

On Call

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WISCONSIN PROFESSIONAL POLICE	:	Case V
ASSOCIATION - LEER DIVISION	:	No. 28445 ME-2035
	:	Decision No. 19188
Involving Certain Employees of	:	
	:	
VILLAGE OF MOUNT HOREB	:	
(POLICE DEPARTMENT)	:	
	:	

Appearances:

- Mr. Jeffrey Anderson, Attorney at Law, 23 N. Pinckney, Madison, Wisconsin 53719, appearing on behalf of Wisconsin Professional Police Association, LEER Division.
- Mr. Allen J. Wood, Village Administrator, 138 East Main St., Mt. Horeb, Wisconsin 53572, appearing on behalf of Village of Mt. Horeb.
- Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Local 60, WCCME, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Wisconsin Professional Police Association, LEER Division having filed a petition on July 27, 1981 requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Village of Mount Horeb Police Department to determine whether said employees desired to be represented for the purpose of bargaining by said Petitioner; and hearing in the matter having been scheduled for August 28, 1981 and rescheduled and conducted on September 25, 1981 at Mount Horeb, Wisconsin before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff, during the course of which the Local 60, WCCME, AFSCME, AFL-CIO was permitted to intervene on the basis of claiming an interest in the matter; and a transcript of the procedures having been prepared; and a brief having been filed by the Petitioner on October 27, 1981; and the Commission having considered the evidence and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Professional Police Association, LEER Division, hereinafter referred to as WPPA, is a labor organization and has its offices located at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.
2. That the Village of Mount Horeb, hereinafter referred to as the Village, has its offices located at 138 E. Main Street, Mount Horeb, Wisconsin 53572 and, among its various governmental functions operates a police department wherein individuals occupying the following classifications are employed:

<u>Classification</u>	<u>Number in Classification</u>
Chief of Police	1
Police Officer (full time)	4
Police Officer (part time/casual)	5

3. That Wisconsin Council 40, AFSCME, AFL-CIO, Local 60, hereinafter referred to as Local 60, is a labor organization and has its offices located at 5 Odana Court, Madison, Wisconsin 53719; and that Local 60 is the certified exclusive bargaining representative for all regular full-time and regular part-time employees with the power of arrest employed by the Police Department of the Village of Mount Horeb, but excluding the Chief of Police.

4. That in the instant proceeding the WPPA seeks a representation election among all regular full-time and regular part-time employees with the power of arrest employed by the Police Department of the Village of Mount Horeb excluding the Chief of Police.

5. That during the course of the hearing the parties agreed to the following bargaining unit description:

"all regular full-time and regular part-time employees with the power-of-arrest employed by the Police Department of the Village of Mount Horeb, excluding the Chief of Police, supervisory, managerial confidential and executive employees."

6. That Police Officers Alvin Hinricks, Tom Orshall, Tim Milas and Rollie Schraepfer are regular full-time employees; that during the course of the hearing Local 60 contended that Police Officers Tim Milas and Tom Orshall are supervisory employees and should be excluded from said unit; that all four said Police Officers perform similar duties; that none of said four Police Officers participate in the hiring process, disciplinary decisions, promotion decisions, transfer decisions, discharge decisions, nor do they evaluate other employees; that Rollie Schraepfer performs the duties of liaison officer and that said duties include the scheduling of employees in the classification of Police Officer Part-Time/Casual to work shifts between 7:00 p.m. and 3:00 a.m. on Fridays and Saturdays; that said four Police Officers direct the work of said part-time/casual employees; that said four Police Officers do not perform supervisory duties in sufficient degree or combination to be supervisors.

7. That the Village currently employs William Steigerwaldt, Jay Wilson, Richard Misunas, Jeffrey Loud, and Thomas Van Horn in its Police Officer Part-Time/Casual classification; that during the course of the hearing Local 60 contended that said five employees are regular part-time employees and should be included in said bargaining unit and that the Village and WPPA contended that said five employees are casual employees and should be excluded from said unit; that said five employees are not currently represented by any bargaining representative; that said five employees have the power of arrest and perform duties similar to the regular full-time Police Officers; that during each week the Police Officer Part-Time/Casual classification is scheduled to work an eight hour shift, from 7:00 p.m. to 3:00 a.m., on Fridays and Saturdays; that said five employees in that class are scheduled to work said shift on a rotating and availability-to-work basis; that said five employees also are scheduled to work on an availability-to-work basis when any of the four regular full-time Police Officers are absent for vacation, sick leave, or any other reason 1/; that between January 1, 1981 and September 19, 1981 said five employees averaged working the following hours per week:

Steigerwaldt	16.93
Wilson	8.25
Misunas 2/	7.95
Loud	1.87
Van Horn	1.15;

that the Village pays employees every two (2) weeks; that between May 16, 1981 and September 19, 1981 there were nine (9) pay periods; that Van Horn only worked during three (3) pay periods since May 16, 1981, and that Loud only worked during five (5) pay periods since May 16, 1981; that between January 1, 1981 and

1/ During the period May 16, 1981 to June 13, 1981 one Police Officer was disabled for 44 days of sick time and said Officer's hours were worked by said five employees.

2/ Misunas did not work for the Village for a six week period between July 25, 1981 and September 5, 1981.

September 19, 1981 there were nineteen (19) pay periods; that Steigerwaldt has worked in every pay period since January 1, 1981; that Wilson has worked seventeen (17) pay periods since January 1, 1981; that Misunas has worked in thirteen (13) pay periods since January 1, 1981; and that Steigerwaldt, Wilson and Misunas are regular part-time employees and should be included in the unit herein.

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

CONCLUSION OF LAW

1. That Police Officers Tim Milas and Tom Orshall are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.
2. That William Steigerwaldt, Jay Wilson, and Richard Misunas are regular part-time law enforcement employees of the Village of Mount Horeb and are eligible to vote in the election directed herein.
3. That Jeffrey Loud and Thomas Van Horn are not regular part-time law enforcement employees but rather are casual employees.
4. That all regular full-time and regular part-time employees with the power-of-arrest employed by the Police Department of the Village of Mount Horeb, but excluding the Chief of Police, supervisory, managerial, confidential and executive employees constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(c)2.a 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

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this directive in the unit consisting of all regular full-time and regular part-time employees with the power-of-arrest employed by the Police Department of the Village of Mount Horeb excluding the Chief of Police, supervisory, managerial, confidential and executive employees, who were employed by the Village of Mount Horeb on December 7, 1981, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Professional Police Association, LEER Division, or by Local 60, WCCME, AFSCME, AFL-CIO, or by neither of said organizations representative for the purposes of collective bargaining with the Village of Mount Horeb with respect to wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

During the course of the hearing the parties agreed to a unit description of the bargaining unit. However Local 60 contends that Police Officers Tim Milas and Tom Orshall are supervisory employees and should be excluded from the unit and further that the five Police Officer Part-Time/Casuals are regular part-time employees and should be included in the unit.

Officers Milas and Orshall

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

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 a 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 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.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 3/

Neither Milas nor Orshall has the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. Said authority is retained solely by the Chief of Police. However, Milas and Orshall, as well as Hinricks and Schraepfer have the authority to assign work to the five Police Officer Part-Time/Casuals, but this is within the parameters of policies, rules and regulations established by the Police Department and only occurs when said five Part-Time/Casuals are assigned to work with a full-time Police Officer. It is clear from the record that said full-time Police Officers primarily supervise activities, that the majority of their time is spent on doing the same type of work as the Part-Time/Casuals, and that their judgment and discretion in the area of work assignments is limited by the rules, policies and regulations established by the Police Department. Therefore the Commission is satisfied that Milas and Orshall do not perform sufficient duties of a supervisory nature to conclude that they are supervisors within the meaning of Section 111.70(1)(o)1 of MERA. Therefore they are included in the bargaining unit.

3/ Trempealeau County (Department of Social Services) (16402) 6/78.

Police Officer, Part-Time/Casual

The Commission has held that the determinative factor in deciding whether an employe is casual is the regularity of employment, rather than the number of hours worked. 4/ Here the Police Officer Part-Time Casual classification is scheduled every Friday and Saturday and will continue to be so scheduled. It is clear that since January 1, 1981, Police Officer's Steigerwaldt, Wilson, and Misunas have worked on a regular basis for the Village. Therefore the Commission concludes that Steigerwaldt, Wilson and Misunas are regular part-time employes and should be included in the bargaining unit.

Since May 16, 1981, Police Officer's Loud and Van Horn have worked 71 hours and 43 3/4 hours respectively for the Village. Neither has worked more than two consecutive pay periods and both have not worked for three consecutive pay periods. The record clearly shows their employment to be irregular in nature and the Commission concludes that Loud and Van Horn are casual employes and accordingly they are not eligible to vote.


Dated at Madison, Wisconsin this 7th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

4/ City of Medford (Police Department) (16846) 2/79.