

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

CITY OF NEW BERLIN

Involving Certain Employees of

CITY OF NEW BERLIN (POLICE DEPARTMENT)

Case XXV

No. 20763 ME-1357

Decision No. 16055

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Appearances:

Mr. Charles D. Schroeder, President, appearing on behalf of the Association.

Hayes and Hayes, Attorneys at Law, by Mr. Tom E. Hayes, appearing on behalf of the City.

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

The City of New Berlin having filed a petition on August 26, 1976 with the Wisconsin Employment Relations Commission requesting that the Commission clarify a voluntarily recognized collective bargaining unit of its law enforcement personnel, and a hearing on said petition having been held at Milwaukee, Wisconsin, on October 6, 1976 before Marshall L. Gratz, Examiner, and the Commission has reviewed the evidence, arguments, and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The City of New Berlin has voluntarily recognized the New Berlin Professional Policemen's Association as representative of a bargaining unit of its power-of-arrest personnel with ranks of sergeant and below since 1964.

2. The City and Association are parties to a 1975-76 collective bargaining agreement which contains the following provision:

"The purpose of this Agreement is:

- (1) To recognize the Association as the bargaining agent for the patrolmen, corporals, detectives and sergeants of the Police Department of the City. Note: The City and the Association have agreed to abide by the decision of the Wisconsin Employment Relations Commission if petitioned to determine if sergeants shall remain within the bargaining group of the Association.

. . ."

During the term of said 1975-76 agreement, and specifically on August 26, 1976, the City filed the instant petition requesting the determination referred to in said clause.

3. The City's police department consists of the following authorized positions with the power of arrest: one chief, one captain, three lieutenants, seven sergeants, two detectives, three corporals, and thirty-two patrol officers. Rounding out the department are the following personnel without the power of arrest: one office manager, five dispatchers, one clerk and three cadets (police aides between high school graduation age and twenty-one years of age).

4. The chief and captain work days and have department-wide responsibilities. Except in cases of vacation, sick leave or other off-time, the balance of the department's employees are ordinarily deployed in the following divisions and shifts:

DIVISION	SHIFT	PERSONNEL
Administration Division	Monday-Friday 7:00 a.m. to 5:00 p.m.	1 Lieutenant 1 Sergeant 1 Court Officer 1 Office Manager 3 Dispatchers 3 Clerks 3 Cadets
Investigation Division	Monday-Saturday 7:00 a.m. to 3:00 p.m.	1 Sergeant 1 Detective 1 Patrol Officer
	Monday-Friday 3:00 p.m. to 11:00 p.m.	1 Detective 1 Patrol Officer (Plus 1 Rotating Patrol Officer)
Youth Services Bureau	Monday-Friday 7:00 a.m. to 3:00 p.m.	1 Sergeant 1 Patrol Officer
	Monday-Saturday 3:00 p.m. to 11:00 p.m.	2 Patrol Officers (Plus 1 Rotating Patrol Officer)
Patrol Division	Monday-Sunday 7:00 a.m. to 3:00 p.m.	2 Sergeants 1 Corporal 7 Patrol Officers
	Monday-Sunday 3:00 p.m. to 11:00 p.m.	1 Lieutenant 1 Sergeant 1 Corporal 9 Patrol Officers
	Monday-Sunday 11:00 p.m. to 7:00 a.m.	1 Lieutenant 1 Sergeant 1 Corporal 7 Patrol Officers

Although the dispatchers, clerks and cadets are under the administrative division, these civilians can be assigned to work round-the-clock shifts. The cadets rotate among all the divisions.

5. The duties and responsibilities of the sergeants vary from division to division and shift to shift. In general, the sergeants spend a significant portion of their work time performing nonsupervisory activities including vehicle and building maintenance, inventory control, clerical record keeping, liaison with prosecutors and courts, patrolling in a vehicle, answering calls (especially those involving complex or sensitive situations), conducting investigations, making arrests, interviewing suspects, providing training to non-City law enforcement personnel, counseling citizens, speaking to civic and other groups, and writing reports with respect to several of the foregoing. The sergeants also spend a significant portion of their time in supervising the work of subordinates, including cadets. The sergeants assign and direct the work of subordinates; authorize their performance of overtime work; call them in from off-duty status when

absences reduce staffing below established standards; conduct roll calls and related inspections; plan, conduct and/or arrange subordinate training; observe and correct subordinates' work performance; and impose oral reprimands and submit written reports to higher authority concerning rules violations or poor work performance. In the absence of higher ranking officers, corporals (on frequent basis) and senior patrol officers (on a few occasions) engage in the foregoing supervisory activities in a manner consistent with the policies of the department and of their sergeant. The sergeants, with the assistance of the corporals as regard patrol officers, periodically complete and submit written evaluations and provide occasional verbal evaluations of the subordinates with whom they work. Those evaluations contribute to decisions by higher authority concerning subordinates' completion of probation, promotion, and transfer. Sergeants among others, contribute factual reports considered by higher authority in determining matters of discipline and suspension of department personnel; on occasion, such reports by sergeants have effectively recommended discipline in general or the particular disciplinary penalty ultimately imposed by higher authority. In no case, however, has a sergeant suspended an employe with the power of arrest without the approval of higher authority.

6. Much of the sergeants' exercise of the foregoing supervisory authority has not required the exercise of independent judgment. A good deal of it is routine or clerical in nature. It has involved small numbers of supervised subordinates, and higher ranking supervisory personnel and/or existing departmental standards or policies have been substantially available for consultation prior to the sergeants' decision making. Some of the sergeants supervise activities as much as they supervise the subordinates performing same, e.g., the administrative division sergeant as regards vehicle purchasing and maintenance and record keeping activities, the investigative division sergeant as regards investigative activities and prosecutor liaison, and the youth services bureau sergeant as regards training and juvenile court activities.

7. The compensation of sergeants is equivalent to that of detectives, greater than that of corporals, and lower than that of lieutenants, the captain, and the chief. Sergeants and all lower ranks receive overtime compensation for time worked beyond normal shift hours; whereas lieutenants, the captain, and the chief do not.

Based upon the above and foregoing Findings of Fact, the Commission issues the following

#### CONCLUSION OF LAW

The positions with the rank of sergeant in the City of New Berlin police department are not supervisory positions within the meaning of Sec. 111.70(1)(o)1, Stats.

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

#### ORDER CLARIFYING BARGAINING UNIT

The positions with the rank of sergeant in the City of New Berlin police department shall remain within the bargaining unit described in Finding 2, above.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 11th  
day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner

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

In its petition filed herein, the City contends that the employees with rank of sergeant are supervisors such that they should be excluded from the unit for which the City has voluntarily recognized the Association as representative. In view of the language of the parties' 1975-76 agreement, cited in Finding 2, there can be no contention that a determination of such issue by the Commission would be improper. The City argues in support of its position that, while the language of the "supervisor" definition in Sec. 111.70(1)(o)1 requires only one or more of the criteria set forth therein to be true of a position for it to be supervisory, the evidence establishes that eleven of same are true of the sergeants herein, to wit, the authority to assign, transfer, discipline, suspend, reward, promote, recall and adjust grievances as regards other department employees or to effectively recommend same. The Association, on the other hand, contends that the sergeants, at most, are lead workers and should therefore remain included in the unit.

The Commission is satisfied that the duties performed by the sergeants, which relate to the duties defined by the statute as supervisory are in many cases of routine nature, and are not performed with sufficient independence of judgment to warrant a finding that they are supervisors within the meaning of the act. 1/

Here, while the sergeants have exercised several of the types of authority listed in the statute, the record estimate that most of them spend eighty to eighty-five percent of their time in supervisory activities appears unrealistically high--at least as the term supervisory is defined in MERA--in view of the small number of subordinates to be supervised, the availability of higher ranking officers to participate in the supervision of subordinates and of sergeants, and the substantial portion of patrol sergeants' time (50%) spent on the road.

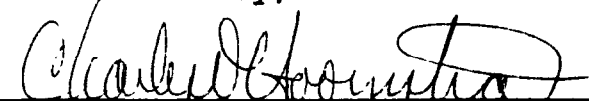
Upon consideration of the evidence as reflected in the Findings of Fact, the Commission is convinced that there is not a sufficient combination and degree of supervisory authority exercised by the sergeants to warrant their exclusion from the instant unit as supervisors.

Dated at Madison, Wisconsin, this 11th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Charles D. Hoornstra, Commissioner

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1/ E.g., Fond du Lac County, Dec. No. 10579-A (1/72).