

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
SHOREWOOD POLICEMEN'S PROTECTIVE ASSOCIATION	:	Case X
	:	No. 18463 ME-1121
Involving Certain Employees of	:	Decision No. 13645
	:	
VILLAGE OF SHOREWOOD	:	
	:	

Appearances:

Mr. Michael J. Kondos, Attorney at Law, appearing on behalf of the Petitioner.

Mr. Alvin R. Meyer, City Attorney, and Mr. Robert K. Maas, Chief of Police and Fire, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Shorewood 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 Village of Shorewood; and hearing on said petition having been conducted at Shorewood, Wisconsin, on December 17, 1974, Hearing Officer Marshall L. Gratz being present; ^{1/} and the Commission having considered the evidence and being satisfied that a question of representation has arisen concerning certain employees of the 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 sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time sworn law enforcement employees with the power of arrest employed by the Village of Shorewood Police Department, excluding Lieutenants, Captains and Chief who were employed by the Police Department of the Village of Shorewood on May 15, 1975, 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

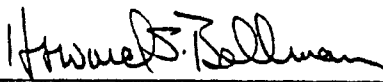
^{1/} The hearing was cassette tape recorded and not transcribed. Both parties waived, in writing, the provisions of Section 227.12 of the Wisconsin Statutes with regard thereto.

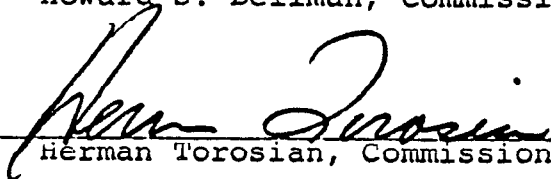
Shorewood Policemen's Protective Association for the purposes of collective bargaining with the Village of Shorewood on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In 1972, the Union was the voluntarily recognized bargaining representative in a unit consisting of all law enforcement personnel in the employ of the Municipal Employer up to and including the rank of Lieutenant. Sometime in 1973, however, the parties agreed that such recognition would be limited to employes in the ranks of Patrolman and Investigator, thereby excluding personnel in the ranks of Detective, Sergeant, Lieutenant, Captain and Chief.

In its petition (as amended at the hearing), the Union seeks a representation election in a unit consisting of:

"All regular full-time and regular part-time sworn law enforcement employes with the power of arrest employed by the Village of Shorewood Police Department, excluding the Chief and Captain."

The Municipal Employer does not take issue with the appropriateness of that unit description, but contends, instead, that an election is unnecessary inasmuch as the Union is presently recognized as representative of all ranks that are, in the Municipal Employer's view, nonsupervisory. Thus, the Municipal Employer, contrary to the Union's position, argues that those holding the ranks of Detective, Sergeant and Lieutenant are all supervisors within the meaning of Section 111.70(1)(o)1. 2/ The Union has indicated a desire for an election, regardless of the Commission's determinations concerning the supervisory status of the disputed positions.

In support of its position, the Municipal Employer contends that each of the positions in question is expressly recognized as supervisory in the published rules of the Department; that each has the authority to make, or to effectively recommend, supervisory decisions concerning Patrolmen in a sufficiently broad range as to constitute them supervisors; that they are paid substantially more than Patrolmen on account of their supervisory responsibilities; that the allocation of supervisory responsibilities among the ranks in the Department is such that the only rational and defensible dividing line between supervisors and nonsupervisors must be drawn between Detective and Patrolman, and not between either Lieutenant and Sergeant, or Captain and Lieutenant.

The Union contends that the duties of the disputed ranks are not sufficiently supervisory in nature to cause their exclusion from the bargaining unit; and that such employes are lead workers rather than supervisors.

2/ That Section sets forth the definition of "supervisor" applicable herein 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."

In its Police Department, in addition to the Chief and the one Captain, the Municipal Employer employs two Lieutenants, three Sergeants, one Detective, one Investigator and sixteen Patrolmen. Those officers are assigned to one or a combination of two of the Department's three shifts on a five-days-on, two-off, four-on, two-off basis.

One officer is designated the commanding officer on each shift. Generally this is the highest ranking officer on the shift, though a Lieutenant is the commanding officer on the day shift which the Chief normally works. While the Municipal Employer concedes that commanding officers do not have any authority with respect to layoff, recall or hire, the record does indicate that such officers have been vested with certain authority and other indicia of a supervisory nature.

Commanding officers assign the work and direct the detailed performance of the subordinate officers working on their shift. They review subordinates' reports concerning police work performed and order follow-up police work or report rewrites as they deem appropriate. Commanding officers assign the subordinates on their shift to either squad or foot patrol and to a particular geographic beat area within the Village; such assignments are ordinarily made according to a pre-established rotation, however, from which the commanding officer seldom deviates. Commanding officers have some discretion in determining which Patrolman will attend to which police work matters arising during a shift and in determining how many Patrolmen are required to attend to a particular matter and how they should be deployed.

Commanding officers are required to submit written fitness reports after a new employe on their shift has completed his first six months and again after his first year. They also maintain and submit to the Chief statistical records of the work output (e.g., numbers of arrests, traffic citations, etc.) of the Patrolmen on their shift and make occasional verbal reports to the Chief (pro or con) concerning the performance of such Patrolmen. Commanding officers also have the authority to recommend that formal citations of merit or demerit be placed in a Patrolman's personnel file; such citations are considered by the Chief in determining whether the Patrolman involved would be promoted.

Discharge, discipline and suspension are generally imposed only by the Chief following an independent investigation of the facts by the Chief. Commanding officers may send a Patrolman home under exigent circumstances without higher authority and may impose verbal reprimands. In other disciplinary matters, commanding officers submit factual reports containing recommendations if they choose to make them. Such recommendations have been put into effect in some cases, but not in others such that it cannot be said that the commanding officers have the authority to effectively recommend discipline, discharge or suspension.

Commanding officers have the authority to recommend that a Patrolman's shift assignments be changed. None has made such a recommendation since the present Chief undertook his position in 1969.

There exists no formal grievance procedure. Commanding officers in fact resolve minor inter-Patrolman disputes on their own, but refer other grievances and complaints to either a Lieutenant or to the Chief.

Commanding officers may authorize Patrolmen to work overtime, but only in a limited set of circumstances contained in Department policies. The Chief schedules vacation time off, but a commanding officer may, where manpower is adequate (under established standards), grant time off requests of a Patrolman on his shift. Commanding officers are also responsible for calling in replacements for absentees; such responsibility is often exercised following consultation with the Captain, however.

All Department employes receive the same fringe benefits, except that the Chief and the Captain are not compensated for overtime work. The Captain's monthly salary is \$1,344; Lieutenants \$1,279.84; Sergeants and Detective \$1,171.32; and Patrolmen \$1,043.36.

The Municipal Employer noted in argument that its published personnel policies and the formal rules governing the Department make reference to one or more of the disputed ranks as being responsible, e.g., "to supervise patrolmen on duty during an assigned shift" and to have "other officers [under their] direction". 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. 3/

Detective

The record shows that while the Detective serves as commanding officer of a shift on occasion, the majority of his time is spent either in the detailed investigation of crimes, or in efforts to detect and prevent criminal or delinquent activity. At times he is placed in charge of one or more Patrolmen in connection with particular matters of criminal investigation. In directing employes in that capacity, however, the Detective is more appropriately described as in charge of the special investigation function than as in charge of the employes assigned to assist him with respect thereto. 4/ For those reasons, the Commission is satisfied that the position of Detective is not supervisory and is properly included in the unit. The incumbent in that position is eligible to vote in the election we have hereby directed.

Sergeants

The Sergeants serve in the capacity of commanding officer of the early and of the late shift during a substantial majority of their working hours. They conduct roll calls for all shifts (the Sergeant on the preceding shift conducting same on the day shift commanded by a Lieutenant). At roll call, attendance is taken, special orders of the Chief are read, the Patrolmen are brought up to date on relevant occurrences during the previous shift and otherwise alerted to matters pertinent to their duties. They are then assigned to patrol a given area, either on foot or in a squad, and they proceed to their assigned duties.

In those unusual situations in which a superior officer serves with a Sergeant on a shift, the commanding officer role would be played by said superior officer and the Sergeant would spend virtually his entire shift on the road. Even when the Sergeant is serving in the commanding officer role, he spends about two-thirds of his time on the road in a squad car and only one-third of his time at the station. When on the road, the Sergeants perform a combination of tasks including both routine police work and the direction of the work of the Patrolmen assigned to the shift. The Sergeant maintains direct radio contact with each of his Patrolmen whether he is in a squad or at the station.

The degree to which they perform routine police work differentiates the Sergeants from (at least one of) the Lieutenants and leads the Commission to conclude that the Sergeants are, at best, performing work comparable to that of a "working foreman" but not of a supervisor. The position of Sergeant is therefore included in the unit and the incumbents holding that rank are eligible to vote in the election.

3/ See: City of Portage, Dec. No. 10318 (5/71).

4/ See: City of West Allis, Dec. No. 12020 (7/73), (Aff. Milw. Co. Cir. Ct., Case No. 414-088 (11/74)).

Lieutenants

Like the Sergeants, Lieutenants regularly serve as commanding officer of the shift on which they work; this is true even on the second shift which the Chief normally works. In the absence of both the Captain and the Chief from the Village, a Lieutenant would be in complete charge of the Department. Certain grievances and complaints from Patrolmen and Sergeants are received and adjusted by a Lieutenant; others are referred to the Chief for determination. Lieutenants are paid \$1,279.84 monthly compared with \$1,171.32 for Sergeants. Unlike the Sergeants, neither Lieutenant conducts roll calls and at least one of the Lieutenants performs little routine police work and spends little time on the road in a squad car.

Based on the foregoing, it is concluded that at least one of the Lieutenant positions is supervisory. Where, as here, neither party has requested that the Commission split a rank, it is the Commission's policy to avoid such a result. ^{5/} Therefore, each of the Lieutenant positions is excluded from the bargaining unit and the incumbents of those positions are not eligible to vote in the election.

It may be noted here, that were the Lieutenants included in the unit, the ratio of supervisory to nonsupervisory unit personnel would be 2:22 or 1:11 - unrealistically low when it is considered that the Chief heads both the Police and Fire Departments of the Municipal Employer. The 4:20 or 1:5 ratio resulting from exclusion of the Lieutenants is a much more appropriate result.

The Commission has, this date, directed an election in the unit designated in the petition as amended. At the hearing, a roster of Department employes was received into evidence. Unless one of the parties proposes an updated list within ten days of the date of issuance hereof, the Commission shall treat said roster as the eligibility list for the election. In that event, the eligibles would be Sergeants Gross, Daley and Lambrecht, Detective Cherney and Patrolmen Mollwitz, Henke, Cerfus, McGowan, Tuzee, Noel, Doubek, Ludan, Ludtke, Ziegert, Cole, Bates, Plumb, Rae, Dunn and Puff.

Dated at Madison, Wisconsin, this 15th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
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5/ City of Madison, Dec. No. 11087-A (12/72) at page 6.