

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of | : | |
| TEAMSTERS UNION LOCAL NO. 695 | : | Case I |
| Involving Certain Employees of | : | No. 20466 ME-1329 |
| CITY OF VERONA (POLICE DEPARTMENT) | : | Decision No. 14776-B |
| | : | |

Appearances:

Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by Marianne Goldstein, appearing for the Petitioner
Melli, Shields, Walker & Pease, S.C., Attorneys at Law, by Thomas R. Crone, appearing on behalf of the City.

PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Teamsters Union Local No. 695, having on June 14, 1979 requested that the Wisconsin Employment Relations Commission determine whether the position of Police Sergeant should be, or should not be, included in an existing collective bargaining unit consisting of all regular employes of the Village of Verona Police Department with the power of arrest, excluding the Chief of Police, non-sworn clerical employes and all other Village employes. The Wisconsin Employment Relations Commission by its order dated July 24, 1979, appointed Timothy E. Hawks as examiner to conduct hearing and issue proposed decision. A Hearing was held on August 21, 1979, during which both the City and the Union were afforded the opportunity to present evidence and arguments with respect to the issue. The parties submitted post hearing briefs by September 19, 1979. The examiner having reviewed the evidence and being fully advised from the premises makes and issues the following proposed Findings of Fact, Conclusion of Law and Irder Clarifying Bargaining Unit.

PROPOSED FINDINGS OF FACT

1. That Teamsters Union Local No. 695, hereinafter referred to as the Union, is a labor organization with its offices at 1314 North Stoughton Road, Madison, Wisconsin 53714.
2. That the City of Verona, hereinafter referred to as the City, is a municipal employer with its offices at P.O. Box 188, Verona, Wisconsin 53597.
3. The Union is a certified bargaining representative of the employes in the bargaining unit certified as all regular employes of the Village of Verona Police Department with the power of arrest, excluding the Chief of Police, non-sworn clerical employes and all other Village employes. The Union has petitioned for a clarification of a bargaining unit requesting that the Commission determine whether Sergeant of Police of the City of Verona is a supervisor as that term is defined by Section 111.70(1)(0)1 MERA. The Union asserts that the sergeant is an employe whereas the City claims that he is a supervisor and therefore properly excluded from the bargaining unit.

4. The City's Police Department is organized in the following manner;

| <u>Position</u> | <u>Number</u> | <u>Hours</u> |
|--------------------|---------------|---|
| Police Chief | 1 | 8:00 a.m. to 4:00 p.m. |
| Sergeant | 1 | 7:00 p.m. to 3:00 a.m. |
| Patrolman | 1 | 6:30 a.m. to 2:30 p.m. |
| | 1 | 2:30 p.m. to 10:30 p.m. |
| | 1 | 10:30 p.m. to 6:30 p.m. |
| | 1 | Swing shift for day and evening shift officers |
| | 1 | Swing shift for sergeant and midnight shift officers |
| Part-time Patroman | 5 | Substitute when any of the 5 full-time patrolmen are absent |

The sergeant and 5 full-time patrol officers work a 41 day work schedule in which the employees work 6 days on, 2 off, 6 on, 2 off, 6 on, 2 off, 5 on, 3 off, and 6 on, 3 off.

5. The sergeant of police position at issue here is currently occupied by Officer Lynn Marquardt. Sergeant Marquardt has been employed by the City as patrolman and sergeant. He was promoted to the position of sergeant, a newly created position, on April 3, 1979. Marquardt receives approximately \$100.00 per month more than the patrol officers.

6. Marquardt spends only one hour at the beginning of the shift and a shorter period of time at 10:30 p.m. in the Department offices. The remainder of his time is spent patrolling in a manner not distinguishable from that of the other officers. Most of the time spent in the office by Marquardt involves performing a routine review and recording of the daily reports filed during the day by the patrolmen. Marquardt returns to the station to pass on information regarding ongoing police activities at 10:30 p.m. The Sergeant is at most a working supervisor who spends virtually all of his time performing non-supervisory duties.

7. As a Police Sergeant, Marquardt is engaged in limited supervisory decision making. In particular he has (1) recommended making full-time a part-time patrolman; (2) orally reprimanded an employee; (3) assigned overtime and allowed the taking of compensatory time; (4) written evaluations of those officers he has contact with during working hours; and (5) assumed the authority of the Chief of Police during the Chief's vacation.

8. The sergeant may not issue discipline more severe than a three day suspension and has not implemented discipline more serious than an oral reprimand, which reprimand had been approved by the Chief. The sergeant's ability to affectively recommend the hiring or promotion of an employee is not established by reference to the same in Finding of Fact No. 7 above since there was only one applicant for the opening and the amount of reliance placed upon Marquardt's recommendation by the Chief cannot be discerned.

Based upon the above and foregoing findings of fact the Examiner

Based upon the above Findings of Fact and Conclusion of Law the Examiner issues the following

PROPOSED ORDER CLARIFYING BARGAINING UNIT

The position with the rank of sergeant in the City of Verona Police Department shall remain within the bargaining unit described in Finding of Fact No. 3 above.

Dated at Madison, Wisconsin this 22nd day of February, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY Timothy E. Hawks
Timothy E. Hawks, Examiner

MEMORANDUM ACCOMPANYING PROPOSED FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

During the last five years the Commission has had frequent opportunity to review the supervisory nature of police sergeant's duties. As has been noted in the past, questions regarding supervisory status among policemen involve factors differing from other municipal employes. As a paramilitary operation the police department has a delineated chain of command. Keeping this in mind the Commission applies the statutory definition of a supervisor and has stated that the criteria itemized below will be utilized when analyzing a police officer's supervisory status.

The principle underlying the statutory exclusion of supervisors from the bargaining unit may be simply stated. The ability to supervise a work force is compromised when the individuals charged with supervision are joined with those supervised for the purpose of collectively bargaining wages, hours and conditions of employment. Just as important, the ability of the employes to collectively bargain and enforce an agreement is hampered by the presence of supervisors among those in the unit. The supervisors themselves are pinioned by a difficult conflict of interest. Reasonable people may and often do differ regarding the interpretation and implementation of a collective bargaining agreement. Thus the statute provides that "'Municipal Employee means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee". 1/

The statute provides further that "'supervisor' means 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 judgement." 2/

The Commission has identified the criteria used to discern supervisory status. These criteria are:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employe;
2. whether the supervisor is primarily supervising an activity or is primarily supervising employes;
3. the level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes;
4. whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;
5. the number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the sam employes;

1/ Section 111.70(1)(b) MERA (emphasis supplied).

2/ Section 111.70(1)(o) MERA..

6. the amount of independent judgement and discretion exercised in the supervision of employes;
7. and the authority to direct and assign the work force. 3/

Not all of the criteria listed above need be present to conclude that an individual is a supervisor within the meaning of the Municipal Employment Relations Act. Indeed, the criteria must be sufficient in both quality and degree to conclude that the position at issue is in fact supervisory.

Among recent cases 4/ involving the supervisory nature of a sergeant position several criteria have proven particularly useful in distinguishing supervisors from employes: (1) the percentage of time spent supervising as opposed to the percentage of time spent performing work duties akin to those performed by the remainder of the employes with the unit; (2) the number of employes supervised and the number of those exercising greater or concomitant supervisory authority; and (3) the degree of independence with which the sergeant makes the alleged supervisory decisions.

In no recent case has the sergeant had an unfettered authority to hire or fire an officer. In all the cases reviewed those sergeants occupying the position at issue had authority to reschedule employes in order to guarantee adequate manning of a shift. In virtually all cases reviewed the sergeant acted at times as the officer in charge with authority to supervise the execution of particular activities. Keeping in mind the statutory definition of supervision and the prior cases the facts of the instant case shall be examined.

Marquardt has engaged in the written evaluation of City employes. Typically this is indicative of supervisory authority. However, said evaluations have not been used to discipline or reward unit employees. It is noteworthy that the Chief reserves the right to amend an evaluation written by Marquardt. The Union cites City of New Berlin (Police Department, 16055 (1/78)), as support for the proposition that the preparation of evaluations by police sergeants is insufficient to establish supervisory status. Indeed, the Commission found that evaluations which effectively recommended the general imposition of discipline would not by itself justify concluding that an individual is a supervisor. In City of Franklin (Police Department), the Commission found that police sergeants were not supervisors despite evaluative authority at least co-extensive with that of Verona's sergeant.

As noted above in Finding of Fact No. 7, Marquardt orally reprimanded an officer. However, the form of discipline was determined by the Chief. In the past we have found that such limited form of disciplinary authority is insufficient to establish that an individual

3/ City of Platteville (Police Department), (15535) 5/77 citing Fond du Lac County, (10579-A) 1/82.

4/ City of Hudson (11470) 12/72; City of Kiel (11368) 10/72; City of St. Francis (13177-A) 4/75; Village of Shorewood (13645) 5/75; Village of Chenequa (13653) 5/75; City of Beloit (Police Department) (14282) 1/76; City of Greenfield (14393) 3/76; Village of Hales Corners (Police Department) (15589) 6/77; City of Platteville (Police Department) (15535) 5/77; Village of Butler (16844) 2/79; City of Medford (Police Department) (16846) 2/79; Village of Fontana (Police Department) (16845) 3/79; and City of Franklin (Police Department) (17179) 8/79.

is a supervisor. 5/ Marquardt has not exercised any other form of discipline.

The fact that the Sergeant performs a routine and perfunctory compilation and review of reports is not relevant to his status as a supervisor. Nor is it particularly relevant that Marquardt serves as the officer in charge during the brief periods that the Chief is unavailable. In most recent cases before the Commission, the Sergeant served as commanding officer at least on some occasions in lieu of the Chief of Police. Such a fact has not been and is not deemed here to be determinative. Notably, except when on vacation, the Chief makes himself constantly available by phone or radio contact.

The Sergeant earns approximately \$100 more than the remainder of the force. Such amount is clearly to compensate for the additional duties of Marquardt. However, most of those additional duties are not supervisory in nature.

In summary the following facts dictate the conclusion that the sergeant employed by the City of Verona is not a supervisor. At least six of the eight hours of Sergeant Marquardt's work day is spent performing patrol duties similar to those performed by the members of the bargaining unit. The two hours that Marquardt spends not performing patrol duties are occupied primarily in routine record keeping which does not require the use of independent judgement and therefore does not stand as a criteria of supervisory authority. Although Marquardt has written evaluations of several employes such evaluations have not been utilized for supervisory purposes. Moreover the incidental aid provided to the Chief by Marquardt regarding the hiring of an employe does not conclusively establish that Marquardt has the effective authority to recommend the employment of an individual. In the one instance where Marquardt appeared to discipline an employe it is clear that the determination of the degree of discipline as well as the decision to discipline was made by the Chief.

For the above reasons Sergeant Marquardt is not properly considered a supervisor as that term is defined by Section 111.70(1)(o) MER

Dated at Madison, Wisconsin this 22nd day of February, 198

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