

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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of the Village (excluding the Chief), the Sergeant, Chester L. Athey, is a supervisor within the meaning of the Municipal Employment Relations Act.

4. That on February 20, 1979 the Village and the three non-supervisory law enforcement personnel in the employ of the Village executed an agreement covering the wages, hours and working conditions of said personnel from at least January 1, 1979 through December 31, 1980; that said agreement contained among its provisions a provision establishing a multi-step grievance procedure, culminating in final and binding arbitration, and the following provisions also material to the issues involved herein:

ARTICLE I

NEGOTIATIONS

Negotiations on all matters covered by these Rules of Employment or on other proposals with respect to wages, hours and/or conditions of employment shall be conducted annually or bi-annually and any agreement reached in negotiations shall become effective on January 1 of each year.

Negotiations shall proceed in the following manner:

the party requesting negotiations shall notify the other party in writing of its requests by the 15th day of September of any year. Within thirty (30) days of the request for meeting, an initial meeting of the parties shall be called by the party upon whom the request is made. At such meeting the party making the request shall explain its requests and present any supporting arguments in its behalf. The party upon whom the requests are made shall make an offer or counter-offer to the requesting party within fifteen (15) days thereafter; and negotiations shall continue in like manner with a view towards an amicable settlement. Nothing contained herein, however, shall be construed as recognition by Employer of any exclusive bargaining representatives of any Employee unless and until such time as Employees so choose to be represented.

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ARTICLE III

RULES AND REGULATIONS

In keeping with the above, the Employer shall adopt and publish further rules which may be amended from time to time, by Employer, provided, however, that such rules and regulations concerning wages, hours, seniority, vacations and insurance shall be first submitted to the Employees for its consideration prior to adoption. In the event the proposed rules or regulations are unsatisfactory to the Employees, the matter shall be referred to the grievance procedure for settlement and shall be initiated at Step 2 of said grievance procedure.

5. That prior to February, 1979 Chester L. Athey was employed as a Patrolman; that Athey, at the time the aforementioned

agreement was signed, was one of the three employees who affixed their signatures to the agreement; that in February, 1979 Athey was promoted to Sergeant; that as a Sergeant, Athey, at the time of the hearing herein, received eight cents an hour over and above the pay received by patrolmen employed at that time; that, however, said differential was due to the fact Athey has been employed a greater length of time than the Patrolmen; that Athey has no authority, nor does he effectively recommend, with respect to the hiring, discharge, promotion, transfer, or discipline of any officer or employee; that Athey performs his duties on various alternate shifts, and when he works said shifts he works alone, that on occasions Athey, on week ends, will be called to assist in police work, when part time officers are on duty, and when the Chief is unavailable; and that Athey's duties were not changed when he was promoted to Sergeant.

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

CONCLUSIONS OF LAW

1. That the agreement entered into on February 20, 1979 by the Village of Combined Locks and the Patrolmen in the employ of its Police Department constitutes a collective bargaining agreement within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act.
2. That the collective bargaining agreement entered into on February 20, 1979 by the Village of Combined Locks and the Patrolmen in the employ of its Police Department does not constitute a bar to a present determination of bargaining representative pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act.
3. That Chester L. Athey, employed as Sergeant by the Village of Combined Locks in its Police Department, is a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.
4. That all regular full-time police officers in the employ of the Police Department of the Village of Combined Locks, excluding the Chief and part-time officers, constitute an appropriate collective bargaining unit within the meaning of Section 111.70(1)(e) of the Municipal Employment Relations Act.

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

DIRECTION OF ELECTION

IT IS HEREBY DIRECTED 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 hereof in the collective bargaining unit consisting of all regular full-time police officers in the employ of the Police Department of the Village of Combined Locks, excluding the Chief and part-time officers, who were employed on April 16, 1980, except such employees as may

prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employes desire to be represented by Combined Locks Professional Police Association for the purposes of collective bargaining with the Village of Combined Locks.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Gary I. Covelli
Gary I. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER DISMISSING PETITION

This proceeding involves a petition requesting the Commission to conduct an election to determine whether non-supervisory law enforcement personnel in the employ of the Village desire to be represented by the Association for the purposes of collective bargaining. During the course of the hearing issues arose with respect to whether an existing collective bargaining agreement bars a present determination of bargaining representatives, and as to whether the Sergeant in the employ of the Police Department is a supervisor.

The Timeliness of the Petition/Contract Bar Issue

On February 29, 1979 representatives of the Village and the three non-supervisory law enforcement personnel then in the employ of the Village executed a document entitled "Police Patrolmen Contract - January 1, 1979 to December 31, 1980". The provisions pertinent to the issues herein are recited in the Findings of Fact. The document consists of fourteen major provisions, referred to as Articles, which are entitled as follows:

ARTICLE I	NEGOTIATIONS
ARTICLE II	FUNCTIONS OF MANAGEMENT
ARTICLE III	RULES AND REGULATIONS
ARTICLE IV	COOPERATION
ARTICLE V	PROBATIONARY AND EMPLOYMENT STATUS
ARTICLE VI	SENIORITY
ARTICLE VII	DISCIPLINARY PROCEDURE
ARTICLE VIII	GRIEVANCE PROCEDURE
ARTICLE IX	NORMAL WORK DAY AND WORK WEEK
ARTICLE X	AUTHORIZED ABSENCE
ARTICLE XI	HOSPITAL AND MEDICAL INSURANCE
ARTICLE XII	WAGES
ARTICLE XIII	WAIVER OF RIGHTS
ARTICLE XIV	MISCELLANEOUS

It is obvious, from the document itself, that it is a collective bargaining agreement covering the wages, hours and conditions of employment of the non-supervisory law enforcement personnel, who were all Patrolmen, at the time said agreement was executed by representatives of the Village and all law enforcement personnel in said collective bargaining unit. Said agreement was reached following the submission of demands by said three Patrolmen.

While Article I, entitled "Negotiations" seems to establish the date on which the agreement may be reopened for negotiations, that being September 15th of any year, it should be noted that Article III, entitled "Rules and Regulations", permits the Village to amend such rules and regulations affecting wages, hours and working conditions, by first submitting same to the Patrolmen, and if no agreement is reached the proposed change proceeds to the grievance procedure, and possibly to arbitration. In our opinion, the latter provision permits the Village to reopen negotiations at any time during the normal term of the agreement. Under such a circumstance we cannot conclude that the reopening date is only September 15th. Therefore the Association, which is now seeking an election, need not wait to file its petition within a 60 day period immediately prior to September 15, 1980. 1/

1/ City of Milwaukee(8622) 7-68; City of Kenosha (16278) 3/78.

Since the Village can reopen negotiations at any time, the Association may properly file its petition at any time, and therefore the agreement does not constitute a bar to a present election. However, the present agreement, unless the parties agree otherwise, shall continue at least until December 31, 1980, and if a new representative is chosen, it shall have the duty to administer same.

The Employee Status of the Sergeant


The Village would exclude the Sergeant presently occupied by Chester L. Athey, from the appropriate collective bargaining unit on the claim that the Sergeant performs supervisory duties. On the basis of the evidence presented, as reflected in the Findings of Fact, we are satisfied that the Sergeant does not perform sufficient supervisory duties to exclude him from the bargaining unit, and therefore the occupant thereof is eligible to vote in the election directed herein.

Dated at Madison, Wisconsin this 16th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Gary L. Covelli, Commissioner