#### STATE OF WISCONSIN

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#### BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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WALWORTH/FONTANA POLICE OFFICERS'	:	Ca <b>se I</b>
ASSOCIATION	:	No. 23750 ME-1608
	:	Decision No. 16895
Involving Certain Employes of	:	
	:	
VILLAGE OF FONTANA (POLICE DEPARTMENT)	:	
	:	
Appearances:		

Barden & Olson, Attorneys at Law, by <u>Mr. John O. Olson</u>, appearing for the Union.

Morrissy, Morrissy & Race, Attorneys at Law, by Mr. John Race, appearing for the Municipal Employer.

#### DIRECTION OF ELECTION

Walworth/Fontana Police Officers' Association having, on November 20, 1978, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to Sec. 111.70 (4) (d) of the Municipal Employment Relations Act among all police officers with arrest powers employed by the Village of Fontana, excluding the Chief of Police and the Captain, to determine whether said employes desire to be represented by the Association for purposes of collective bargaining; and a hearing on said petition having been held at Elkhorn, Wisconsin on December 14, 1978, before Douglas V. Knudson, a member of the Commission's staff; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusion of Law and Direction of Election.

## FINDINGS OF FACT

1. That the Walworth/Fontana Police Officers' Association, hereinafter referred to as the Association, is a labor organization with offices at Lake Geneva, Wisconsin.

2. That the Village of Fontana (Police Department), hereinafter referred to as the Village, has its offices at Fontana, Wisconsin and employs, in addition to the Chief of Police and the Captain, one Sergeant and four Patrolmen.

3. That the Association and the Village, during the course of the hearing, agreed that the collective bargaining unit should be described as consisting of all regular full-time and regular part-time police officers with the power of arrest, excluding the Chief of Police, and that the parties agreed that the Patrolmen should be included, however, that the Village, contrary to the Association, would further exclude the Captain and the Sergeant as managerial and/or supervisory positions.

4. That the Captain, Robert Patek, and the Sergeant, Robert Sandy, do not exercise sufficient supervisory or managerial duties and responsibilities to constitute them as supervisors or managerail personnel.

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

# CONCLUSION OF LAW

That the Captain, Robert Patek, and the Sergeant, Robert Sandy, are employes within the meaning of Section 111.70(1)(b) of the Municipal

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Employment Relations Act, and therefore such positions are included in the bargaining unit consisting of all regular full-time and regular parttime officers with the power of arrest in the employ of the Police Department of the Village of Fontana, excluding the Chief of Police.

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

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# 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 from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time police officers with the power of arrest, including the Captain and the Sergeant, but excluding the Chief of Police, who were employed by the Village of Fontana on March 12, 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 voting desire to be represented by the Walworth/Fontana Police Officers' Association for the purpose of collective bargaining with the Village of Fontana with respect to wages, hours and conditions of employment.

> Given under our hands and seal at the City of Madison, Wisconsin this 12th day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morr/is Slavney Chairman in Torosian, Commissioner Herman

Marshall L. Gratz, Commissioner

# MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The small size of the police department, results in a sharing of duties uncommon to larger police departments. All officers, including the Chief, spend part of their working hours in squad cars on patrol. However, the Chief, Captain and Sergeant spend a smaller percentage of their duty time on patrol than do the four Patrolmen.

The Chief works from 8:00 a.m. to 4:00 p.m. Every three months, the Captain and the Sergeant rotate shifts, so that one works from 10:00 a.m. to 6:00 p.m., while the other works from 6:00 p.m. to 2:00 a.m. The Patrolmen work either from 6:00 p.m. to 2:00 a.m., or, from midnight to 8:00 a.m. Thus, it is clear that, normally for at least six hours a day, the Chief and either the Captain or the Sergeant are the only law enforcement personnel on duty. The Captain, Sergeant and Patrolmen receive time and one-half of their respective rate of pay for overtime duty.

The Chief, Captain or Sergeant, can authorize overtime work and can call in off-duty Patrolmen when necessary. However, Patrolmen also can call in off-duty Patrolmen without first obtaining approval from higher ranking officers, if none of said officers are on duty and cannot be reached by phone.

The Chief with the assistance of the Captain prepares the department's annual budget. The Captain handles vacation scheduling. The Sergeant developed, implemented and administers the department's juvenile investigation program.

The Village Board retains all authority to hire, fire, or discipline employes, although the Chief makes recommendations concerning such actions. The Chief routinely has discussed promotions, written reprimands, 1/ and applicants for employment with the Captain and the Sergeant prior to making his recommendations in those matters. Said matters have arisen on a very infrequent basis.

The Chief makes recommendations to the Village Board regarding hiring and discipline and would make them with regard to discharge determinations. While the Captain and the Sergeant are consulted by the Chief before he makes recommendations to the Board, their inputs are too far removed from the Board to be deemed effective recommendations. Furthermore, while the Captain assists the Chief in developing a proposed department budget and schedules vacations, and even though the Sergeant developed and implemented the department's juvenile investigation program, and although the Captain and Sergeant spend a smaller portion of their time patrolling than do the Patrolmen, we are nonetheless satisfied that their non-supervisory and non-managerial activities clearly predominate and thus warrant their inclusion in the unit.

Dated at Madison, Wisconsin this 12th day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NON By Mogris Slavney Chairman Herman Torosian, Commissioner Marshall L. Gratz, Commissione

1/ The Village has never suspended or discharged an employe.