

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
CITY OF FRANKLIN (POLICE DEPARTMENT) :
Involving Certain Employees of : Case XIV
CITY OF FRANKLIN (POLICE DEPARTMENT) : No. 23500 ME-1580
Decision No. 17179

Appearances:

Lindner, Honzik, Marsack, Hayman and Walsh, S.C., Attorneys at Law,
by Mr. Roger E. Walsh, appearing on behalf of the Petitioner.
Goldberg, Previant and Uelmen, S.C., Attorneys at Law, by
Mr. Thomas J. Kennedy, appearing on behalf of the Union.

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

City of Franklin, having, on December 22, 1978 filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to clarify a collective bargaining unit, previously certified by the Commission, consisting of certain employees of the City of Franklin Police Department with the power of arrest and hearing on said petition having been held on February 7, 1979 at the City Hall, Franklin, Wisconsin, before Examiner Dennis P. McGilligan, and a transcript having been prepared and the parties having completed their briefing schedule on March 20, 1979, and the Commission having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Teamsters Local No. 695, hereinafter referred to as the Union, is a labor organization and has its offices at Madison, Wisconsin.
2. That City of Franklin, hereinafter referred to as the City, has its offices at Franklin, Wisconsin, and operates various departments, including a Police Department, wherein, among others, individuals occupying the positions of Detective Sergeant and Patrol Sergeant are employed.
3. That on November 15, 1978 the Commission issued a certification of Representative for the following unit of employees in the Franklin Police Department:

All employees of the Franklin Police Department
who have the power of arrest, but excluding the
Police Chief and Administrative Lieutenant.
(City of Franklin, Decision No. 16622)
4. That on December 22, 1978 the City filed a petition with the Commission to clarify the above collective bargaining unit to determine whether the positions of Detective Sergeant and Patrol Sergeant are supervisory and/or managerial and therefore excluded from said bargaining unit.
5. That the Detective Sergeant performs managerial functions and supervises other employees in the Police Department.

6. That the Patrol Sergeants also perform managerial duties and exercise supervisory authority over other employees in the Police Department.

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

CONCLUSION OF LAW

That since the Detective Sergeant and the Patrol Sergeants perform managerial functions and supervise other employees they are not "municipal employees" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and, therefore, said positions are properly excluded from the collective bargaining unit described below.

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

ORDER CLARIFYING BARGAINING UNIT


The prior certification of the instant collective bargaining unit dated November 15, 1978 is amended to read as follows:

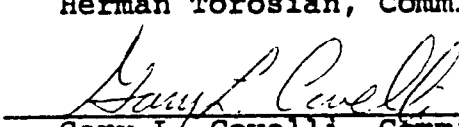
All employees of the Franklin Police Department who have the power of arrest, but excluding the Police Chief, Administrative Lieutenant, Detective Sergeant and Patrol Sergeants.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

No. 17179

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

In its petition filed on December 22, 1978 the City contends that the positions of Detective Sergeant and Patrol Sergeant should be excluded from the Police Department bargaining unit on the basis of their supervisory and/or managerial duties. The Union takes the opposite position.

The Franklin Police Department is set up with three operating divisions - Patrol Services, Investigations and Technical Services and Support Services. Each of these three divisions is independent of each other and operates directly under the Chief of Police. The Support Services Division is headed by the Lieutenant; the Investigations and Technical Services Division by the Detective Sergeant and the Patrol Services Division by three Patrol Sergeants (one on each of the three main shifts). Those in charge of each of the three divisions report directly to the Chief of Police and have no responsibility or control over the operation of either of the other divisions.

A fourth division of the department is titled "Staff Services" and includes most of the management and administrative functions, i.e., personnel records administration, budget preparation, purchasing, planning and research, program development, various community programs, traffic services, public information and relations and inspection and control. Due to the limited size of the Department no particular individual is assigned specifically to this division, but the functions of the division are handled by the Police Chief, Lieutenant, Detective Sergeant and Patrol Sergeants.

Detective Sergeant

The Detective Sergeant's normal hours are 10:00 a.m. to 6:00 p.m. and he receives the same pay rate as the Lieutenant. There are three employees working under the Detective Sergeant - one normally works from 10:00 a.m. to 6:00 p.m. and the other two from 2:00 p.m. to 10:00 p.m. These work hours are quite flexible and it is not unusual for them to be changed to meet the needs of the division. The changes in work hours are made solely by the Detective Sergeant without prior consultation with the Chief.

The Detective Sergeant is responsible for establishing departmental policies for crime prevention, for the handling of juveniles, for use of jail facilities, for use of investigative equipment and for criminal identification records and procedures. These policies are developed by the Detective Sergeant on his own with little or no involvement from the Chief of Police.

The Detective Sergeant makes the assignment of all cases in his division, without prior consultation with the Police Chief. He decides on his own when to close a case or whether to continue the investigation. He also independently decides whether cases will be taken to the District Attorney's office. The Detective Sergeant sometimes assigns cases to Patrolmen for investigation. In such instances, he would, on his own, contact the Patrol Sergeant who would then make the actual assignment to a patrolman working on his shift. The Detective Sergeant has also issued general assignments to all personnel. Although the Detective Sergeant may on occasion discuss some case assignments with the Police Chief, the Chief indicated that he has always accepted the recommendations of the Detective Sergeant.

The Detective Sergeant spends less than 50% of his time in actual investigative work. He determines the equipment and supplies needed in his division and makes recommendations for the budgetary needs of his division. The Detective Sergeant initiates purchase requisitions. Because of City policy, the Chief must sign these requisitions, but his signature is automatic. He reviews all investigative reports regarding crimes committed in the City of Franklin.

The Detective Sergeant has the authority and responsibility regarding discipline of the employees in his division. He has full authority in minor matters and can issue verbal or written reprimands, which he has done. If a major matter occurs, the Detective Sergeant has the authority to investigate the matter and submit a report with his recommendation to the Police Chief. The Chief generally would follow the recommendation of the Detective Sergeant in this regard. The Detective Sergeant serves as a management representative at Step One of the grievance procedure contained in the collective bargaining unit between the Union and the City. The Detective Sergeant has the authority on his own to send an employee home if an employee reports for duty in an unfit condition. He also evaluates the work performance of employees in his division and makes recommendations for specific training for them.

The Detective Sergeant has a major role in the hiring of new patrolmen. He is one of the two persons questioning the applicants in the oral interview. Others involved in the oral interview are the Fire and Police Commission, the Police Chief and a Patrol Sergeant. Only the Detective Sergeant and Patrol Sergeant ask questions, but they along with Fire and Police Commission and Police Chief score the applicant. The scores of all of these are then totaled and averaged. Those applicants who score highest on the oral interview, as well as a written test and a physical agility test are sent for psychological testing and given a background check. The Detective Sergeant might be involved in making the background check. The last two oral interviews occurred in the latter part of 1977 and in September of 1974. In May of 1978, the Detective Sergeant was also actively involved in the promotion of patrolmen to Acting Detective.

Employees working under the Detective Sergeant who work overtime may take compensatory time off in lieu of cash. The Detective Sergeant makes the sole decision regarding approval of such requests. He also approves the vacation schedules for employees in his division. While the vacation selection is based primarily on seniority, the Detective Sergeant has the authority on his own to disapprove a request for a particular vacation period because of the work requirements in the division. The Detective Sergeant assigns and approves overtime.

Based on all of the above, the Commission is satisfied that the duties performed by the Detective Sergeant are sufficiently supervisory and managerial in nature to exclude said position from the Police Department bargaining unit.

Patrol Sergeant

The City employs three officers holding the title of Patrol Sergeants. Frank Sandor is the Patrol Sergeant on the day shift; Glen Scott holds this position on the early shift and John Nelson is the late shift Patrol Sergeant.

Patrol Sergeants are paid \$1,479.74 per month while patrol officers working under them are paid a maximum of \$1,361.76 per month.

At the beginning of the shift, the Patrol Sergeant makes general announcements; passes along information from the previous shifts and assigns squad areas and equipment such as tape recorders and radios.

If the manpower on a particular shift is short, the Patrol Sergeant has the authority on his own to keep an employee over on overtime or to call in police officers to work overtime. Overtime is apportioned to police officers according to a loosely structured, generally consensual type system. However, the style of the Patrol Sergeant is the predominant variable. He makes the final decision in the matter and the Police Chief does not get involved.

After the patrolmen are sent out on their beats, the Patrol Sergeant would stay in the station to perform his planning or policy development work, or review reports made out by the patrol officers, and would then go into the field in a patrol car. The Patrol Sergeants serve primarily as backup and supervise the functions of the patrol officers in the field. They are not assigned an area to patrol but drive all over the City. Although there is some dispute over the exact amount of time Patrol Sergeants spend in patrol work the record indicates that it is less than 50%.

Patrol Sergeants have the responsibility to detect and correct deficiencies in the patrol officers working under them. They have the authority to issue verbal warnings and have done so. Patrol Sergeants also have the authority to issue written discipline, although they have not done so in the past seven years. They may suspend a police officer for a short time if the officer reports unfit for duty. In other serious matters Patrol Sergeants are to investigate the matter and file a report with the Police Chief along with a recommendation regarding disciplinary action. Although there has been no prior instance of a serious disciplinary matter, the Chief indicated that he would rely heavily on the recommendation of the Patrol Sergeant in this area.

If a Patrol Sergeant discovered operational deficiencies in his patrol officers, he would recommend and request specialized training for them to overcome the deficiency. The Chief testified that he honors these requests and does not require justification for the request.

One Patrol Sergeant - Sergeant Nelson - was involved in the interview procedure for police officer applicants in a case arising in 1974 and another in 1977 in the same manner as the Detective Sergeant noted above. The Patrol Sergeants were involved in background checks of these applicants. The Patrol Sergeants also submitted recommendations for the recent promotions to Detectives in 1978 and for the 1977 promotion to Patrol Sergeant.

Vacation requests are to a large extent dependent on the express wishes of the patrol officers and based on a shift and seniority basis. However, Patrol Sergeants have denied vacation requests because of staffing problems. In addition, the Patrol Sergeants coordinate the vacation requests and the Police Chief is not involved in any of the scheduling of vacations.

If a Patrol Sergeant is off duty on his shift, he determines how much authority the Patrol Officer who is the acting command officer will have. Sergeant Scott requires his acting command patrolman to call him in unusual situations, for example, where additional personnel might be needed. Sergeant Nelson does delegate some authority, but with restrictions. The Police Chief does not get involved in the determination of delegation of authority.

Patrol Sergeants get involved in writing departmental policies to a greater extent than police officers. Sergeant Nelson authored the Department's Mental Observation Commitment policy and Implied Consent Law Procedures. He also assisted in the establishment of the Department's Court officer program. Sergeant Scott assisted in establishing the department's

policy relative to traffic accident investigation and is currently working on revisions to this policy. Sergeant Sandor, who was just recently promoted to Sergeant, initiated the concept of a patrol activity book and has been placed in charge of effectuating this program.

Patrol Sergeants have the responsibility to keep ongoing records of equipment needs in their division and to submit their requests at budget preparation time.

Sergeant Nelson is in charge of the Department's SWAT Team, and determines its operating procedures, budgetary needs and the required personnel training.

Because of a particular law enforcement problem in a subdivision, Sergeant Scott recommended using police officers on foot patrol rather than in patrol cars. The Chief followed this recommendation.

Sergeant Sandor was concerned with the staffing situation on the day shift and recommended additional manpower. The matter was discussed with the night shift Sergeant, Sergeant Nelson, and a transfer of manpower was made.

The Police Chief's standing policy with regard to the Patrol Sergeant's responsibility and authority on his shift is that they have complete freedom to make a decision on all matters except in instances where a police officer is injured or there is a death under suspicious circumstances wherein the Chief is to be called.

The Union basically cites two cases, City of St. Francis (13177-A) 4/75 and City of West Allis (12020) 7/73, to support its argument that the Patrol Sergeants should be included in the Police Department bargaining unit. However, those cases can be distinguished on the basis of their facts from the instant matter. In City of St. Francis, the Commission concluded that the Sergeants performed work comparable to that performed by "working foremen". The Commission reached that decision because the Sergeants there spent the majority of their time on patrol work, had limited supervisory duties and exercised independent judgement based more on experience than rank. In addition the Commission found that the Sergeants did not evaluate patrol officers on a regular and formal basis, a fact which reinforced its ultimate conclusion. In City of West Allis, the Commission included sergeants in the bargaining unit due primarily to the routine nature of their work (including the assignment of work); the lack of discretion they possessed in carrying out their duties and the substantial amount of time they spent in actually doing bargaining unit work.

As the discussion above indicates the facts are different in the instant case. The Patrol Sergeants herein are directly responsible to the Chief for the operation of the three shifts in their division and are given a large amount of discretion by the Chief in carrying out their duties. They are actively involved in the formulation, determination and implementation of departmental policy and procedure. The patrol sergeants have the power to discipline patrol officers and/or the authority to effectively recommend same. They are actively involved in the promotional process. Finally, Patrol Sergeants spend less than 50% of their time on patrol work. In addition, they do not patrol an assigned area like patrol officers but serve primarily as a backup and supervise the functions of the patrol officers in the field.

No. 17176

Based on all of the above, the Commission finds that it is appropriate to exclude the aforementioned positions of Detective Sergeant and Patrol Sergeant from the Police Department bargaining unit and has amended its previous certification to reflect same.

Dated at Madison, Wisconsin this 2nd day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner