

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK
PROCESSORS, CANNERY, DAIRY EMPLOYEES
AND HELPERS UNION LOCAL 695, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Case I
No. 20750 ME-1355
Decision No. 15535

Involving Certain Employees of

CITY OF PLATTEVILLE (POLICE DEPARTMENT)

Appearances:

Mr. Merle Baker, Business Representative, Teamsters Union Local
No. 695, appearing on behalf of the Petitioner.

Mr. Stephen R. Buggs, Platteville City Attorney, appearing on
behalf of the Municipal Employer.

DIRECTION OF ELECTION

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the petitioner, having, on August 23, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting the commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the City of Platteville, to determine whether said employees desire to be represented by said petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Platteville, Wisconsin, on November 23, 1976, Stephen Schoenfeld, hearing examiner, being present; and the commission having considered the evidence and being fully advised in the premises, and being satisfied that a question has arisen concerning representation of certain employees of said municipal employer;

NOW, THEREFORE, it is


DIRECTED

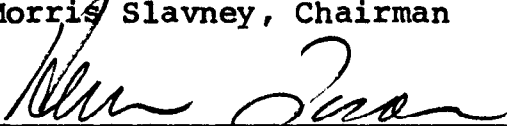
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all regular full time and part time employees of the Platteville Police Department, who have the power of arrest, but excluding the captain and chief, who were employed by the City of Platteville on May 27, 1977, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether said employees desire to be represented

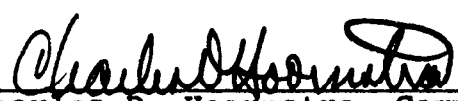
by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, for the purposes of collective bargaining with the City of Platteville.

Given under our hands and seal at the City of Madison, Wisconsin this 27th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosián, Commissioner


Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America petitioned the Wisconsin Employment Relations Commission to conduct a representation election in a unit consisting of "all regular law enforcement employees of the City of Platteville Police Department with the power to arrest, including sergeants, corporals, patrolmen and dispatchers, but excluding the chief of police, captain and all other supervisory employees, clerical employees, work study employees and all other municipal employees of the City of Platteville."

Prior to the hearing the parties agreed that the clerical and the dispatcher positions be excluded from the collective bargaining unit since the occupants of said positions were not authorized to make arrests. The parties, however, were unable to agree as to whether the three sergeant positions, presently occupied by James Zimmer, Edward Moffett, and Richard Zenz, should be included in the unit. The employer, contrary to the union, maintains that positions should be excluded from the unit on the basis that the occupants of said positions are supervisors. The parties were also unable to agree as to whether Thomas Michael, whose patrolmen position is primarily funded through the Community Action Program, should be included in the unit.

The Issue as to Sergeants

Section 111.70(1)(o)1 of MERA defines the term "supervisor" 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."

In concluding whether an individual is a supervisor, 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:

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

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

In applying the aforesaid criteria, the commission has stated that:

"It is not necessary that all those factors be present in order to find an employe to be a supervisor, but rather it is necessary that those factors should appear in sufficient combination to clearly establish that the employe is a supervisor." 2/

The Platteville Police Department has 16 permanently authorized police positions. 3/ The department operates three eight-hour shifts, and except for the 8:00 a.m. to 4:00 p.m. shift when the chief and captain are also present, each shift usually has 1 sergeant and 3 officers on duty. 4/ The sergeant acts as the shift commander, however, if the sergeant is unavailable, a patrolmen or corporal serve as the shift commander.

The sergeants, as do patrolmen, perform investigative work, direct traffic, patrol in a squad car, 5/ and respond to complaints and accidents. Sergeants also direct the ambulance service, prepare the "shift report" 6/ and assign work. 7/ The sergeants have the authority to assign overtime, however, Zimmer testified that on one occasion he directed an officer to remain on duty after his shift ended, but the chief ordered the officer to go home. Sergeants are also authorized

2/ Village of Chenegra, (13653), 5/75.

3/ The department consists of a chief, 1 captain, 3 sergeants, 3 corporals, 1 police-community relations officer and 7 patrolmen. An 8th patrolmen position is funded by the Community Action Program.

4/ The chief has the exclusive authority to assign officers to the respective shifts on a "continuing basis". Unlike officers who remain on a shift until promoted or assigned to a different shift by the chief, sergeants rotate shifts on a three month basis.

5/ Sergeants patrol areas with no delineated boundaries, whereas patrolmen patrol specific sectors. Sergeants periodically check officers to determine if any problems exist and to provide "back up" assistance if necessary.

6/ This document is a compilation of the incidents that occur during the respective shifts and takes approximately 15-20 minutes to prepare. The captain, in turn, based on the three shift reports, makes a report and submits same to the chief.

7/ Many incoming calls are not formally assigned to the officers by the sergeants, but are routinely assigned to a patrol officer by a dispatcher. Most of the assignment of work duties is routine, whereby the officers, exclusive of any direction by the sergeants, engage in patrol and respond to various calls. The chief usually issues the sergeants general orders with respect to work assignments and it is the responsibility of the sergeants to effectuate these orders by giving specific instructions to the patrolmen concerning same. Both the captain and chief have given orders directly to the officers to perform various tasks without consulting the sergeants and the sergeants have been directed by the captain and the chief to assign particular tasks to the officers.

to "call in" extra officers when the need arises and can grant compensatory time; however, the record indicates that sergeants spend substantially most of their time performing the same duties as patrolmen. 8/

Sergeants do not have any input into decisions regarding the hiring and firing of officers and do not make decisions concerning work and vacation schedules. Zenz and Zimmer testified that they have never disciplined any officer or recommended discipline of an officer to the chief 9/, and have never adjusted the grievance of any officer. On one occasion, Moffett recommended to the chief that a letter of reprimand be placed in the personnel file of an officer, but the chief did not follow his recommendation. The chief testified that while he would listen to a sergeant's recommendation relative to the discipline of an officer, he would always conduct his own investigation and arrive at his own decision independent of the sergeant's recommendation. Furthermore, the captain has recommended disciplinary action against a sworn officer without consulting the sergeant and said recommendation was upheld by the chief. Any decisions concerning promotions and layoffs are beyond the authority of the sergeants.

Sergeants do not maintain any personnel records of officers, nor do they prepare any written evaluations; however, they have been requested to prepare a written report concerning the progress of student interns who work in the department and earn credit towards their police science degree at the University of Wisconsin. Sergeants have informally given the chief oral recommendations concerning an officer's progress; however, the sergeants aren't advised with respect to how said information was utilized. Sergeants have, on occasion, instructed officers in what they consider to be good police practices.

A sergeant's salary begins at \$10,657.00 per annum and can be increased to \$11,137.00. A patrolman begins at \$7,788.00 per year and can reach a maximum salary of \$10,465.00. The difference in salary is primarily attributable to the fact that sergeants are the highest ranking officers, on at least two of the shifts. Sergeants and patrolmen "punch" a time clock and are eligible for overtime.

The employer introduced evidence which established that the three sergeants did not issue as many traffic citations during 1976 as did the patrolmen and urged the commission to reach the conclusion that this was a result of the amount of time they spent on "supervisory

8/ Although the Rules and Regulations of the Platteville Police Department set forth certain duties and responsibilities of the patrol sergeant, which patrolmen are not responsible for, the record indicates that the sergeants have not in the past and do not presently perform said duties, and have never been instructed that they are to effectuate same. The commission has previously indicated that it will not be bound by job titles in the determination of supervisory status, but will examine the duties of alleged supervisory positions on a case by case basis. (See Village of Shorewood (6552) 11/63 and City of Kiel (11370), 10/72.

9/ On one occasion, Zenz indicated to the captain that two officers should be investigated because of their drinking alcoholic beverages; however, after the captain apprised the chief of this information, the chief conducted his own investigation and ultimately suspended the officers involved.

tasks." This contention is without merit in that the three sergeants offered uncontroverted testimony that there is not a great disparity between the number of traffic citations they issued as a patrolmen and the amount they have issued since their promotion to sergeant.

Sergeant Moffett is responsible for gathering data with respect to the cost of protective equipment in order to assist the chief in preparing the department's budget. Moffett was selected for this assignment because of his knowledge of firearms. The ultimate decision concerning the amount of the budget that is submitted to the Common Council is made by the chief. Any requisition of equipment or material in excess of \$25.00 has to be made through the chief. Neither party claims that Moffett should be excluded from the unit on the basis of his alleged managerial status and the commission concludes that Moffett's budgetary responsibilities are not exercised at a level which is indicative of managerial status.

Based on the record the commission concludes that the sergeants are not vested with sufficient supervisory authority to require their exclusion as supervisors within the meaning of sec. 111.70(1)(o)(1) of the Municipal Employment Relations Act. Most of their time is spent in the field in direct support of police functions, similar to those performed by the patrol officers. Therefore the sergeants are included in the unit and are eligible to vote in the election. 10/

The Issue as to Thomas Michaels

The employer maintains, contrary to the petitioner, that Michaels is not an employe within the meaning of the Municipal Employment Relations Act, and should consequently be excluded from the unit.

Unlike the other sworn officers who were hired by the police and fire commission, Michaels was hired by the city manager, pursuant to the Community Action Program, (CAP). 11/ While other officers are paid a salary, CAP pays Michaels \$2.30 per hour and the city pays him an additional \$.50 per hour. The city provides Michaels with a uniform and he performs duties identical to the other patrolmen; however, he works 32 hours a week compared to the 40 hours a week worked by the other officers. Unlike the other patrolmen, he receives no hospital insurance, life insurance or retirement benefits. While other officers earn vacation, Michaels is not entitled to same, although he does get holidays off and can earn sick leave.

As previously noted, the employer has authorized 16 police positions, and Michaels, at the time of the hearing, occupied the 17th position. The employer expected the federal funds to expire in early 1977, and it indicated that it had no expectation to create a 17th patrolman position, and, therefore, did not anticipate that Michaels would become a permanent employe of the department. Although Michaels was not recruited nor hired in the manner similar to the manner in which other patrolmen were hired, and although his salary and fringe benefits are

10/ City of Madison (11087-A) 12/72; City of West Allis (12020) 7/73, affirmed on other grounds, 72 Wis. 2d 268 (1976).

11/ This is a program designed to provide money to low income people while they are attending school.

less than the other patrolmen, he performs unit work on a regular part-time basis. The commission has previously held that it will not determine employe status solely on the basis of the funds utilized to pay an individual's wages or salary. 12/ Should the CAP funded patrolman position be presently filled, the occupant thereof is included in the unit, and, therefore, eligible to vote.

Dated at Madison, Wisconsin this 27th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
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12/ Blackhawk Vocational, Technical and Adult Education District No. 5,
(11726-A), 7/73.