

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case IV
No. 20329 ME-1213
Decision No. 14707

Mr. William A. Wulf, City Attorney, appearing on behalf of the
Petitioner.
Mr. James T. Rogers, Attorney at Law, appearing on behalf of the
Merrill Professional Policemen's Association.

The City of Merrill having, on March 24, 1976, filed a petition with the Wisconsin Employment Relations Commission wherein it requested that the Commission determine whether two Lieutenant-Shift Commander positions should be, or should not be, included in an existing voluntarily recognized collective bargaining unit consisting of law enforcement personnel in the employ of the City of Merrill, excluding the Chief and Captain; and a hearing having been held in the matter on April 14, 1976, Robert M. McCormick, Hearing Officer, being present; and during the course of the hearing both the City and the Merrill Professional Policemen's Association, the collective bargaining representative of the employees in the unit involved, having been afforded the opportunity to present evidence and arguments with respect to the issue; 1/ and the Commission, being fully advised in the premises and being satisfied that the positions of Lieutenant-Shift Commander are supervisory positions, makes and issues the following

That the positions of Lieutenant-Shift Commander are hereby excluded from the bargaining unit consisting of law enforcement personnel employed by the City of Merrill, and, therefore, the description of the appropriate bargaining unit shall now read as follows:

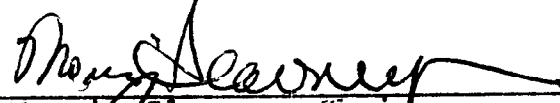
No. 14707


"all law enforcement personnel in the employ of the City of Merrill, excluding the positions of Chief, Captain and Lieutenant-Shift Commander."

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The instant proceeding was initiated as a result of an issue between the City and the Association as to whether the positions of Lieutenant-Shift Commander, occupied by Dennis Hintze and Charles Batchelder, are, or are not, supervisory positions, and thus, whether said positions are, or are not, included in the unit consisting of non-supervisory law enforcement personnel in the employ of the City. The Association contends that Hintze and Batchelder perform functions similar to those performed by unit personnel.

The term "supervisor" is defined in Section 111.70(1)(o) of the Municipal Employment Relations Act (MERA) 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."

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 2/

2/ Fond du Lac County (10579-A), 1/72.

Prior to the reorganization of the Police Department, which formally occurred on January 1, 1976, there existed one Lieutenant position, the occupant of which was responsible for record keeping and for handling juvenile cases. Said position was included in the bargaining unit. The functions of the Shift Commander were performed by a Captain, who was a supervisory employe and therefore not included in the unit, and by a Sergeant, who was included in the unit. Early in August, 1975, the City Council and the Police and Fire Committee approved a change in the organization of the Police Department, to become effective January 1, 1976, which change essentially resulted in assigning two Lieutenant positions to act as Shift Commanders of a day and night shift. Due to retirements, Hintze and Batchelder were promoted from Patrolmen to the Lieutenant positions. The changes in the Department and the details of the responsibilities of the Lieutenant positions were orally communicated to Hintze and Batchelder by the Chief of Police sometime in December, 1975.

The Association contends that inasmuch as the Lieutenants and Sergeants were not provided with written specifications concerning their duties until April 11, 1976, three days prior to the date of the hearing herein, that no weight should be given to the evidence with respect to said changes in the duties of the positions involved. It appears that the Chief presented such matters to the officers involved at the advice of the City Attorney, in order to have such documents completed in time for the hearing. The Association's objection has no merit since it is evident that Hintze and Batchelder were performing the duties presently performed by them, at least since January 1, 1976.

The Department, as now organized, consists of the Chief, one Captain, who has direct authority over a Traffic Officer, the two Lieutenants and a Detective. The Lieutenants, as Shift Commanders, are in charge of Sergeants and Patrolmen. The hours of the shifts are staggered over the days - 5:00 a.m. to 6:00 p.m., and nights - 6:00 p.m. to 9:00 a.m. There is no Lieutenant-Shift Commander on duty between the hours of 2:00 a.m. and 10:00 a.m. The void is covered by either Sergeants or Patrolmen. However, it is to be noted that either the Chief or the Captain reports for work at 7:30 a.m.

Under the reorganized Department Hintze and Batchelder have the authority to recommend discipline, transfer, promotion and suspension of their Shift Commanders. They may adjust work schedules, such as calling officers in on duty on other shifts and may grant time off. The Sergeant or Patrolman who act as Shift Commander between 2:00 a.m. and 10:00 a.m. have no such authority. Hintze and Batchelder have the authority to temporarily suspend a subordinate, as well as the authority to recommend or to dismiss an arrest action taken by a subordinate officer, whereas the Sergeants or Patrolmen act as an officer in charge and have no such authority. Hintze and Batchelder are given the authority to adjust grievances and adjust schedules. No such authority is exercised by Sergeants or Patrolmen acting as officers in charge. While the Lieutenants may take a patrol car out from 12 midnight to 2:00 a.m., they do not suspend a major portion of their hours patrolling the City as do the other officers.

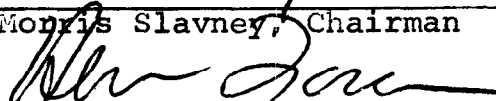
Based on the above, the Commission is satisfied that as Lieutenant-Shift Commanders, Hintze and Batchelder are supervisory employes and, therefore, we have excluded them from the existing bargaining unit.

Dated at Madison, Wisconsin this 11th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner