

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF GREENFIELD

Case XXXIV
No. 19482 ME-1233
Decision No. 14393

Mulcahy & Wherry, Attorneys at Law, by Mr. Ronald J. Rutlin, appearing on behalf of the Municipal Employer.

Teamsters Union Local No. 695, hereinafter referred to as the Petitioner, having on August 19, 1975, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the City of Greenfield, hereinafter referred to as the Municipal Employer, to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Milwaukee, Wisconsin, 1/ on October 24, 1975, Stanley H. Michelstetter II, Hearing Officer, being present; and the Commission having considered the evidence and being fully advised in the premises, and being satisfied that a question has arisen concerning representation of certain employees of said 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 employees of the Greenfield Police Department, who have the power of arrest, but excluding Sergeants, Lieutenants, Captains and the Chiefs, who were employed by the City of Greenfield on March 4, 1976, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employees desire to be represented by

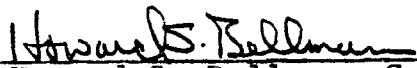
1/ The parties waived, in writing, the preparation of a transcript of the proceedings and the provisions of Section 227.12 of the Wisconsin Statutes.

Teamsters Union Local 695 for the purposes of collective bargaining with the City of Greenfield.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

By its petition filed August 19, 1975, Petitioner seeks an election among police personnel employed by the Municipal Employer previously represented by the Greenfield Professional Policemen's Association. After the Association received notice of the hearing, its president notified the Hearing Officer by letter received September 17, 1975, that it did not wish to appear on the ballot, nor did it appear at the scheduled hearing.

The parties stipulated that the Chief, Captain and Acting Lieutenant, are supervisory, but the Municipal Employer, contrary to Petitioner, contends that the Sergeants are also supervisory. As of the date of hearing, the Municipal Employer operated a police department consisting of one Chief, one Captain, one Acting Lieutenant, five Sergeants, five Detectives, and 22 Patrol Officers. 2/ The department operates on a seven-day week, three-shift basis. The Acting Lieutenant is responsible for the operation of the detective bureau and assigns, directs and disciplines the Detectives. Apparently that new position is not included in the chain of command over Patrol Officers. The Captain reports to the Chief and both regularly work the day shift (8:00 a.m. to 4:00 p.m.). Both spend 100 percent of their time in their offices establishing police policy, operating procedures and evaluating the allocation of resources. Each has responsibility for independent determination with respect to the assignment of personnel, direction thereof and the imposition of discipline as discussed below. We, therefore, find that the parties' stipulations conform to our established policy.

Sergeants report directly to the Captain. In turn, they have authority to direct the activities of Patrol Officers and Detectives, except that Detectives may direct Sergeants at the scene of an investigation. In the absence of the Captain and Chief, the senior Sergeant on duty is designated shift commander. Even in the presence of either senior officer, the senior Sergeants perform the shift commander functions. At the beginning of the shift, the senior Sergeant conducts a roll call formation by which he transmits general orders from higher authority, instructs officers as to recent court decisions selected by the Chief, informs officers of recent developments from preceding shifts, inspects officers' uniforms and determines that they are fit for duty. He also makes any changes necessary from the cutomarily assigned patrol areas including assigning officers to radar operations, stake outs and answering specific complaints 3/ or following up previous calls. Pursuant to specific standards established by higher authority, the senior Sergeant determines if the shift has sufficient manpower. If not, he calls in off-duty officers to fill in: he offers overtime to the off-duty personnel from that shift by seniority and, if more personnel is still needed, offers the remaining overtime to off-duty personnel from other shifts by seniority.

When two Sergeants are on duty, one takes responsibility for "office work" for the remainder of the shift and the other goes "on the road". Ordinarily, only one Sergeant is on duty and must perform both office and road duties. The day-shift Sergeant spends approximately

2/ The Municipal Employer employs nine clerical employees without the power of arrest who are presently represented by another labor organization in a different unit; City of Greenfield (12947) 8/74.

3/ During the shift, non-unit dispatchers assign incoming calls to Patrol Officers.

25 percent of his time on the road, of which 20 percent is spent backing up or assisting officers at the scenes of calls. While a Sergeant is assisting or backing up he observes the performance of the Patrol Officers at the scene, particularly new hires, verbally correcting deficiencies. Ten to 15 percent of his total time is spent checking up on officers either by observing them from remote locations, by doing a "follow-up", a check with citizens involved in previous calls to see if the officer performed properly, and investigating citizen complaints about police officers. The remainder is spent patrolling in the unmarked squad car without an assigned patrol area. The 4:00 p.m. to 12:00 a.m. Sergeants spend 50 percent of their time assisting and backing up officers, ten to 15 percent checking up on Patrol Officers and 35 to 40 percent in general patrolling. The 12:00 a.m. to 8:00 a.m. Sergeants spend 25 percent of their time in the office reviewing officers' reports, and the remaining 75 percent is spent on the road in the unmarked patrol car. Because of the high number of calls on this shift, the Sergeant finds himself often answering calls in the same manner as the Patrol Officer in addition to the back-up and assisting function. As a rule, for all shifts Sergeants do not answer ordinary calls if there is a Patrol Officer available.

The Municipal Employer asserts that Sergeants have the authority to discipline employes by warning them and by suspending them pending immediate independent investigation by the Captain and/or Chief; and have the authority to effectively recommend the discharge, disciplinary suspension or other discipline of fellow officers. In fact, Sergeants have verbally reprimanded Patrol Officers, but have rarely issued written reprimands. In any case, written reprimands for serious matters are independently reviewed by the Chief and/or Captain. The Municipal Employer's rules 4/ grants the authority of Sergeants to suspend Patrol Officers for the following reasons:

"CONDUCT LEADING TO SUSPENSION:

- 1) Commission of a Felony or Misdemeanor under Law.
- 2) On-duty intoxication.
- 3) Insubordination or disrespect toward a superior member.
- 4) Overbearing, oppressive conduct in the discharging of duty.
- 5) Absence from scheduled duty without permission.
- 6) Gross inefficiency and incompetency.
- 7) Communicating sensitive and confidential information regarding prosecutive cases before discovery rights.
- 8) Making a false official statement or report.
- 9) Willful maltreatment of a prisoner.
- 10) Discourtesy, lack of respect toward other members and the public
- 11) Soliciting business for an attorney or bail bondsman.

4/ "Revised Rules and Regulations, Greenfield Police Department" rule 2.04, in relevant part.

- 12) Smoking while in uniform and dealing with the public in a public place.
- 13) Accepting a bribe or an award not authorized by law.
- 14) Excessive and habitual tardiness.
- 15) Soliciting any gift, gratuity, loan, fee or other thing of value, the acceptance of which might tend to influence the actions of said member in a matter of Police business or pending trial.
- 16) Sleeping, loafing or gambling on duty."

Sergeants have never actually disciplined or recommended discipline of fellow employees other than by written or verbal warning. In all serious matters the Captain and/or Chief independently determine whether, and to what extent, discipline should be imposed. We are satisfied that the Municipal Employer has limited the Sergeants' independent authority to discipline action to minor situations and authorizes them to recommend disciplinary action only in egregious situations, subject to independent review.

Sergeants have the responsibility for authorizing overtime at the end of their shift. The Chief has specified guidelines for that authorization and established a policy of avoiding overtime whenever possible. In this regard, the Sergeant must use his discretion in determining whether Patrol Officers may be safely replaced at the scenes of calls occurring near the end of shifts without undue disruption of the police function. The Sergeant also arranges for the necessary replacement from the following shift. When departmental overtime becomes excessive, the Chief directs the responsible Sergeants to reduce overtime. While the authorization of overtime requires the use of the Sergeants' superior knowledge and experience as police officers it may not involve the use of independent judgment in the Municipal Employer's interest.

Although the agreement between the Association and the Municipal Employer expressly includes Sergeants in the bargaining unit, the Sergeants are the Municipal Employer's representative at the first step of the grievance procedure. In those situations where grievances have been filed, the Sergeants routinely defer matters to higher authority and have not actually resolved any grievance. Sergeants follow established policy in approving vacations and other leaves.

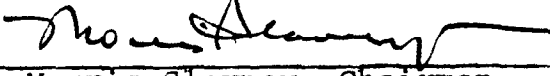
Sergeants are selected from the ranks of officers and are selected, in part, on the basis of their seniority (at least 20 percent weighting). They receive \$13,680.08 annually, the same wage as unit Detectives, while Patrol Officers receive the annual salary of \$12,460.03.


On the basis of the foregoing, we find that the Sergeants exercise authority and perform duties sufficiently differentiated from the those of Patrol Officers, and therefore conclude that the Sergeants herein are supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and therefore are excluded from the collective bargaining unit.

Dated at Madison, Wisconsin this 4th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner