

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 18351 ME-1108
Decision No. 13653

Patrolman Barry W. Weissenborn, President, appearing on behalf of the Association.
Mulcahy & Wherry, Attorneys at Law, by Mr. Michael Van de Kerchove, appearing on behalf of the Municipal Employer.

The above-named labor organization having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain employees of the Fire and Police Department of the above-named Municipal Employer for the purpose of determining whether said employees desire to be represented by the Petitioner for purposes of collective bargaining on questions of wages, hours and other conditions of employment; and a hearing having been conducted at Waukesha, Wisconsin on October 18, 1974, before Marshall L. Gratz, Hearing Officer; and the Municipal Employer alone having taken the opportunity offered to the parties to submit post-hearing briefs; and the Commission having considered the evidence and arguments and brief of counsel, and being satisfied that a question has arisen concerning representation for certain employees of the Municipal Employer;

DIRECTED

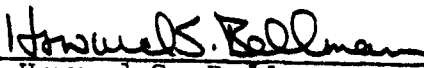
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time employees employed by the Village of Chenequa in its Fire and Police Department, excluding the Chief, supervisory, managerial, confidential, seasonal, casual, part-time and temporary employees, employees without the power of arrest, volunteer firemen who are not full-time Department employees, and all other employees of the Village, who were employed on May 19, 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 voting desire to be represented by Chenequa Professional

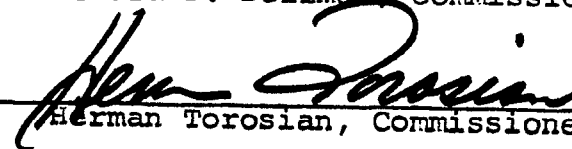
Policemans Association, for the purpose of collective bargaining with the above-named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 19th
day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

At the outset of the hearing, following a discussion between the parties, the Petitioner requested that the description of the claimed bargaining unit set forth in the petition should be amended so as to read as follows:

"All regular full-time employees employed by the Village of Chenequa in its Fire and Police Department, excluding the Chief, supervisory, managerial, confidential, seasonal, casual, part-time and temporary employees, employees without the power of arrest, volunteer firemen who are not full-time Department employees, and all other employees of the employer."

The Municipal Employer had no objection to the amendment, but it argues, contrary to the Association's position, that the description of the appropriate unit should expressly exclude employees holding the rank of Sergeant on account of their confidential, managerial and/or supervisory status. In its brief, the Municipal Employer asserted only the alleged supervisory status of Sergeants as its basis for seeking their exclusion from the unit.

The Petitioner asserted at the hearing that the Sergeants should properly be included in the bargaining unit and requested that an election be conducted regardless of the Commission's determination on the Sergeants' eligibility.

The Municipal Employer's law enforcement and fire protection functions are performed by a combined Police and Fire Department under the direction of Chief Robert F. Mulligan. There is presently no certified or voluntarily recognized collective bargaining representative of any employees of that Department. Besides the Chief, the Department employs five regular, full-time employees (two Sergeants and three Patrolmen) and there are 14 volunteer firemen who take part in certain of the Department's activities. The volunteers, as a group, receive a sum of money annually which they divide among themselves on the basis of quantity and intensity of participation in volunteer activities (including fires, drills, meetings, parades, etc). To the Chief's recollection, no volunteer has ever received more than \$50 in any year for such participation.

The duties of the regular full-time employees, taken as a whole, are divided between police and firefighting responsibilities, with the majority of time (probably more than 60%) being devoted to police work. In 1973, the Municipal Employer reorganized the rank structure within the Department, replacing a single Captain position with two Sergeant positions. At the same time, the Municipal Employer directed that one Sergeant, presently Scott Marquardt, concentrate on assisting and advising the Chief on police matters, and that the other Sergeant, presently Melvin Erdmann, concentrate on assisting and advising the Chief on firefighting matters. Notwithstanding their designated areas of concentration, however, each Sergeant was directed to continue to perform in the dual capacity of police officer/firefighter.

Except when emergencies exist, regular Department personnel are generally assigned to one of three eight-hour shifts on a five days on, two off, four on, two off work schedule. Thus, normally, in each 13-day cycle, each officer works nine days and is off four.

The Chief, Sergeant Marquardt and one Patrolmen cover the day shift (8:00 a.m. to 4:00 p.m.). Sergeant Marquardt generally performs

routine police patrolling duties on the four days in each work cycle when the day shift Patrolman is off, though occasionally the Chief will patrol on such days in order to permit Sergeant Marquardt to pursue some other priority police work project such as an ongoing investigation. Sergeant Erdmann and one Patrolman cover the second shift (4:00 p.m. to midnight). Sergeant Erdmann generally performs routine police patrolling on the four days in each work cycle when the second shift Patrolman is off duty. 1/ The night shift (midnight to 8:00 a.m.) is covered by one Patrolman. On his off days, the night shift is generally covered by the Chief or one of the other regular Department employees on a rotating basis though occasionally that shift is left uncovered. 2/

In its brief, the Municipal Employer argues that Sergeant Erdmann, being the officer in rank immediately below the Chief in the firefighting chain of command, must be excluded pursuant to the direct statutory mandate of Section 111.70(1)(o)(2) of MERA. That provision reads, in pertinent part, as follows: "In municipalities where there is but one fire station, the term 'supervisor' shall include only the chief and the officer in rank immediately below the chief." While the evidence is clear that the Municipal Employer has but one fire station and that the Sergeants are the officers in rank immediately below the Chief, the Commission concludes that the aforesaid special definition of "supervisor" is not applicable herein inasmuch as a majority of the work of Department personnel is spent on police rather than firefighting work. 3/

Therefore, the statutory definition applicable herein is Section 111.70(1)(o)(1) of MERA which defines "supervisors" 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 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."

It is not necessary that all of those factors be present in order to find an employee to be a supervisor, but rather it is necessary that those factors should appear in sufficient combination to clearly establish that the employee is a supervisor. 4/

The Municipal Employer argues that the extent of supervisory duties and responsibilities of the Sergeants is sufficient to warrant their exclusion from the unit as supervisors.

1/ When only one employee is working a shift and he is out on the road patrolling, phone calls to the station ring in both the Chief's home and on the County Sheriff's department switchboard, both of which are apparently equipped with radios to communicate with the officer on the road.

2/ The County Sheriff's Department uses the Chenequa station as a substation and apparently provides some coverage of the area when no Chenequa personnel are on duty.

3/ See, Village of Bayside, Decision No. 11514 (1/73).

4/ See, e.g., Wood County, Decision No. 10356-A (10/71).

The Sergeants are "in charge" of the shifts on which they work except for those shifts which Sergeant Marquardt and the Chief have in common. Each of the Sergeants is entirely responsible for their respective areas of concentration when the Chief is on vacation or otherwise unavailable. The Chief testified, however, that he was available 90% of the time; that he is ordinarily in telephone communication with his officers at least once during each shift and that he is called when unusual circumstances or emergencies develop. The Sergeants direct the work of the Patrolmen, if any, working their shift with them. In addition, at fires, Erdmann actually directs the efforts of the regulars and volunteers except in those instances that the Chief believes things should be handled differently.

The Sergeants play a limited role in the hiring function. When it has been determined that an employee will be hired, the selection from among several applicants is made by the Chief with the approval of the Fire and Police Commission. Before he selects a candidate, however, the Chief seeks recommendations from an "interview board" consisting of himself, the Sergeants and the Chairman of the Fire and Police Commission. That board interviews each applicant. Sergeant Erdmann's opinion is valued in interview Board deliberations since, in the Chief's view, Erdmann is most familiar with the firefighting function of the Municipal Employer. Sergeant Marquardt's inputs are valued in Board deliberations because he conducts background investigations of each applicant and is therefore more familiar with the background of each applicant than are the others on the interview board. Only one hire decision has been made during the present Chief's tenure which began in 1973. On that decision, the interview board was unanimous.

The Sergeants' role in discipline, suspension and discharge matters is apparently limited to one of recommendation. In the only two cases cited by the Municipal Employer (one a discharge and the other a suspension of several days), the Chief conferred with the Sergeants and they both recommended the measures eventually imposed by the Chief. The Chief, noted, however, that he also would have sought the recommendation of a Patrolman familiar with the work of the employee who was eventually discharged; the Chief found it unnecessary to do so however because that Patrolman offered his recommendation even without being asked for same.

The Sergeants receive and adjust employee work related complaints of a minor nature or of a nature requiring immediate attention. All others are taken directly to the Chief or referred by the Sergeants to the Chief for disposition.

The Sergeants are required, as are the Patrolmen, to report in writing to the Chief about any rules infractions on the part of fellow Department personnel.

Sergeants are also assigned by the Chief to investigate any complaint (from any source) about the conduct of a fellow officer. Such reports are solely factual except that where the Sergeant was personally involved in the incidents reported, the Chief asks for the Sergeant's recommendations as to what should be done.

Each of the Sergeants has training responsibilities with respect to his area of concentration. Erdmann is the "senior member" of a three-person firefighting training committee which determines and implements the content of fire drills and meetings. Erdmann instructs firefighters on some occasions himself and is in charge of the regulars

and volunteers during drills and other training meetings. Marquardt recommends to the Chief which, if any, of the regular employees should attend specialized police work courses. The Chief then decides whether such course work can be financially afforded and should be undertaken. Marquardt also recommends to the Chief schedules for attendance at the standard training school courses taken by all regular employees so as to avoid conflicts with off days, vacations and the like.

Erdmann also assists the Chief in being aware of Department expenditures, making required reports to outside agencies, maintaining records of fires, inspections and the like. It is likely that Marquardt assists the Chief with certain similar administrative tasks with respect to the Police function. The Sergeants meet monthly with the Chief to discuss Department matters; Patrolmen do not ordinarily attend those meetings.

Although the Sergeants have shorter lengths of service than one and two of the Patrolmen respectively, each is paid a higher salary than the Patrolmen. The record leaves unclear whether the difference is \$40 or \$60 per month. In addition, Sergeants are not entitled to overtime compensation in some circumstances under which Patrolmen would be.

While the Sergeants are regarded by all in the Department as "supervisors", and while they have been granted certain indicia and authority of a supervisory nature, we conclude that the Sergeants do not exercise independent judgment with respect to enough of that authority to warrant the conclusion that they are supervisors within the meaning of the MERA. For the most part, the Sergeants' exercise of authority is of a routine nature, either within limits established in advance by the Chief or subject to immediate consultation with the Chief. 5/ In addition, it must be noted that if the Sergeants were not included within the bargaining unit, the ratio of supervisory to non-supervisory employees would be 3:4 (or 1:1.34); their inclusion makes that ratio a more appropriate 1:7. Consideration of such ratios confirms that the Department is small enough so that the Chief can, for the most part, know about and deal with matters requiring the exercise of independent supervisory judgment himself.

For the foregoing reasons, the Commission has concluded that neither Sergeant is a supervisor within the meaning of the applicable definition noted above.

Moreover, although Sergeants prepare priority lists of purchases which, when approved by the Chief, will determine the order in which Department expenditures will be made from its allocation of funds; and although the Sergeants perform the mechanics of purchasing items authorized by others; and although the Sergeants attend regular meetings with the Chief exclusive of all other Department employees, the record as a whole does not support the conclusion that the Sergeants should be excluded from the bargaining unit as managerial employees.

5/ In the Chief's words, the Sergeants are ". . . pretty well controlled by the rules and regulations and verbal orders that I lay down for them. It's awful easy for me to detect any deviation whatsoever because of the size of the entire operation . . ." Transcript at p. 55.

Furthermore, while the Sergeants have access to Department personnel files and perform employee evaluations and adjust certain work-related complaints, none of these functions, nor the record as a whole warrants, exclusion of the Sergeants as confidential employees, especially in view of the small size of the Department. 6/

We therefore find no basis for excluding the Sergeants from the unit, by express exclusion or otherwise. They are included in the unit and the individuals occupying said positions are eligible to vote in the election which we have, this date, directed.

Dated at Madison, Wisconsin this 19th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

6/ See Wausau County Electrical Co-op, Decision No. 4875 (9/53).