

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 20466 ME-1329
Decision No. 14776-D

The Wisconsin Employment Relations Commission having, on July 16, 1980, issued its Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit and Amending Certification in the above-entitled proceeding; and thereafter the above-named Union having, on August 8, 1980, filed a petition for rehearing, pursuant to Section 227.12, Wis. Stats., wherein it alleged that the Commission's decision contained material errors of fact and law; and the Union having filed a brief in support of its petition for rehearing and the above-named City having filed a brief in opposition thereto; and the Commission having reviewed the petition for rehearing and the briefs of the parties, and being satisfied that said petition be denied;

ORDERED

Given under our hands and seal at the
City of Madison, Wisconsin, this 19th
day of August, 1980.

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REHEARING

The petition for rehearing repeats many of the same arguments that were raised before the examiner which were considered by the Commission in issuing its findings. In our view it is not necessary to address those arguments in considering the petition herein. However, several arguments merit some comment because they relate specifically to the Commission's decision as rendered.

As the City correctly points out in its brief in opposition to the petition, the Commission's decision is not contrary to the provisions of MERA or past Commission precedents. The Commission does not base its decisions as to supervisory status on the titles of positions. Thus we have in some instances found sergeants to be supervisory employes and in other instances, we have found that they were not, depending on all the facts and circumstances in a given case.


With regard to the Union's claim that the Commission did not consider the fact that the sergeant here spends a large portion of his time performing the same work as patrolmen, we would point out that our Finding of Fact No. 5 acknowledges such fact, which is essentially undisputed. The numerous evidentiary findings of the examiner which support this ultimate finding, and were contained in his proposed decision, were not repeated in our Finding of Fact No. 5 since, in our opinion, they are not dispositive of the question of whether Marquardt performs supervisory duties in sufficient combination and degree to be found to be a supervisor.

In support of our view that Marquardt does perform duties of a supervisory nature in sufficient combination and degree to deem his position supervisory, our Finding of Fact No. 5 describes those duties. As noted in our original memorandum, the inferences that we draw from the evidence differ substantially from those of the Examiner and those differences are reflected in our description of Marquardt's duties.^{1/}

Dated at Madison, Wisconsin, this 19th day of August, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

^{1/} For example, the Examiner merely found that Marquardt "recommended making full time a part-time patrolman" and that his ability to effectively recommend the hiring or promotion of an employe was not established thereby since the employe, who was promoted, was the only applicant. We found that this recommendation when considered in light of Marquardt's personal knowledge of the individual's work record and the other evidence was indicative of such authority.