

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MEDFORD (POLICE DEPARTMENT)

No. 16846

4. That the City, contrary to the Association, contends that Sergeant Glenn Nikkila is a supervisor and therefore should be excluded from the bargaining unit, and that Safety Officer Carol Anderson is a temporary employe, is not a regular Police Officer, and does not share a community of interest with the regular Police Officers, and therefore should also be excluded from the bargaining unit, while the Association contends that Anderson is a regular law enforcement employe with the power of arrest and therefore should be included in the unit; and that the City, contrary to the Association, contends that Dennis Bowers, the part-time Patrol Officer, is not a regular employe of the Department and should be excluded from the bargaining unit.

5. That the Sergeant, Glenn Nikkila, does not exercise a sufficient combination of supervisory duties to conclude that he is a supervisory employe.

6. That the Safety Officer, Carol Anderson, whose position is funded by the federal Comprehensive Employment and Training Act, is a sworn police officer and has the power of arrest, said power being required to fulfill her duties as Safety Officer; and that she performs duties related to law enforcement functions.

7. That the on-call Patrol Officer, Dennis Bowers, is employed on a casual basis.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That Sergeant Glenn Nikkila is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That Carol Anderson is a regular law enforcement employe of the City of Medford and that she is eligible to vote in the election directed herein unless it is clear at the time of the election that funding will expire prior to April, 1979 or otherwise not be available after March, 1979.

3. That Dennis Bowers, occupying the classification of part-time patrol officer, is not a regular law enforcement employe but is a casual employe.

4. That all regular full-time and regular part-time law enforcement employes of the City of Medford Police Department, excluding managerial, supervisory and confidential employes, constitute an appropriate collective bargaining unit within the meaning of Section 111.70 (4)(c)2.a. of the Municipal Employment Relations Act.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes and issues the following

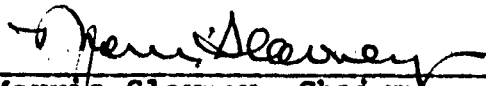
DIRECTION OF ELECTION

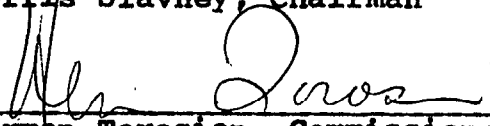
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this directive in the unit consisting of all regular full-time and regular part-time law enforcement employes of the City of Medford Police Department, excluding managerial, supervisory, and confidential employes, who were employed by the City of Medford on February 16, 1979, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire

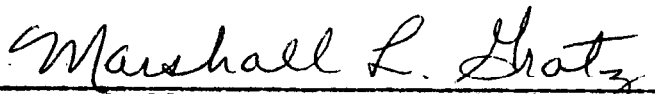
to be represented by Medford Police Department Association or by no representative for the purposes of collective bargaining to the City of Medford with respect to wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DIRECTION OF ELECTION

Sergeant Glenn Nikkila

Section 111.70(1)(o)1 of the Municipal Employment Relations Act contains the following definition of the term supervisor:

As to other than municipal and county firefighters any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, 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 determining 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:

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

Sergeant Nikkila has been employed by the Police Department first as a Patrol Officer and, since August 1978, as a Sergeant. His duties consist primarily of conducting criminal investigations and, occasionally, of patrolling. He seldom works with a Patrol Officer. Nikkila's authority in regard to department employees involves reviewing for completeness Patrol Officers' reports to the District Attorney involving arrests, rescheduling Officers' shifts in the event of an unexpected

1/ Trempealeau County (Department of Social Services) (16402) 6/78.

absence of a previously scheduled Officer; occasionally consulting with the Chief, at the Chief's request, on the job performance of Officers; issuing orders to Patrol Officers in regard to law enforcement operations and informing the Chief of any improper behavior by a Patrol Officer. The latter situation has not occurred. He does not participate in the hiring process and has no authority to discipline Patrol Officers. Except for the limited rescheduling powers mentioned above, he does not schedule Officers. He does not authorize overtime work or vacation requests. His authority in regard to issuing orders to Patrol Officers is no different than the authority a senior Patrol Officer has over a junior Patrol Officer. The Commission determines that Sergeant Nikkila does not perform substantial duties of a supervisory nature to conclude that he is a supervisor within the meaning of Section 111.70(1)(o)1 of MERA. Therefore, he is included in the bargaining unit.

Safety Officer, Carol Anderson

Carol Anderson began working for the Police Department on November 13, 1978 when she was hired as the Safety Officer. She is employed pursuant to a CETA grant. Her job presently involves creating safety programs to be utilized in schools and the community. She serves as a crossing guard and, as such, directs traffic. In order to fulfill her traffic directing duties, she must be -- and she is -- a sworn Police Officer with the power of arrest. 2/ Although she has not issued citations due to the fact that she has not as yet completed the requisite number of hours of training, citations have been issued by the Police Department based upon her referrals to the department that motorists have refused to obey her directions.

The federal grant which funded Anderson's salary and health insurance will expire at the end of March, 1979 and the Municipal Employer does not intend to continue the position of Safety Officer under that grant. Funding from the State of Wisconsin has been requested for the position of Safety Officer as well as for materials to begin conducting safety programs in the schools and community but no decision on the request had been made at the time of the hearing on the election petition. If funding from this source is not received, Anderson's position will be discontinued. If funding is received, it is not certain whether the position will remain within the Police Department or be transferred to another department or to the local school district.

Because Anderson has the power of arrest and because she performs duties related to law enforcement functions at this time, the Commission concludes that Anderson is a regular law enforcement employee and therefore shares a community of interest with the other law enforcement employees of the Municipal Employer. In addition, since she is a law enforcement employee it would create undue fragmentation to exclude her from the unit. 3/ She is eligible to vote unless it is clear at the time of

2/ Anderson is also a Reserve Officer with the power of arrest. The Commission has excluded from their consideration her duties and powers as a Reserve Officer because her job as a Safety Officer and as Reserve Officer are separate and because the parties stipulated that Reserve Officers are to be excluded from the bargaining unit.

3/ Section 111.70(4)(d)2a of MERA provides that the Commission "shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force."

the election that funding will expire prior to April, 1979 or otherwise not be available after March, 1979.

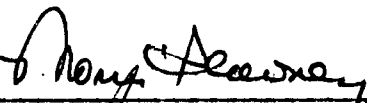
Dennis Bowers, On-Call Patrol Officer

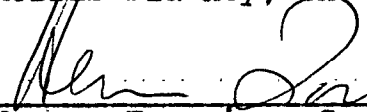
Bowers is employed full-time by another employer. In addition, he has worked as a regularly scheduled part-time Patrol Officer for the Municipal Employer from at least April, 1978 through December, 1978. In November, 1978, an additional full-time Officer was hired and the Municipal Employer decided Bowers was no longer needed on a regularly scheduled basis. Thus, beginning January, 1979, he has worked on an on-call basis. It is the Municipal Employer's intent to use him for special assignments, to fill-in, if needed, for ill or vacationing Officers when full-time Officers are not available and to supplement the force during police emergencies. From January 1 to January 23, 1979, Bowers worked a total of thirty-seven hours, all spent on a special assignment.

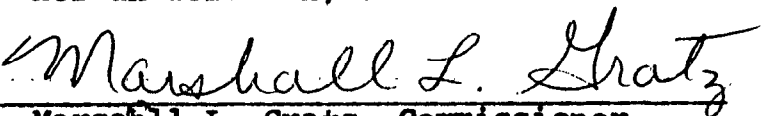
The Commission has held that the determinative factor in deciding whether an employe is casual is the regularity of employment, rather than the number of hours worked. 4/ In this particular case, it is difficult to predict with accuracy the regularity of Bower's employment because he is no longer regularly scheduled and because it is not certain how often he will be called. With the addition of the fourth full-time Officer, it is likely that Bowers will work irregularly. Although Bowers worked a considerable number of hours in January, 1979 on a special assignment, it is not certain that the need for such services will continue with any regularity. Therefore, the Commission concludes that Bowers is a casual employe and is excluded from the bargaining unit, which the parties have agreed should be limited to regular employes.

Dated at Madison, Wisconsin this 19th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

4/ Tomah Area School District (8209-D) 5/78.