

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-C  
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Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller, Levy and Brueggeman,  
S.C., Attorneys at Law, by Marianne Goldstein Robbins;  
788 North Jefferson Street, P. O. Box 92099, Milwaukee,  
Wisconsin 53202, appearing on behalf of the Union  
Melli, Shiels, Walker and Pease, S.C., Attorneys at Law, by  
Thomas R. Crone, Suite 600 Insurance Building, 119 Monona  
Avenue, P. O. Box 1664, Madison, Wisconsin 53701, appearing  
on behalf of the County

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER  
CLARIFYING BARGAINING UNIT AND AMENDING CERTIFICATION

Examiner Timothy E. Hawks, having, on February 22, 1980, issued his Proposed Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit in the above entitled matter; and the City of Verona having, on March 13, 1980, filed timely objections to said proposed decisions along with a brief in support thereof; and Teamsters Union Local 695 having, on April 24, 1980, filed a brief in opposition to the City's objections; and the Commission, having reviewed the record including the objections and briefs in support thereof and opposition thereto, has determined not to accept the Examiner's proposed decision and hereby issues its own Findings of Fact, Conclusion of Law and Order as follows:

FINDINGS OF FACT

1. That Teamsters Union Local No. 695, hereinafter referred to as the Union, is a labor organization with 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 offices at P. O. Box 188, Verona, Wisconsin 53597; and that as part of its municipal functions the City operates a police department.
3. That the Union is the certified bargaining representative of the City's law enforcement personnel in a collective bargaining unit consisting of all regular employees of the City's police department with the power of arrest, excluding the Chief of Police, non-sworn clerical employees and all other City employees; 1/ that at the time of said certification the City (then a Village) employed four policemen and did not employ any law enforcement personnel holding the rank of sergeant; that in 1979 the City created a sergeant's position in its police department which position was

1/ Decision No. 14776, dated July 29, 1976.

filled on April 3, 1979, by the promotion of patrolman Lynn Marquardt; and that the City, contrary to the Union, contends that the sergeant occupies a supervisory position and should be excluded from the bargaining unit.

4. That the City's police department is staffed by the following personnel, working the hours and shifts indicated

<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 a.m.
	1	Swing shift for day and evening shift officers
	1	Swing shift for sergeant and midnight shift officers
Part-time Patrolman	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. That, although Marquardt spends a substantial portion of his time performing patrol duties and other duties similar to the duties performed by the patrolmen in the department who work on the 2:30 p.m. to 10:30 p.m. and 10:30 p.m. to 6:30 a.m. shifts, he is expected to and does perform duties of a supervisory nature, to wit:

(a) The preparation of written evaluations concerning the performance of the three full-time employees who work overlapping shifts, i.e., Ottman, Meuer and Bemis which evaluations may have a significant impact on their employment.

(b) The evaluation of the performance of probationary employees and the making of effective recommendations concerning the termination or continuation of their employment.

(c) The evaluation of the performance of three of the five part-time employees who substitute for full-time patrolmen when they are absent, including the authority to make effective recommendations concerning changes in their employment status.

(d) The investigation of alleged misconduct and the administration of discipline including verbal reprimands to employees under his supervision.

(e) The assignment of overtime and the scheduling of part-time employees to cover for patrolmen who seek compensatory time off.

(f) Participation with the Chief in discussions concerning the proper operations of the department --- including the handling of personnel problems such as temporary shift assignments and the selection of personnel to attend training programs.

(g) The authority to act in the Chief's absence with regard to the proper operation of the department.

Based on the above and foregoing Findings of Fact the Commission issues the following

#### CONCLUSION OF LAW

That the position of sergeant currently occupied by Lynn Marquardt is a supervisory position within the meaning of Section 111.70(1)(o)1., of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusion of Law the Commission issues the following

ORDER

The bargaining unit of law enforcement personnel employed by the City of Verona properly excludes the position of sergeant and is therefore amended to read as follows:


All regular employees of the City of Verona Police Department with the power of arrest, excluding the Chief of Police, Sergeant, non-sworn clerical employees and all other City employees.

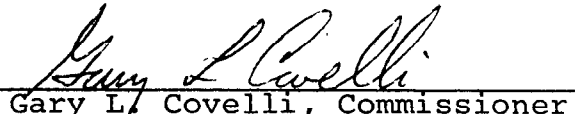
Given under our hands and seal at the City of Madison, Wisconsin this 16th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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

The Examiner, in the memorandum accompanying his proposed decision first reviewed the law and the Commission's policy and decisions with regard to the determination of whether particular positions in law enforcement agencies are supervisory in nature. The Examiner then stated in relevant part:

Marquardt has engaged in the written evaluation of City employees. Typically this is indicative of supervisory authority. However, said evaluations have not been used to discipline or reward unit employees. [sic] 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, [sic] 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, [sic]) 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 is a supervisor. 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 [sic] and therefore does not stand as a criteria of supervisory authority. Although Marquardt has written evaluations of several employees such evaluations have not been utilized for supervisory purposes. Moreover the incidental aid provided to the Chief by Marquardt regarding the hiring of an employee 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 employee it is clear that the determination of the degree of discipline as well as the decision to discipline was made by the Chief. (Footnotes Omitted)

#### City's Position

The City takes issue with a number of aspects of the Examiner's proposed decision. Specifically the City argues that the Examiner erred in the following respects:

- (1) By finding that Marquardt does not have the authority to effectively recommend the employment of an individual;
- (2) By concluding that the written evaluations performed by Marquardt have not been used for supervisory purposes;
- (3) By finding that Marquardt does not spend significant amounts of time engaged in supervisory functions;
- (4) By concluding that the higher rate of pay received by Marquardt is for additional, non-supervisory duties.
- (5) By failing to give proper weight to Marquardt's disciplinary authority;
- (6) By failing to give proper weight to Marquardt's authority to assign overtime and permit compensatory time off;
- (7) By failing to give proper weight to the fact that Marquardt is responsible for the direct supervision of patrol officers; and
- (8) By failing to consider two other significant supervisory functions performed by Marquardt:
  - (a) The authority to effectively recommend transfers (or temporary shift reassignments).
  - (b) The authority to effectively recommend training.

#### Union's Position

The Union relies upon its brief filed with the Examiner in support of its position that the Commission should adopt the Examiner's Proposed Findings of Fact, Conclusion of Law and Order.

In its brief the Union argues

- (1) Marquardt spends the majority of his time doing routine bargaining unit work.
- (2) He ordinarily has contact with only two other patrolmen during his shift.
- (3) His office work (reviewing reports) is routine and does not involve independent judgment.
- (4) While it is true that Marquardt arranges for coverage of days off by part-time personnel, the Chief must approve the taking of days off.
- (5) While it is true that Marquardt writes evaluations, the function of such evaluations is unclear; no one has been disciplined on the basis of these evaluations and the Chief reserves the right to amend them.
- (6) While the Chief relied on Marquardt's recommendations in hiring part-time employee Meuer as a full-time officer, that recommendation was as a "fellow officer" since Marquardt's knowledge of Meuer's work was acquired when he was still a patrolman.
- (7) The decision as to who should receive training was based on a consensus and not the recommendation of Marquardt.
- (8) Marquardt does not exercise independent judgment as evidenced by his handling of the investigation of a disciplinary matter where his discretion was limited in advance.
- (9) Marquardt does not exercise independent judgment during the periods when he is covering the Chief's shift in his absence.
- (10) Marquardt's actual duties, as opposed to the duties listed in his job description, are controlling and the job description contained numerous errors.

## DISCUSSION

In the Commission's view the evidence presented, contrary to the discussion and conclusion reached by the Examiner in the above quoted portion of his memorandum, supports a finding that Marquardt's position contains sufficient duties of a supervisory nature to cause the position in question to be deemed supervisory. While it is true that Marquardt spends a considerable portion of his time performing duties similar to those performed by patrolmen, his supervisory duties, particularly those involving consultations with the Chief and the evaluation of other employees, are sufficient to require such a conclusion.

The fact that the Chief may have reserved the right to amend the written evaluations prepared by Marquardt does not render them ineffective, and there is no basis in the record here to conclude that his written evaluations will not be accepted. On the other hand, there is evidence to support the inference that the Chief has in the past and will probably continue to rely on Marquardt's evaluations, both written and oral, particularly in the case of employees whose shifts do not coincide with that of the Chief. One example, supporting that inference, is the recommendation that James Meuer, a part-time patrolman, be hired as a full-time patrolman. 2/ The fact that he acquired his knowledge of Meuer's performance while he was still a patrolman is immaterial.

Without discussing the evidence in detail we would also note our disagreement with at least two other points in the Examiner's evaluation of the evidence. While it is possible to conclude that Marquardt understood that the Chief did not expect him to administer any discipline in excess of a verbal reprimand in the one disciplinary matter discussed in the Examiner's memo, the Chief did not place any express limitation on the action Marquardt should take. It is more reasonable to infer from the record evidence that Marquardt retained the authority to effectively recommend greater discipline if he believed that the situation called for such action.

Secondly, the inference that the additional \$100 per month received by Marquardt is to compensate him for his additional non-supervisory duties is not compelling. A more compelling inference is that the additional compensation reflects compensation for his supervisory duties rather than less responsible activities such as the filing of reports.

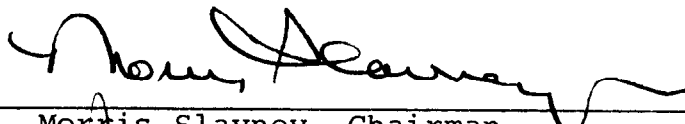
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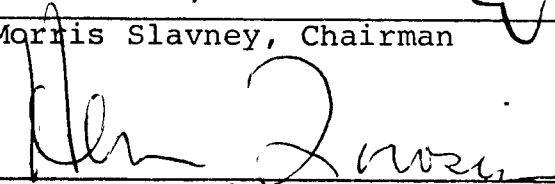
2/ In City of Franklin (17179) 8/2/79, we found that the sergeants were "supervisory" in fact in the absence of a delegation of authority.


For the above and foregoing reasons we have modified the Examiner's proposed Findings of Fact, Conclusion of Law and Order to reflect our view that Marquardt's position is supervisory and properly excluded from the bargaining unit.

Dated at Madison, Wisconsin this 16th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary I. Covelli, Commissioner