

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**CITY OF SUPERIOR**

Involving Certain Employees of

**CITY OF SUPERIOR**

Case 38  
No. 56370  
ME-938

**Decision No. 17018-A**

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Appearances:

von Briesen, Purtell & Roper, S.C., by **Attorney Charles P. Magyera**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of the City of Superior.

**Mr. Richard Thal**, General Counsel, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association, Superior Local No. 27.

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

The City of Superior, on April 16, 1998, filed a petition requesting that the Wisconsin Employment Relations Commission clarify an existing collective bargaining unit consisting of certain employees of the City of Superior (Police Department) to determine whether the Field Supervisors should be excluded from the collective bargaining unit represented by the Law Enforcement Employee Division of the Wisconsin Professional Police Association, Superior Local No. 27, on the basis that they are supervisors. The Law Enforcement Employee Division of the Wisconsin Professional Police Association, Superior Local No. 27, denies that the Field Supervisors are supervisors and opposes the exclusion.

No. 17018-A

A hearing was held in Superior, Wisconsin, on July 30, 1998, before Examiner Coleen A. Burns. The hearing was transcribed and the transcript was received on September 11, 1998. The record was closed on November 17, 1998, upon receipt of post-hearing written argument.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. City of Superior, herein the City, is a municipal employer and has its offices at 1407 Hammond Avenue, Superior, Wisconsin 54880.

2. The LEER Division of the Wisconsin Professional Police Association and its affiliated Superior Local No. 27, herein Association, are labor organizations with offices at 340 Coyier Lane, Madison, Wisconsin 53713.

3. The City and the Association are parties to a collective bargaining agreement that contains the following Article 1, Paragraph A:

The City hereby recognizes the LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION of the WISCONSIN PROFESSIONAL POLICE ASSOCIATION, SUPERIOR LOCAL NO. 27, as the exclusive bargaining agent for all regular full-time sworn police officers of the City of Superior's Police Department. Expressly excluded from the bargaining unit are the Chief of Police and all other excluded personnel as defined by State Statute 111.70.

4. At the time of hearing, the City of Superior Police Department employed approximately 55 police officers. Of these 55 police officers, four were Captains, *i.e.*, Floyd Peters, Richard Pukema, Scott Campbell, and Charles LaGesse, and seven were Field Supervisors. Captain Peters, the Operations Commander, is in charge of coordinating all operations, grants administration, internal investigations, citizen complaints, policy development, risk management, career development, planning, public information, evaluations, training, and recruit selection. Captain Campbell, the Primary Service Commander, is in charge of the uniform division, housing authority, traffic, auxiliary, parking, bike patrol, divisional budget, crime prevention, and Field Training Officer. Commander Pukema, the Support Services Commander, is in charge of the detective bureau, communications, ident/ property, audits and inspections, technology research and development, divisional budgets, and liaison to the District Attorney. Captain LaGesse, the Special Services Commander, is in charge of narcotics, Emergency Response Team, liaison, recruit selection, training, task forces, intelligence/crime analysis, background, gang prevention initiative, divisional budgets, security and DARE.

The position description of the Captain, revised in April of 1998, states as follows:

## POLICE CAPTAIN

. . .

### DEFINITION:

Under general direction, responsible for the management and administration of the major divisions in the department. Each Division Commander is responsible for managing those areas assigned to them by the Chief of Police: Patrol Investigations, Support Services, and Training and Standards. Performs other related duties as required.

### DISTINGUISHING CHARACTERISTICS:

This position is a highly responsible position involving supervisory, managerial and administrative duties. Incumbents in this position are required to have extensive knowledge and ability in modern management methods and the ability to apply them in achieving departmental goals and objectives. Persons in this position are required to have above average skills in interaction with the community and must be able to exercise independent judgment and decision making.

### TYPICAL TASKS:

1. Represents the Department and the City in attaining goals and objectives.
2. Serves as the Department head in the absence of the Chief.
3. Assists in formulation of departmental policies and procedures.
4. Develops and administers the division budget.
5. Develops, implements and reviews divisional policies and procedures.
6. Plans routine and special events.
7. Supervises division supervisors.
8. Reviews performance data.
9. Other projects as directed by the Chief of Police.
10. Reviews statistical data for geographic boundary changes and manpower allocation studies.
11. Reviews reports for completeness and accuracy.
12. Identifies department training needs.
13. Responsible for the response to calls for service, accident investigation and criminal follow-up investigation.

14. Frequently confers with the Chief of Police regarding the full array of police activities.
15. Assumes field command of major criminal investigations or major disturbances.
16. Investigates complaints against division members.
17. Serves on various community groups, professional organizations or committees.
18. Interacts with other City departments to resolve problems.
19. Prepares staff reports to solve problems through use of appropriate resources.
20. Disciplines division members and makes disciplinary recommendations.
21. Responsible for all aspects of subordinate performance including work unit scheduling, subordinate compliance with departmental policy and the delivery of service to the community.
22. Performs other related duties as required.

#### EMPLOYMENT STANDARDS:

##### Knowledges:

Thorough knowledge of:

- The principles and practices of police science, criminal investigation and identification, modern municipal police administration, office procedures and management;
- State, local and federal laws;
- Department policy and procedures.

##### Ability to:

- Plan, assign and supervise work of police personnel;
- Analyze problems correctly and plan a course of action;
- Communicate clearly, both written and oral;
- Produce accurate, concise administrative reports.

#### REQUIREMENTS:

Training and experience: Any combination of training and experience which meets the required knowledges and abilities is qualifying. A typical way to obtain these knowledges and abilities would be through:

Ten years of experience in a municipal police agency with a Bachelor or Associate degree highly desirable.

#### SPECIAL REQUIREMENTS:

License Requirement: Must be Wisconsin certified as a Police Officer.

Driver License Requirement: Must possess a valid driver's license.

Residency Requirement: Must reside and maintain residency within a 25-minute response time to the corporate limits of the City of Superior.

Background Investigation Requirement: Must pass background investigation prior to hire.

Post Job Offer Psychological Examination Requirement: Must pass psychological exam prior to hire.

Post Job Offer Medical Examination Requirement: Must pass medical examination requirement for specified occupational grouping prior to hire.

Captains normally work Monday through Friday during the day shift. At one time, Lieutenants and Captains were assigned to each shift and the Captains routinely functioned as shift commanders. The Department no longer employs Lieutenants.

5. Of the seven Field Supervisors, six function as Patrol Sergeants, i.e., Michael Rehl, Richard Klugow, Mark Cummings, Tim Hendry, Richard Berchild, and Joseph Krieg; Berchild and Krieg are "acting" Field Supervisors; and the seventh Field Supervisor functions as a Traffic Sergeant. Two Patrol Sergeants and the Traffic Sergeant work the day shift. Two Patrol Sergeants are assigned to the afternoon shift and two Patrol Sergeants are assigned to the night shift.

The position description of the Field Supervisor, revised in April of 1998, states as follows:

## FIELD SUPERVISOR

. . .

### DEFINITION:

Under general direction, an employee in this job class is responsible for supervising subordinate officers in the delivery of police service throughout the community. Performs other related duties as required.

### DISTINGUISHING CHARACTERISTICS:

The people assigned to this position are responsible for supervising the activities of their subordinates in the delivery of police service throughout this community. Field supervisors must ensure that police services are provided in a manner that is consistent with the mission, goals and objectives of the Superior

Police Department. Field Supervisors must oversee the delivery of police service so that it is provided in compliance with the rules, regulations, policies and procedures of the Superior Police Department. Positions are assigned to Traffic, Patrol or Investigations at the discretion of the Chief of Police.

#### TYPICAL TASKS:

1. Assign police officers to patrol districts within the City.
2. Conduct briefing of the officers prior to each shift.
3. Assume command on the street for any situation requiring coordination and officer assignment.
4. Supervise subordinate activity ensuring compliance with departmental rules, regulations, policies and procedures.
5. Monitor radio communications to remain informed on activities of the police officers.
6. Make reviews of accuracy on accident reports and citations and all traffic related paperwork procedures for officers on the shift.
7. Review reports that are prepared by police officers checking for accuracy, comprehensiveness and appropriateness of actions.
8. Refer reports to the appropriate individual or agency.
9. Assign and/or delegate specific job responsibilities to subordinates.
10. Evaluate the performance of subordinates identifying strengths and weaknesses as well as setting goals.
11. Inspect the uniform, equipment and appearance of subordinates.
12. Communicate the needs and problems of subordinates to superiors and describe administrative action to subordinates.
13. Schedule adequate manpower for special events.
14. Determine the need for and authorizes resources such as evidence technicians, on-call detectives and emergency response team and authorizes their call-in.
15. Receive and investigate complaints filed by citizens against police officers.
16. Make recommendations for recognition of police officers for exemplary performances.
17. Carry out disciplinary actions against police officers who violate the rules and regulations of the department.
18. Serve as shift commander.
19. Schedule and authorize early call-in, call back and overtime of authorize (sic) officers as needed.
20. Distribute policy revisions to officers and discuss the impact of new policies or revisions to existing policies.
21. Performs other related duties as required.

## EMPLOYMENT STANDARDS:

### Knowledges:

Thorough knowledge of:

- applicable federal, state and local laws;
- departmental mission, goals, rules, regulations and procedures;

Working knowledge of police related constitutional and judicial rulings;

Working knowledge of the principles of personnel and material supervision.

### Ability to:

- Direct personnel and material to the achievement of departmental goals and objectives.
- Identify equipment and training needs of subordinates;
- Think quickly under stress in a logical, analytical manner;
- Effectively relate to others in tense and/or hostile situations;
- Comprehend and apply laws to the police service role;
- Comprehend and apply departmental rules, regulations, policies and procedures to the mission and goals of the department;
- Comprehend departmental policies and directives and communicate them to subordinates in a clear and accurate manner;
- Communicate in a clear, accurate, comprehensive and concise manner both verbally and in writing;
- Endure prolonged periods of physical and mental stress;
- Operate a motor vehicle in a safe manner while traveling at a high rate of speed;
- Communicate over the radio while operating a motor vehicle.

## REQUIREMENTS:

Training and Experience: Any combination of training and experience which would provide the required knowledges and abilities is qualifying. A typical way to obtain these knowledges and abilities would be:

eight years of law enforcement experience; four years of which was as a Police Officer with the Superior Police Department; and equivalent to three years of performing work in a lead capacity for collateral assignments and a willingness to attend training to develop and improve supervisory skills.

## SPECIAL REQUIREMENTS:

Driver License Requirement: Must possess a valid driver's license.

Residency Requirement: Must reside and maintain residency within a 25\* minute response time to the corporate limits of the City of Superior.

Post Job Offer Medical Examination Requirement: Must pass medical examination requirement for specified occupational grouping prior to hire.

Background Investigation Requirement: Must pass background investigation prior to hire.

Post Job Offer Psychological Examination Requirement: Must pass psychological exam prior to hire.

Bargaining Unit: \*To be Determined through Unit clarification by WERC

Worker's Comp Code: Police

EEOC Job Category: Protective Service

Occupational Grouping: Police

On a standard day, there are four to eight patrol officers on a shift. In the absence of a Captain, the senior Patrol Sergeant on the shift acts as "Captain" and receives out-of-rank pay of slightly more than \$2/hour, which brings his rate to that of an entry level Captain. Patrol Sergeants do not work the same schedule and, thus, the least senior Patrol Sergeant on each shift regularly performs the duties of "acting" Captain. If a Patrol Sergeant determines that a report prepared by a police officer is not acceptable because of legal insufficiency, missing witness statements, ambiguity, or typographical errors, the Patrol Sergeant returns the report to the police officer for correction. In the absence of a Captain, a Patrol Sergeant has authority to call in additional staff, including the Emergency Response Team, Detectives, Evidence Technicians, and patrol officers, as the Patrol Sergeant deems necessary. Normally, the Patrol Sergeant notifies a Captain of such call-ins, but is not required to obtain the Captain's prior approval. A Patrol Sergeant may authorize patrol officers to work past their shift, as the Patrol Sergeant deems necessary. When shift personnel exceed minimum staffing requirements, a Patrol Sergeant may authorize excess staff to leave work.

Patrol Sergeants approve or deny patrol officers leave requests in accordance with contractual requirements and Department policies. Patrol Sergeants do not approve patrol officer training requests.

Recently, Patrol Sergeants have been assigned the responsibility to conduct annual performance evaluations of patrol officers and have evaluated patrol officers who work on their shift. Captains may also conduct such evaluations. Field Supervisors are expected to prepare "Documentation of Performance" reports when they observe an incident which deserves commendation or criticism. These "Documentation of Performance" reports are placed in the employee's file and given consideration in the annual performance evaluation process.

The Chief holds monthly staff meetings with Captains and Field Supervisors. Topics of discussions at these monthly staff meetings include use of force reviews, citizen complaints,



review of accidents or damaged vehicles, internal investigations, and pursuits. At these meetings, the Chief reviews and solicits the opinions of the Captains and Patrol Sergeants regarding pending disciplinary actions which, in the Chief's view, warrant up to a few days suspension. While the Chief values the opinions of the Captains and Patrol Sergeants, the Chief retains the right to decide the appropriate level of discipline. On one occasion, opinions expressed at the staff meeting persuaded the Chief to impose a lesser discipline than that originally recommended by the Chief. The Chief, who has been in his position since July of 1996, has brought all but one disciplinary matter to the monthly staff meeting. That disciplinary matter involved an allegation of criminal conduct. The monthly staff meetings may include a discussion of the employment status of probationary employees.

From the beginning of 1997 through July 15, 1998, the Department had sixty-eight (68) use of force reviews; twenty-six (26) citizen complaints; twenty-three (23) reviews of accidents or damaged vehicles; ten (10) internal investigations; and twenty (20) reviews of pursuits. Use of force reports are initially reviewed by the Patrol Sergeant on duty at the time of the incident and subsequently reviewed by the Department's primary Defense and Arrest Tactics Instructor, Captain LaGessee. The Patrol Sergeant is required to provide an opinion on whether or not the use of force was justified and within departmental guidelines. The majority of the citizen complaints filed since the beginning of 1997 have been assigned to and investigated by Patrol Sergeants. As part of this investigation, the Patrol Sergeant gives an opinion as to whether or not the complaint against the officer was founded. Normally, the Patrol Sergeant on duty does the initial review of accidents or damaged vehicles and the entire staff does the final review. Since the beginning of 1997, five of these reviews have resulted in formal discipline. Since the beginning of 1997, ten internal investigations were completed and six of these resulted in disciplinary action. In nine of the ten internal investigations, Patrol Sergeants were involved in the decision to discipline. Patrol sergeants may be assigned to conduct an internal investigation of patrol officers. In instances of pursuit, the Patrol Sergeant on duty prepares the "Shift Supervisor Review" and provides an opinion as to whether there has been adherence to, or deviation from, policy and statutory guidelines.

The General Order governing standards of conduct, which was last revised on November 16, 1992, expressly provides that a Field Supervisor may issue the following disciplines for cause: training, counseling, verbal reprimand, letter of warning or reprimand, and suspension with the concurrence of the Chief of Police. The Police Chief confirms that the Field Supervisors have such authority. Patrol Sergeants have counseled patrol officers and have issued oral reprimands. Periodically, patrol sergeants receive training on supervising employees.

On occasion, patrol sergeants are asked to assist in screening or interviewing new recruits and the selection of patrol officers who receive collateral assignments. Patrol Sergeants prepare periodic progress reports on probationary employees that work their shift. Patrol Sergeant Rehl is the Field Training Coordinator and, in that capacity, has significant involvement in the selection, training and retention of probationary officers. Field Supervisors do not receive or process grievances on behalf of the City.

Under the collective bargaining agreement in effect at the time of hearing, a Patrol Sergeant earned \$18.50 per hour; a Traffic Sergeant earned from \$17.49 to \$18.50 per hour; and the top Patrolman and Detectives earned \$17.49 per hour.

6. In July of 1997, Donna Andrews assumed the duties of acting "Traffic Sergeant." In April of 1998, the "Traffic Sergeant" position was abolished and recreated as a "Field Supervisor." Since that designation, Andrews has been an acting Field Supervisor. Normally, Andrews works Monday through Friday from 7:00 a.m. to 3:00 p.m. As "acting" Field Supervisor, Andrews serves at the discretion of the Chief. Regular positions of Field Supervisor are posted and filled in accordance with Article 20 of the collective bargaining agreement. In the written performance evaluation dated July 15, 1998, Andrews' supervisor, Captain Peters, recognized that Andrews has the following duties and responsibilities:

**\*\*In general, to supervise city and police department traffic operations, and specifically:**

1. Handle vehicle registration suspension program for unpaid parking fines.
2. Coordinate traffic enforcement.
3. Supervise parking enforcement.
4. Supervise adult crossing guard program, including screening applicants, hiring, discipline, and firing.
5. Supervise Auxiliary Police Unit, including screening and acceptance of applicants, promoting, discipline and dismissal.
6. Handle police fleet vehicle operations including budget, purchase and coordinate repairs, cleaning of police vehicles, and purchase, installation and repair of vehicle equipment.
7. Co-ordinate traffic control needs for public events (Head of the Lakes Fair, summer concerts, races, fireworks, parades, street dances, etc.)
8. Handle abandoned vehicle ordinance including enforcement, removal and disposal of vehicles.
9. Supervise wreckers call out list
10. Handle serious/fatal crash investigations and follow up crash investigations.
11. Follow up Hit & Run investigations.
12. Handle intoxilyzer operation, maintenance, paperwork & operator testing.
13. Work SPD's/Hwy. Safety public information booth at the H.O.L. Fair.
14. Handle the department's traffic court procedures.
15. Review the of (sic) accuracy on accident reports and citations.
16. Review traffic related paperwork procedures for all officers.
17. Assign vehicles to officers for patrol use and travel.
18. Approve/deny parade permits.
19. Approve/deny oversize load permits.
20. Conduct required follow-up procedures of OWI blood and urine lab tests.

21. Address school bus and crossing guard violations.
22. Instruct safety belt use and enforcement classes.
23. Maintain updated list of officers trained in traffic specialties (radar, laser HGN, SFST, Video Intoxilyzzer (sic), etc.)
24. Draft budget for traffic bureau including police fleet vehicles and equipment.
25. Write highway safety grants for federal & state funding.
26. Implement, maintain and evaluate traffic safety grants.
27. Communicate/correspond with other agencies on traffic matters.
28. Work closely with City Attorney on drafting new traffic ordinances.
29. Handle citizen concerns regarding traffic matters.
30. Investigate complaints against officers in traffic matters.
31. Study traffic needs of the city and make recommendations.
32. Advisor to public works committee and city council members on traffic matters.
33. Coordinate traffic signage throughout the city with public works sign crew.
34. Inspect Taxi Cabs and make recommendation for approval or denial of license.
35. Speedometer technician. (Check and maintain proper calibration of Squad speedometers).
36. Conduct scheduling and implementation of speed display trailer.
37. Produce Traffic Bureau Annual Report.
38. Producer of the *"It's the Law"* news article in the local BID newsletter.
39. Member of the Mayor's Commission on Disabilities.
40. Member of the Duluth-Superior Metropolitan Interstate Committee.
41. Member of WO/MEN Highway Safety Leaders Inc.
42. Member of Wisconsin Highway Safety Coordinators Association.
47. Member of the Douglas County Highway Safety Commission.
48. Member of Traffic Code Committee.
49. Public Speaker for Driver's Ed Classes.
51. Public Speaker on Traffic Safety
52. Member of the National Association of Governors' Highway Safety Representatives.
53. Member of Fleet Committee (Updating and regular rotation of squads)
54. Attend regular Staff Meetings.
55. Attend Public Works Meetings.
56. Attend several highway Safety/Traffic Related meetings.
57. Handle repairs and maintenance of traffic equipment (radar's laser's video's, PBT's, etc.)
58. Fill in as street sergeant

Additional assignments non-related to Traffic:

Property officer  
Take all City I.D. cards

Members of the Auxiliary Police Unit for whom Andrews is responsible are not employees of the City, but rather are volunteers.

At her last evaluation, on July 15, 1998, Captain Peters advised Andrews that she did not have any evaluation responsibility, but that, in the future, it was probable that she would conduct performance evaluations when working as a Field Supervisor. Andrews has authority to prepare "Documentation of Performance" reports and, during her most recent performance evaluation, was advised by Captain Peters to issue more of these reports. Andrews has not evaluated any employee.

The approximately fifteen (15) crossing guards employed by the City work a few hours per day when school is in session. The majority of the crossing guards have been employed for many years and understand their duties. Andrews does not direct the work activity of the crossing guards, except to find a replacement if a crossing guard calls in ill and to receive an accounting of hours worked. Andrews has screened applicants for the position of crossing guard and has hired crossing guards. Andrews has authority to discipline or fire a crossing guard but has not done so.

Andrews does not have any responsibility for hiring police officers and has not disciplined any police officer. Normally, management does not solicit Andrews' opinions when making decisions about police officer discipline. Andrews has attended the monthly staff meetings for approximately one year. With one exception, Andrews has not been allowed to remain for the portion of the meeting involving employee discipline, use of force reviews, internal investigations, pursuits and citizen complaints. Andrews understands that she has been excluded from these discussions because she is serving in an "acting" capacity.

Management has advised Andrews that she may be called upon to substitute for one of the other Field Supervisors and, on occasion, Andrews has done so.

7. Normally, a Patrol Sergeant arrives at work one-half hour before his shift starts to take report from the outgoing Patrol Sergeant and to fill out the worksheets which indicate patrol area and car assignments. The Patrol Sergeant then briefs the officers on his shift; attends to paperwork; monitors calls; and goes out on patrol as duties and time permit. The patrol area and car assignments of senior officers are generally bid in accordance with contractual requirement, but the Patrol Sergeant may reassign as necessary, e.g., train probationary employees. Less senior officers receive their patrol area and car assignments from the Patrol Sergeant. The day shift starts at 7:00 a.m. and ends at 3:00 p.m. The afternoon

shift starts at 3:00 p.m. and ends at 11:00 p.m. The evening shift starts at 11:00 p.m. and ends at 7:00 a.m. The power shift starts at 7:00 p.m. and ends at 3:00 a.m. Shift assignments are governed by the collective bargaining agreement. The minimum staffing on days is four officers on the street and one at desk. The minimum staffing on the afternoon shift is six officers on the street and one at the desk. The minimum staffing on nights from Sunday through Thursday is five officers on the street and one on the desk. The minimum staffing on Friday and Saturday nights is six officers on the street and one on the desk, until 3:00 p.m., at which time five officers are required to be on the street. When patrol sergeants work patrol, they monitor calls and determine which calls warrant their involvement.

8. The Field Supervisors have supervisory duties and responsibilities in sufficient combination and degree to be supervisors.

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

### **CONCLUSION OF LAW**

The Field Supervisors are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

### **ORDER CLARIFYING BARGAINING UNIT**

The Field Supervisors shall be excluded from the collective bargaining unit represented by the LEER Division of the Wisconsin Professional Police Association and its affiliated Superior Local No. 27.

Given under our hands and seal at the City of Madison, Wisconsin, this 26<sup>th</sup> day of February, 1999.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

CITY OF SUPERIOR

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

**POSITIONS OF THE PARTIES**

The City seeks to exclude all seven Field Supervisors from the collective bargaining unit represented by LEER Division of the Wisconsin Professional Police Association and its affiliated Superior Local No. 27 on the basis that they are supervisors. The City contends that, as a result of departmental reorganization that began in 1990, the Field Supervisors now function as first line supervisors. According to the City, the Field Supervisors' supervisory authority includes assigning work to police officers; monitoring the work of police officers to ensure compliance with Departmental rules, regulations, policies and procedures; evaluating the work performance of police officers; calling police officers into work and authorizing overtime; receiving and investigating citizen complaints, accidents involving patrol cars, and use of force; participating in the hiring and disciplining of police officers; training of police officers; approving leave requests; and exercising discretion in the commitment of resources, such as Evidence Technicians and Detectives.

Opposing the City's request to exclude the position of Field Supervisor from the collective bargaining unit, the Association argues that the Field Supervisors are not supervisors within the meaning of the Municipal Employment Relations Act. The Association maintains that the Field Supervisors do not have significant authority to hire, promote, transfer, discipline or discharge employees; that their assignment of officers is a routine function; that, when Field Supervisors have exercised any significant amount of independent judgment, they have done so while acting as a shift commander in place of Captains; and that only the senior afternoon and night shift Field Supervisors regularly serve as shift commanders. The Association further argues that the fact that the Field Supervisor wage rates are more comparable to bargaining unit members than to Captains supports the conclusion that the Field Supervisors are appropriately included in the bargaining unit.

**DISCUSSION**

**Supervisory Status - General Considerations**

As we previously stated in WALWORTH COUNTY (SHERIFF'S DEPT.), DEC. NO. 29040 (WERC, 4/97):

A supervisor is defined in Section 111.70(1)(o)1, Stats., as follows:

. . . 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.

Historically, we have considered the following factors in determining if an employee is a supervisor under Sec. 111.70(1)(o)1, Stats.

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 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 for 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; and
7. The amount of independent judgment exercised in the supervision of employees. 2/

Not all of the above factors need to be present for a position to be found supervisory. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. 3/

The quasi-military organization of police and fire departments presents unique problems in determining supervisory status of certain employees. 4/ Officers of higher rank will generally have the authority to issue orders to subordinates, regardless of our determination of supervisory status. Therefore, it is appropriate to consider the present case in light of our prior decisions regarding protective services. The size of the force or department is not particularly

relevant – it is the authority held and exercised that is more important, and our conclusions are not based on considerations of big departments versus small departments.

In past cases where we found officers such as sergeants or lieutenants to be supervisors, it was because those people demonstrated a high level of supervisory responsibility. For example, the sergeants we have previously found to be supervisors had the authority to independently issue verbal and written reprimands and to effectively recommend more severe forms of discipline, to consistently participate in hiring decisions, to conduct meaningful performance evaluations and to call in additional personnel; 5/ to issue oral or written reprimands, or impose a day's suspension pursuant to written policies; 6/ to serve as the first step in contractual grievance process, to participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders, and to conduct meaningful performance evaluations; 7/ and to independently change work schedules, to participate in hiring decisions, to make or effectively recommend oral and/or written disciplinary notices, to conduct performance evaluations, and to do work substantially distinct from patrol officers. 8/

To the contrary, where we have found sergeants and lieutenants to be non-supervisory, those officers displayed few of the factors noted above. For example, we found sergeants to be non-supervisory where they had no role in the hiring decisions or transfer decisions, could not recommend promotions, conducted evaluations which were only preliminary, and shared many work features with those whom they oversaw. 9/ A lieutenant who had the authority to call in replacements, change work schedules, and approve days off, but who performed the same duties as patrol officers, had no role in grievance adjustments, did not conduct written evaluations, and was often the only officer on duty was not a supervisor. 10/ Another lieutenant whose disciplinary role was limited to preparing reports of wrongdoing by lower ranking officers, who made only routine assignments as shift commander and directed deputies and sergeants at accident scenes was not a supervisor. 11/ We even found a chief deputy in command of a department on a regular basis to be nonsupervisory because he did not make any notable supervisory decisions. 12/

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2/ *TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).*

3/ *CITY FIREFIGHTERS UNION V. CITY OF MADISON, 48 WIS.2D 262 (1970); CITY OF TWO RIVERS, DEC. NO. 21959-A (WERC, 2/91).*

4/ *CITY OF MADISON, DEC. NO. 11087-A (WERC, 12/72).*

5/ *SAUK COUNTY, DEC. NO. 17201-A (WERC, 6/87).*



*6/ DANE COUNTY, DEC. NO. 21406 (WERC, 2/84).*

*7/ CITY OF ST. FRANCIS, DEC. NO. 24473 (WERC, 4/87).*

*8/ LACROSSE COUNTY, DEC. NO. 19539 (WERC, 4/82).*

*9/ MILWAUKEE COUNTY, DEC. NO. 74855 (SIC) (WERC, 10/87).*

*10/ CITY OF KIEL, DEC. NO. 11370-A (WERC, 3/85).*

*11/ PORTAGE COUNTY, DEC. NO. 19798-A (WERC, 2/93).*

*12/ MENOMINEE COUNTY, DEC. NOS. 23352 – 23355 (WERC, 3/86).*

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### **Patrol Sergeants**

There are seven Field Supervisor positions. Six of these positions function as Patrol Sergeant.

### **Hiring Authority**

At times, a Patrol Sergeant may assist in screening or interviewing applicants for the position of police officer. It is not evident, however, that such participation involves any significant hiring authority.

### **Promotion and Transfers**

The record does not demonstrate that the Patrol Sergeants have any significant authority to promote or transfer employees. On occasion, Patrol Sergeants are involved in deciding which officers receive collateral assignments.

### **Discipline and Discharge**

The General Order governing standards of conduct provide a Field Supervisor with authority to discipline police officers, up to and including a written reprimand, without the involvement of a superior officer. The Chief of Police confirms that the patrol sergeants have such authority. While it may be unusual for a Patrol Sergeant to impose a written reprimand without first consulting with a superior officer, we are not persuaded that such consultation is required.

Each newly hired police officer serves a probationary period. While all patrol sergeants report on the progress of probationary officers who work their shift, only Field Supervisor Rehl, the Field Training Coordinator, has significant involvement in the decision to retain probationary police officers.

The Patrol Sergeants are required to attend the monthly staff meeting with the Captains and the Police Chief. At these monthly staff meetings, the Police Chief consults with the Patrol Sergeants and the Captains regarding disciplinary matters that the Chief considers to be of a lower level, i.e., disciplines which do not exceed several days suspension.

To date, the Chief has brought all but one disciplinary matter to the monthly staff meeting. On one occasion, the opinions offered by the Captains and the Patrol Sergeants persuaded the Chief to reduce the discipline that the Chief initially recommended. Inasmuch as the Chief reserves the right to determine the discipline, we are not persuaded that such opinions rise to the level of an effective recommendation of suspensions.

#### **Authority to Direct and Assign the Work Force**

In the absence of a Captain, the senior Patrol Sergeant receives approximately \$2 per hour out-of-rank pay. Given that the Captains normally work Monday through Friday days, the senior Patrol Sergeant on the afternoon and evening shifts routinely receive this pay, as does the senior Patrol Sergeant on the weekend day shift.

There are two Patrol Sergeants assigned to each shift. Inasmuch as the two Patrol Sergeants on each shift do not work the same schedule, each regularly work shifts in which he is the senior Patrol Sergeant. "Acting" as Captain has become an integral part of the Patrol Sergeant's work duties and, thus, may be considered when determining the supervisory status of the Patrol Sergeant.

The collective bargaining agreement and/or established procedure dictate much of the patrol officer work assignment and work schedule. However, the Patrol Sergeant has authority to exercise the work assignment and work schedule rights retained by management.

The Patrol Sergeants' authority over work hours includes the authority to call in additional personnel, hold personnel over to the next shift, authorize overtime, grant or deny leave requests in accordance with the contract, and release officers from duty in conformance with minimum staffing requirements. The Patrol Sergeants' authority over work assignment includes the authority to remove patrol officers from their regular work assignment as necessary and to assign patrol cars and patrol areas to the less senior patrol officers who do not have a regular patrol assignment. In performing these duties, the Patrol Sergeant is functioning as a shift commander. These shift commander duties require the use of significant independent judgment and primarily involve the supervision of employees, rather than a work activity.

Patrol Sergeants instruct patrol officers on department rules and appropriate procedures. Patrol Sergeants monitor the work activity of patrol officers to ensure that they are in compliance with departmental rules, regulations, policies and procedures and provide counseling for the purpose of improving the officer's work performance. Patrol Sergeants prepare "Documentation of Performance" reports that commend, or criticize, a patrol officer's work performance. Patrol Sergeants conduct annual performance evaluation of patrol officers on their shift. Patrol Sergeants routinely investigate citizen complaints; use of force; accidents or damaged vehicles; and pursuits. At times, Patrol Sergeants conduct internal investigations. As part of these investigations, the Patrol Sergeant makes findings with respect to whether or not the patrol officer's conduct was reasonable and complied with Department policies and procedures. These findings are a factor in determining whether or not the patrol officer's conduct warrants discipline. These duties of the Patrol Sergeant require the use of significant independent judgment and primarily involve the supervision of employees, rather than a work activity.

### **Number of Employees Supervised**

Depending on the shift, minimum staffing is from four to six patrol officers. Captains and the Chief, who have supervisory authority over patrol officers, do not normally work the afternoon or evening shift, or the weekend day shift. The Captains perform a variety of administrative tasks in addition to their supervisory responsibilities.

### **Level of Pay**

Patrol Sergeants receive approximately one dollar more per hour than the top patrol officer. When the Patrol Sergeants are acting as "Captain," they receive out-of-rank pay of slightly more than two dollars per hour, which brings their rate to that of an entry level Captain.

The level of pay for the Patrol Sergeants has been determined by contract. The fact that the pay rate of the Sergeant is approximately one dollar more per hour than any other bargaining unit position suggests that the Patrol Sergeant is being compensated for performing additional responsibilities, including the direction of patrol officer work, as does the frequency with which Patrol Sergeants receive out of rank pay for acting as "Captain."

### **Conclusion**

Although Patrol Sergeants do work patrol, they perform a variety of duties that are separate and distinct from the duties performed by patrol officers. The Patrol Sergeants' shift commander responsibilities; their authority to evaluate employees; their authority to issue oral and written reprimands; and their authority to investigate patrol officer conduct and issue findings of culpability, persuade us that the Patrol Sergeants possess the indicia of supervisory

status in

sufficient combination and degree to warrant the conclusion that they are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats. Accordingly, the six Field Supervisors that function as Patrol Sergeant have been excluded from the collective bargaining unit represented by the Association.

### **Traffic Sergeant**

In July of 1997, Donna Andrews assumed the position of acting Traffic Sergeant. On April 15, 1998, Andrews was notified that the Traffic Sergeant position had been abolished and that she had been assigned the position of acting Field Supervisor. Andrews was further notified that she would continue to perform the work of the Traffic Sergeant.

Andrews' job duties and responsibilities include the authority to "supervise Auxiliary Police Unit, including screening and acceptance of applicants, promoting, discipline and dismissal." Members of the Auxiliary Police Unit are not employees of the City, but rather, are volunteers. As the Commission has previously held, the statutory definition set forth in Sec. 111.70(1)(o)(1), Stats., clearly contemplates the exercise of such functions and authority as to employees and not to volunteers. ST. CROIX COUNTY (HOSPITAL), DEC. NO. 11179 (WERC, 7/72). Accordingly, the evidence concerning supervisory authority over members of the Auxiliary Police Unit is irrelevant.

Andrews' job duties and responsibilities include the authority to "supervise adult crossing guard program, including screening and acceptance of applicants, hiring, discipline and firing." The City employs approximately fifteen crossing guards who work a few hours per day while school is in session. Andrews has exercised her authority to screen and hire applicants for the position of crossing guard, but has not exercised her authority to discipline or fire a crossing guard.

After a crossing guard has been hired, Andrews' contact with the crossing guards is limited to finding substitutes for absent crossing guards and receiving an accounting of hours worked by the crossing guards. This contact primarily involves supervision of a work activity, rather than supervision of an employee.

Occasionally, Andrews fills in for an absent Patrol Sergeant, but does not regularly perform the work of a Patrol Sergeant. Andrews attends the monthly staff meetings. With one exception, however, Andrews has been excused from that portion of the staff meeting involving employee discipline, use of force reviews, internal investigations, pursuits, and citizen complaints on the basis that she is an "acting" Field Supervisor. Andrews has a responsibility to prepare "Documentation of Performance" reports on police officers, which reports are given consideration when the police officers are evaluated.

As discussed above, the General Order governing standards of conduct recognizes that a Field Supervisor has authority to discipline police officers. Andrews has never exercised such authority. Nor does the list of her job duties, which were developed after the abolishment of the Traffic Sergeant position and the creation of a Field Supervisor position with Traffic Sergeant responsibilities, demonstrate that she has such authority.

At her most recent performance evaluation, Captain Peters advised Andrews to become familiar with the performance evaluation system so that she may assist in the evaluation of Department employees. Andrews, however, has never evaluated an employee and her present duties do not include employee evaluations.

### **Conclusion**

The Traffic Sergeant has authority to hire, discipline and discharge crossing guards. On occasion, she fills in for a Patrol Sergeant/Field Supervisor. Although we note her exclusion from certain portions of the supervisory staff meeting, we conclude the Traffic Sergeant does possess the indicia of supervisory status in sufficient combination and degree to warrant the conclusion that she is a supervisor. Accordingly, the Field Supervisor who functions as a Traffic Sergeant has also been excluded from the collective bargaining unit represented by the Association.

Dated at Madison, Wisconsin, this 26<sup>th</sup> day of February, 1999.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner