencement of the hearing, the Village requested that the Marshal, Donald Danielson, be excluded from the unit because of his supervisory status. The Union stipulated to the exclusion of the Marshal from the unit. However, during the course of the hearing the Village changed its position and moved that the Marshal be included in the unit. The Union then agreed to the inclusion of the Marshal, and the parties entered into a stipulation for the election.

The Village employs four full-time police officers, including the Marshal. Three part-time officers work a total of two days per month and the Employer stipulated at the hearing to the inclusion of the part-time employees in the bargaining unit. 1/

The Union declined to respond to this letter. Inasmuch as the Employer has not withdrawn its stipulation to the election, the Commission rules that the Employer may challenge the ballots of the part-time employees at the election. The Commission would then hold a hearing to determine the eligibility of the part-time employees. 2/

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1/ On November 29, 1973, the Hearing Officer received the following letter from the Employer's counsel Mr. Herrick (a copy of this letter was forwarded on November 29, 1973 to Mr. Miller, the Union representative). The letter reads as follows:

"Dear Mr. Malamud:

I have been confering (sic) with the Village President, Mr. Charles Kuder, since our meeting on November 20, 1973 at the Village Hall. A certain fact has been brought to my attention, which I was unaware of as of the date of our meeting. That fact is that Mr. Robert Broullire, Mr. Ray Outcalt, Jr., and Mr. Louis A. DePas, all listed as part-time employees of the Niagara Police Department, are under no obligation to report to work if asked. In other words, these gentlemen may be asked to work because of a shortage of personnel or for any other reason, and it is completely discretionary with them if they come to work or not. They work if it is convenient for them, if not, they simply tell the President or who ever (sic) is in charge, that they can not (sic) or chose not to work on that certain day they are needed.

Since there is no obligation on the part of these gentlemen to work, I am now questioning their eligibility to be represented by a union.

Therefore, I would like their information supplemented to the facts already gathered by you at the hearing, and presented to the Board of Commissioners when they review your findings and make a determination as to eligibility of the persons connected with the Niagara Police Department.

Thank you for your time and consideration in this matter."

2/ Should the evidence substantiate the facts alleged in the letter, the Commission would conclude that said part-time employees are casual employees and therefore not eligible to vote.

## THE MARSHAL

Supervisory employees are excluded from the definition of the term "municipal employee" as defined in Sec. 111.70(1)(a) of the Municipal Employment Relations Act. The Act, in Sec. 111.70(1)(b) defines the term "supervisor" as follows:

"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."

In determining whether the "supervisor" in fact is performing such duties the Commission considers (1) the number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees; (2) the level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees; (3) whether the supervisor is primarily supervising an activity or is primarily supervising employees; (4) whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and (5) the amount of independent judgment and discretion exercised in the supervision of employees.

Mr. Danielson was appointed to the position of Marshal in 1968. He receives a differential of \$60.00 per month above the Patrolman's salary. His assistant, Mr. Betters, receives a differential of \$12.00 a month above the Patrolman's salary. During the period from 1968 to the present, Danielson has had occasion to hire new employees. Although all hiring must be approved and authorized by the Village Board, the recommendations of the Marshal are accepted and implemented by the Village Board. While the Village Board does the hiring and firing and is ultimately responsible for the operation of the Police Department, Danielson is the only person with day-to-day supervision over the assignment of personnel. Danielson approves all sick leave and vacation requests, and he must complete a monthly report to the Village Board on the activities of the Department. During the period from 1968 to the present, the Marshal has had no occasion to formally discipline a Patrolman.

The Village explained that it changed its position and requested that the Marshal be included in the bargaining unit because a majority of the Marshal's time is devoted to patrolling the Village, an activity performed by the other Patrolmen of the Department, and that very little of his time is devoted to his supervisory responsibilities. However, we find that to include Danielson in the unit would result in non-supervised law enforcement personnel and therefore, we reject the stipulation to exclude him from the unit.

Dated at Madison, Wisconsin this 30<sup>th</sup> day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner