

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XVIII
No. 20813 ME-1362
Decision No. 15257

Mulcahy and Wherry, Attorneys at Law, by Mr. Dennis W. Rader,
appearing on behalf of the Municipal Employer.

NOW, THEREFORE, it is

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On September 9, 1976, Shawano County and the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO stipulated to the resolution of a petition which had been filed by Shawano County requesting the clarification of the supervisory and/or managerial status of certain employees of the Shawano County Sheriff's Department. Said resolution indicated that the positions of Chief Deputy and Administrative Deputy would be excluded from the existing bargaining unit due to their supervisory and managerial status and that the positions of Lieutenant, Traffic Sergeant, and Detective Sergeant would be excluded from said unit as supervisory employees. On September 9 the Union also indicated that it intended to petition for an election among the supervisory law enforcement personnel employed by the Shawano County Sheriff's Department and the parties stipulated that the positions of Lieutenant and Traffic Sergeant would be appropriately included in such a supervisory unit. The Employer, however, disputed the Union's desire to include the position of Detective Sergeant in said unit by asserting that the position is managerial. The parties then presented evidence with respect to said issue and the union subsequently filed the election petition for the supervisory unit on September 13, 1976.

"Section 111.70(3)(d) of MERA states that:

"(d) Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employees but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employee representative."

In ERB sec. 17.01 the Commission set forth basic procedures pursuant to the directive of 111.70(3)(d) which provide that:

"The determination as to the levels of law enforcement and firefighters supervisors to be included in bargaining units, as set forth in Section 111.70(3)(d), Wis. Stats., will be determined on a case-to-case basis, because of a variance of the duties and responsibilities assigned to supervisory officers in law enforcement and firefighting services in the various municipalities throughout the state. Since section 111.70(1)(b), Wis. Statutes, specifically excludes confidential, managerial and executive employees, as well as supervisors, from the term 'municipal employee', supervisors who perform confidential, managerial or executive duties shall be excluded from units of supervisory law enforcement or firefighter personnel. Supervisors employed in law enforcement departments, who have no power of arrest, and supervisors employed in fire departments, who are not actively engaged in firefighting are not considered as law enforcement or firefighter supervisors."

Given the positions of the parties, the Commission must determine whether the two positions in question are managerial, and thus subject to exclusion from the collective bargaining unit. In making such determinations the Commission must consider the degree to which the individuals in question participate in the formulation, determination and implementation of management policy and possess the authority to commit the Employer's resources.

The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison, the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgment and discretion are required in determining when such expenditures should be made. Thus, the authority to spend money from a certain account for a specified purpose is not a managerial power, even though managerial employees also have that authority. For example, a secretary empowered to purchase postage on an as-need basis would not have the power to commit the employer's resources within the meaning of this criterion for determining managerial status.

DETECTIVE SERGEANT-BURGLARY INVESTIGATOR

The record reveals that the Detective Sergeant-Burglary Investigator spends the majority of his time functioning as a criminal investigator, with the remainder being spent performing a variety of supervisory duties, including the deployment of personnel and equipment and the training and evaluation of Jailers and dispatchers. Taking advantage of the incumbent's educational background, the Employer has also assigned him various responsibilities in the area of communications, including the maintenance of the Department's communication system and participation in the planning of a central dispatch system for firefighting units in Shawano County. Pursuant to the former responsibility he effectively recommends the repair and purchase of equipment although he lacks any significant input into the establishment of a budget in this area. The incumbent has also on occasion made certain policy recommendations to the Sheriff, which have subsequently been discussed in staff meetings by all supervisory personnel and ultimately adopted by the Sheriff and the Shawano County Law Enforcement Committee.

Based upon the incumbent's ability to effectively recommend the commitment of the Employer's resources in the communications area and his development of policy recommendations, the Employer has asserted that the position should be deemed managerial in nature. While cognizant of these responsibilities, the Commission notes that both of the above responsibilities are exercised on a sporadic basis. Furthermore, the incumbent's policy function is shared by other supervisory non-managerial employees, who also develop policy recommendations and subsequently participate in discussions concerning policy adoption and implementation. Therefore the Commission concludes that the degree to which the Detective Sergeant Burglary-Investigator participates in policy functions or commits resources does not merit his exclusion from a bargaining unit of supervisory personnel as a managerial employee.

DETECTIVE SERGEANT-JUVENILE OFFICER

The incumbent in the position of Detective Sergeant Juvenile Officer is primarily occupied by his responsibility for dealing with juvenile offenders who come into contact with the Shawano County Sheriff's Department. He is also in charge of the Department's uniform allowance program and thus orders clothing and disburses funds in payment thereof. The incumbent has on occasion prepared certain policy recommendations for the Sheriff including a procedure for departmental promotions which was subsequently adopted. The ability to disburse monies and occasionally prepare policy recommendations form the basis for the Employer's belief that the position is managerial.

As with the position of Detective Sergeant Burglary Investigation, the Commission notes that the policy making function is shared to some degree by all supervisory employees of the Department. Thus, the occasional disbursal of funds and limited policy role of the incumbent simply do not distinguish the incumbent from other supervisory personnel to a degree which would require his exclusion from a supervisory unit as a managerial employee.

Dated at Madison, Wisconsin this 8th day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
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