

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION
Involving Certain Employees of
CITY OF SPARTA
(POLICE DEPARTMENT)

Case 23
No. 36924 ME-87
Decision No. 18799-A

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, 20 North Carroll Street,
Madison, WI 53703, by Mr. Thomas Rudebusch at hearing and Mr. Steve
Dettinger on brief, appearing on behalf of the Wisconsin Professional
Police Association/LEER Division.
Mr. Richard J. Heitman, City Attorney, P. O. Box 400, Sparta, Wisconsin
54656, appearing on behalf of the City of Sparta (Police Department).

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

Wisconsin Professional Police Association/LEER Division, having filed a petition on May 1, 1986, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of the City of Sparta consisting of all police officers employed by the City of Sparta Police Department, excluding the Chief of Police, casual employees, supervisory employees and all other employees of the City of Sparta by including the position of lieutenant; and a hearing having been held on July 28, 1986, in Sparta, Wisconsin, before Examiner James W. Engmann, a member of the Commission's staff; and a stenographic transcript having been prepared and forwarded to the parties on August 15, 1986; and the parties having filed briefs in the matter, the last of which was received on September 11, 1986; and the Commission having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the City of Sparta (City or Employer) is a municipal employer and has its offices at the Sparta City Hall, 1202 Euclid Avenue, Sparta, Wisconsin 54656; and that among its municipal functions the City maintains and operates a Police Department.

2. That the Wisconsin Professional Police Association/LEER Division (Association) is a labor organization representing municipal employees for the purposes of collective bargaining and has its offices at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.

3. That since 1981 the Association has been the certified representative of the collective bargaining unit consisting of all police officers employed by the City of Sparta Police Department, excluding the Chief of Police, casual employees, supervisory employees and all other employees of the City of Sparta. 1/

4. That on May 1, 1986, the Association filed a Petition to Clarify Bargaining Unit of Municipal Employees requesting the Commission to include the position of lieutenant in the unit described in Finding of Fact 3 above; and that the City opposed such inclusion, alleging said position was supervisory and managerial.

1/ City of Sparta (Police Department), Dec. No. 18799 (WERC, 7/81).

5. That the position of lieutenant is held by Francis C. Harr; that he has held that position since January 1, 1986; that Harr held the position of sergeant for approximately 8 1/2 years prior to his appointment as lieutenant; that as a sergeant, Harr was a member of the collective bargaining unit described in Finding of Fact 3 above; and that Harr has been a police officer with the City of Sparta Police Department for 22 years.

6. That prior to April, 1985, the City of Sparta employed both a Chief of Police and a Fire Chief; that Theodore R. Storandt was appointed Fire Chief in 1981; that upon retirement of Chief of Police Dave Kemp in April 1985, Storandt was appointed as Chief of Police in addition to being Fire Chief; that at that time he was given the overall title of Director of Public Safety; that at the time of Storandt's appointment as Chief of Police, the department consisted of three sergeants, approximately eight patrol officers, approximately five part-time patrol officers, and two radio operators; that the position of lieutenant is a new position; that when Harr was appointed lieutenant, no one was appointed to fill his position as sergeant; that the part-time patrol officers and the radio operators are not included in the collective bargaining unit described above; that the Fire Department is a volunteer fire department; and that, except for Storandt, the only other employe of the Fire Department is a fire engineer who doubles as the radio operator for the Police Department on the second shift.

7. That prior to his appointment as lieutenant, Harr worked first shift as the radio dispatcher; that Chief Storandt also works the first shift; that two or three patrol officers also work the first shift; that both the second and third shifts consist of a radio dispatcher, one sergeant and one to two patrol officers; that since his appointment as lieutenant, Harr continues to work first shift as the radio dispatcher; that his rate of pay has not changed since his appointment as lieutenant; and that he is paid hourly and receives compensation for overtime worked.

8. That as a sergeant Harr kept arrest records and filed the monthly uniform crime report, managed information from the court and City attorney, performed background checks of service, driving and arrest records of candidates for patrol officers, and scheduled officers' compensatory, vacation, and other leave time, after checking with the Chief; and that Harr's normal duty was to operate as radio dispatcher on the first shift.

9. That as a lieutenant, Harr continues to perform all the duties he did as a sergeant; that at the direction of the Chief he is developing a policy on high speed pursuit by the Department; that at the direction of the Chief he is preparing a procedure and operations set up for adult crossing guards; that he is working with the City Council Street Committee in reviewing and revamping parking ordinances, including the requirement of handicap parking restrictions; that he schedules officers without consulting with the Chief beforehand; that if there is a conflict or problem in the schedule, he consults with the Chief before a decision is made; that discretion in scheduling officers is greatly limited by the collective bargaining agreement; and that he calculates overtime, holiday and compensatory time, makes out the payroll and submits it to the Chief for final approval.

10. That since Harr was appointed lieutenant, two part-time officers have been hired; that once the candidate list had been pared down by the Public Safety Commission to those candidates it wished to interview, Harr worked with the Chief in checking background information on the candidates; that the Chief asked Harr as to which candidate he thought might be a better candidate; that Harr told him; that the Chief also discussed the candidates with the other officers in the department; and that Harr was not involved in the interview or any other aspect of the hiring process.

11. That one officer has been disciplined since Harr became a lieutenant; that the officer was to testify in court but did not appear and the case was dismissed; that Harr who was present at the time did not discipline the officer for failing to appear in court; that he discussed the matter with the Chief who was considering suspending the officer for at least one day; that Harr suggested a letter of reprimand; that the Chief issued a letter of reprimand; that no officer has been promoted or discharged since Harr became lieutenant; and that the Department does not formally evaluate its employes so Harr has never done so.

12. That other than when he is in court, Harr is operating as radio dispatcher; that dispatching takes up the vast majority of his time; that he cannot leave this post unless someone relieves him; that he has radio contact with the two or three first shift officers on duty; that he directs and assigns these officers as the dispatchers and sergeants do on the other two shifts; that he has little or no contact with the officers on the other two shifts; that the Chief is present most of the time that he is on the job; that very little of his time is spent supervising employees; that he exercises little independent judgment in the supervision of the employees; and that a significant combination of those factors that make a position supervisory in nature are not present in this case.

13. That Harr is involved in the preparation of the Department's budget; that Harr is using past records to compute the annual average usage of sick and compensatory and other leave times, part-time employees and supplies; that he is also preparing a document projecting the costs to the City if it should hire a Captain, a second lieutenant and a third sergeant; that the Chief presents the budget to the Council; that Harr would present his document on projected costs to the Public Safety Commission; that he has authority to purchase small amounts of office supplies; that he does not have authority to allocate funds for purposes different from which they were budgeted; that Harr does not participate in the formulation, determination and implementation of management solely in a significant manner; and that Harr does not possess effective authority to commit the Employer's resources.

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

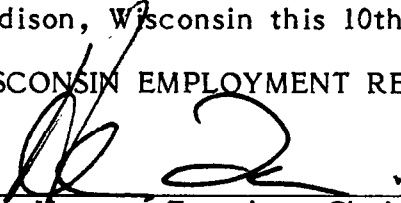
CONCLUSION OF LAW 2/

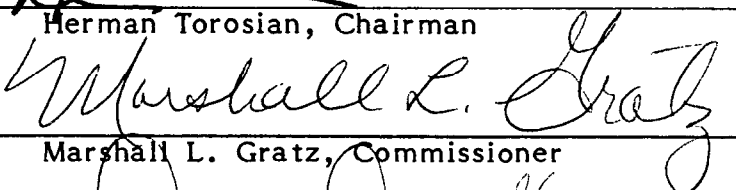
That the position of lieutenant currently occupied by Francis C. Harr is neither supervisory nor managerial and, therefore, Harr is a municipal employee within the meaning of MERA and is hereby included in the bargaining unit described in Finding of Fact 3 above.

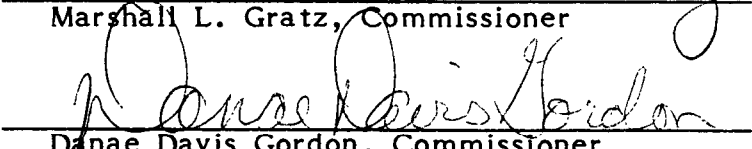
Given under our hands and seal at the City of
Madison, Wisconsin this 10th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is

(Footnote Two Continued on Page 4)

required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CITY OF SPARTA (POLICE DEPARTMENT)

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

INTRODUCTION

On May 1, 1986, the Wisconsin Professional Police Association filed a petition with the Commission requesting that the position of lieutenant be included in the certified collective bargaining unit. The City opposed said inclusion, alleging that the position is both supervisory and managerial.

POSITION OF THE PARTIES

The City asserts that the lieutenant should be excluded from the bargaining unit because he serves both supervisory and managerial functions, thus providing a chain of command between the Chief and the other officers. More specifically, the City argues that the lieutenant has effectively recommended the hiring and discipline of employees, that he assigns and schedules the work force, that he supervises 13 employees, that while his pay was not raised when he was promoted, it was because of budgetary constraints, and that the Chief desires to delegate some of his duties to the lieutenant, all of which add up to make him a supervisor. In addition the City argues that he is involved in the preparation of the budget and the development of Department policies, all of which add up to make him a managerial employee.

The Association argues that the nature of the lieutenant's duties limits his ability to exercise supervisory authority, that his function as radio dispatcher during his entire shifts limits the independence of his actions and his ability to respond to nonroutine situations, that the set rotation schedule and established procedures allow the lieutenant to exercise little independent judgment when scheduling or making work assignments and that the Chief works basically the same hours as the lieutenant and is involved in resolving any personnel or assignment conflicts. The Association also argues that the lieutenant's duties are basically the same duties he performed as a sergeant, that the lieutenant's involvement in budget preparation and department policies is not significant enough to establish managerial status and that the lieutenant's rate of pay is the same as the sergeants in the bargaining unit.

DISCUSSION

The Commission considers the following factors in determining if a position is supervisory in nature: 3/

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/her skills or for his/her supervision of employees;
5. Whether the supervisor is 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.

3/ City of Manitowoc (Police Department), Dec. No. 20696 (WERC, 5/83); City of Kiel (Police Department), Dec. No. 11370-A (WERC, 3/85).

The City asserts that the lieutenant is a supervisor. The lieutenant has been involved in the only hiring that has occurred since he was promoted but in a very limited way. At one point in the hiring of two part-time officers, the Chief asked the lieutenant which candidate he thought might be the better one. The Chief also asked other officers in the Department their opinion of the various candidates. This was part of the Chief's process in determining whom he would recommend to the Public Safety Commission to be hired. In the only instance where discipline has been given since the lieutenant was promoted, the lieutenant did not issue the discipline, even though he was present when the offense occurred. Instead he advised the Chief and, although the Chief may have been influenced by the lieutenant's opinion on the type of discipline to be issued, it was the Chief who determined and issued the discipline. Thus it cannot be said that the lieutenant effectively recommends the hire or discipline of employees.

The lieutenant does not exercise any more supervisory authority in the other areas of his job. Although he does schedule employees without consulting the Chief, problems go to the Chief. His ability to supervise is greatly limited by his duties as dispatcher which require him to remain at his post unless he is replaced and by his hours worked which give him little or no contact with the second and third shift employees. In addition to the lieutenant the only other first shift employees on duty are the two or three patrol officers who are supervised by the Chief who is also on duty during the first shift.

Although there was some testimony that the salary of the lieutenant would be raised in the next budget, at the time of hearing his rate of pay was the same as the sergeants, and he was paid hourly and receiving extra compensation or compensatory time for overtime. In any event an increase in pay for the higher rank of lieutenant, without the assignment of supervisory duties, would not establish the lieutenant position as supervisory. Finally the record is clear that any major decisions are not made by the lieutenant but by the Chief who is on duty at the same time.

For these reasons we find that the lieutenant is not a supervisory employee.

The City also asserts that the lieutenant is a managerial employee. In determining if a position is managerial in nature the Commission considers the following factors: the employee's participation in the formulation, determination and implementation of management policy; and the employee's possession of effective authority to commit the employer's resources. 4/ The Commission will determine that a position is managerial if the employee participates in a significant manner in the formulation, determination or implementation of management policy. 5/ The Commission will also determine a position is managerial if the employee has authority to establish an original budget or to allocate funds for differing purposes from such a budget, provided the authority to allocate funds is not merely ministerial. 6/

While the lieutenant is involved in developing policy regarding high speed pursuit and adult crossing guards, this work is such a small part of his duties as to be de minimus. In addition, it is the Police and Fire Commission and the Chief who actually determine the policy, although they can call on the expertise of various officers to assist them. The same is true of the lieutenant's work on parking where he acts as a resource, although the actual decisions are made by the Streets Committee.

As for budgetary matters, the lieutenant's involvements consist of computing and averaging the use of off-days, part-time officers and supplies to help the City budget better. The work he is doing regarding the cost of adding positions is a projection by which the City will use in preparing the actual budget. Both of these tasks are clerical, not policy making. While he has authority to purchase supplies, he does not have authority to deviate from the budget. For these reasons we conclude that the lieutenant is not a managerial employee.

4/ Juneau County, Dec. No. 18728-A (WERC, 1/86); City of Jefferson, Dec. No. 10344-A (WERC, 3/85).

5/ Juneau County, supra, City of Jefferson, supra.

6/ Juneau County, supra, City of Jefferson, supra.

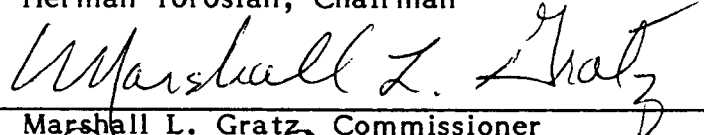
As he is neither a managerial employe nor a supervisor, he is a municipal employe who should be included in the bargaining unit with all police officers.

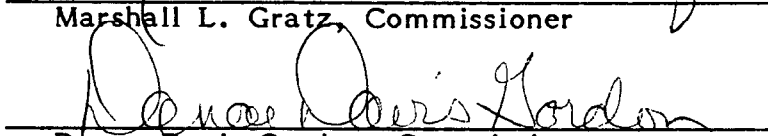
Dated at Madison, Wisconsin this 10th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner