

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

BROWN DEER SUPERVISORS :
ASSOCIATION :

Involving Certain Employes of :

VILLAGE OF BROWN DEER (DEPT. OF :
PUBLIC SAFETY) :

Case XXIII
No. 28178 ME-2014
Decision No. 19342

Appearances:

Hayes and Hayes, Attorneys at Law, by Mr. Tom Hayes, Suite 7034, 161 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203, on behalf of the Village of Brown Deer.

Mr. John D. Murray, Attorney at Law, Suite 1717, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, on behalf of the Petitioner.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Brown Deer Supervisors Association having, on June 9, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain supervisory employes of the Village of Brown Deer (Department of Public Safety) to determine whether said employes desired to be represented by said Association for the purpose of negotiating with the Village of Brown Deer pursuant to Section 111.70(8) of the Municipal Employment Relations Act; and hearing in the matter having been conducted on September 4, 1981 by Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff, and a transcript of the hearing having been prepared; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Brown Deer Supervisors Association, hereinafter referred to as the Association, is a labor organization and has its offices at 633 West Wisconsin Avenue, Suite 1717, Milwaukee, Wisconsin 53203.

2. That the Village of Brown Deer, hereinafter referred to as the Village, is a municipal employer and has its offices at 4800 West Green Brook Drive, Brown Deer, Wisconsin 53223.

3. That the Association in this proceeding requests that an election be conducted in a bargaining unit of supervisory employes in the Village of Brown Deer Department of Public Safety consisting of the Police Captain, Police Lieutenant, and Fire Captain to determine whether the occupants of said positions desire to be represented by the Association; that at the hearing in the matter the parties stipulated to a unit description of all supervisory employes above the ranks of Police Sergeant and Fire Lieutenant in the Public Safety Department of the Village of Brown Deer, excluding all managerial, executive and confidential employes; that the parties also stipulated that the positions of Police Captain, occupied by Theodore S. Janonis, Police Lieutenant, occupied by Steven R. Pokrandt, and Fire Captain, occupied by Ralph C. Moeller, are supervisory positions but that the Village, contrary to the Association, contends that the foregoing positions are managerial and thus ineligible for inclusion in a supervisory law enforcement/firefighter unit.

4. That the Department of Public Safety consists of the Public Safety Administration, the Police Department and the Fire Department; that the position of Director of Public Safety is occupied by Donald E. Rosenbauer; that Rosenbauer's duties include those of Chief of Police and Fire Chief; and that as of September 3, 1981, the Police Department consisted of 35 individuals, the Fire Department, 37 individuals, and the Public Safety Administration, 13 individuals.

5. That Police Captain Janonis is the second highest ranking officer of the Police Department and reports directly to the Director of Public Safety (Police Chief); that Janonis assists Rosenbauer in coordinating all operations of the Police Department and assumes the duties of the Chief of Police during any prolonged absence of Rosenbauer; that Janonis insures that Police Department operations are accomplished and directs department programs; that Janonis organizes and coordinates the Police Department workload, insures that the Police Department's human resources are properly used, establishes lines of communications within the Police Department and with other law enforcement agencies, has input into the preparation of budgetary plans, and directs and coordinates the criminal investigation functions of the Police Department; that Janonis does not possess independent authority to establish an original budget or to allocate funds for differing program purposes from such a budget and thus does not possess the effective authority to commit the Village's resources to any significant degree; that although Janonis occasionally consults with the Director of Public Safety concerning departmental policy and needs, the Director maintains basic control over formulation of management policy and the departmental budget and thus Janonis does not participate in the formulation, determination, or implementation of management policy to any significant degree.

6. That Police Lieutenant Pokrandt is the third highest ranking officer in the Police Department and assumes the duties of Police Captain or Chief of Police during any prolonged absences from duty by those individuals; that Pokrandt developed and coordinates a reporting and records management system for the Police Department; that Pokrandt assists the Police Captain and Chief of Police in the preparation of the Police Department's budget; that under the direction of the Director of Public Safety, Pokrandt directs the Police Department's training program; that Pokrandt insures that the Police Department maintains the supplies of equipment within established budgetary limits; that Pokrandt oversees a public information and awareness program; that Pokrandt cannot establish an original budget or allocate funds for differing program purposes from such a budget without the approval of the Director of Public Safety and thus does not possess effective authority to commit the Village's resources; and that although Pokrandt occasionally consults with the Director of Public Safety concerning departmental policy and needs, the Director maintains basic control over formulation of management policy and the departmental budget and thus that Janonis does not participate in any significant degree in the formulation, determination, or implementation of management policy.

7. That Fire Captain Moeller is the highest ranking officer in the Fire Department under the Director of Public Safety (Fire Chief); that Moeller serves as administrative assistant to the Fire Chief, directs a program of fire training for employes of the Fire Department, conducts special investigations of fires at the direction of the Fire Chief, makes recommendations to assist the Fire Chief in planning, inspections and control of the Fire Department, and, as directed by the Fire Chief, assists in budget preparation, personnel matters and other external matters; that Moeller does not possess independent authority to establish an original budget or to allocate funds for differing program purposes from such a budget and thus does not possess the independent authority to commit the Village's resources; and that although Moeller occasionally consults with the Director of Public Safety concerning departmental policy and needs, the Director maintains basic control over formulation of management policy and the departmental budget; and thus that Janonis does not participate in any significant degree in the formulation, determination, or implementation of management policy.

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

CONCLUSIONS OF LAW

1. That the occupants of the positions of Police Captain, Police Lieutenant and Fire Captain are neither confidential, managerial nor executive employes within the meaning of the Municipal Employment Relations Act, but rather the occupants of the positions of Police Captain and Police Lieutenant are supervisory employes within the meaning of Sec. 111.70(1)(o)1 of said Act, and that the occupant of the position of Fire Captain is a supervisory employe within the meaning of Sec. 111.70(1)(o)2 of said Act, and that therefore the occupants of said positions are properly included in the following collective bargaining unit found to be appropriate within the meaning of Sec. 111.70(8) of said Act:

All supervisory employes above the ranks of Police Sergeant and Fire Lieutenant in the employ of the Public Safety Department of the Village of Brown Deer, excluding all managerial, executive and confidential employes.

2. That a question concerning representation, within the meaning of Sec. 111.70(8) of the Municipal Employment Relations Act has arisen among the supervisory employes included in the appropriate collective bargaining unit set forth above.

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 shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Direction in the collective bargaining unit consisting of all supervisory employes above the ranks of Police Sergeant and Fire Lieutenant in the employ of the Public Safety Department of the Village of Brown Deer, excluding all managerial, executive and confidential employes employed by the Village of Brown Deer who were employed on January 29, 1982, except such supervisory employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by Brown Deer Supervisors Association for the purposes of negotiating with the Village of Brown Deer, in accordance with Section 111.70(8) of the Municipal Employment Relations Act.

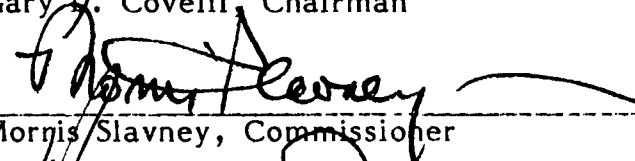
Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of January, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Gary J. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

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

The sole issue in this proceeding is whether the occupants of the positions of Police Captain, Police Lieutenant and Fire Captain are managerial employes. 1/ The parties stipulated at the hearing that said positions are supervisory and would be appropriately included in the supervisory bargaining unit if they do not perform managerial, executive or confidential duties. The Commission and the Wisconsin Supreme Court have considered the following in determining whether an employe is managerial:

Managerial employes . . . have been excluded from MERA coverage on the basis that their relationship to management imhues (sic) them with interest significantly at variance with those of other employes. In that managerial employes participate in the formulation, determination and implementation of management policy, they are unique from their co-workers . . . In addition managerial status may be related to a position's effective authority to commit the Employer's resources. Managerial employes do not necessarily possess confidential information relating to labor relations or supervisory authority over subordinate employes. 2/

Managerial status must be demonstrated by a showing that the holder of a position in question participates in a significant manner in the formulation, determination and implementation of management policy or that the holder of such a position has the effective authority to commit the municipal employer's resources. 3/

Janonis, Pokrandt and Moeller do not fit the above definition of a "managerial employe". Although they consult from time to time with the Director of Public Safety concerning Department policies and needs and draft proposed regulations for said Director's review and approval, they function primarily to provide expertise and information. The record clearly reveals that in most matters the Director of Public Safety possesses the sole authority to make managerial decisions affecting either the Police Department or Fire Department. The record further indicates that the positions at issue do not possess a significant degree of effective authority to commit the Village's resources. The applicable standard is as follows:

The power to commit the Employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison, the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgement and discretion are required in

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- 1/ The parties stipulated to the appropriateness of the bargaining unit which includes both law enforcement and fire fighting supervisors. As the positions in question do share a common supervisor, the Director of Public Safety, the Commission is willing to accept the appropriateness of the stipulated bargaining unit.
 - 2/ City of Oak Creek, (17633) 3/80; City of New London (12180) 9/73; approved by the Wisconsin Supreme Court in City of Milwaukee v. Wisconsin Employment Relations Commission 71 Wis. 2d. 709, 239 N.W. 2d. 63 (1976). See also Milwaukee Area Board of Vocational, Technical and Adult Education No. 9 (8736-B, 16507-A) 6/79; Tomahawk School District (16525) 8/78.
 - 3/ City of Cudahy (Fire Department), (18502) 3/81; City of Milwaukee (12035-A) 6/73, aff'd sub nom. Dane Co. Cir. Ct. No. 142-170 (7/74); City of Milwaukee (11917) 7/73.

determining when such expenditures should be made. Thus, the authority to spend money from a certain account for a specified purpose is not managerial power, even though managerial employes also have that authority . . . 4/

While Captains Janonis and Moeller recommend expenditures within the established budgets for their respective Departments, all such recommendations must be approved by said Director. Furthermore, their role in the Village's budgetary process is limited to submitting budget requests to the Director of Public Safety and to advising said Director of needs in specific areas within their responsibility. Such functions do not constitute authority to commit the Village's resources in a manner sufficient to warrant the conclusion that the position of Captain is managerial.

Lieutenant Pokrandt reviews equipment use and its effect on the Police Department's operations and evaluates new equipment to determine whether it can be used to improve the efficiency and safety of the Police Department's operations. Pokrandt's role in the budgetary process is also limited to advising the Director of needs in specific areas within his responsibility. Any expenditures are within the confines of established budgetary limits and are subject to the approval of the Director of Public Safety. Such responsibilities do not constitute a sufficient basis to warrant the conclusion that the position of Lieutenant is managerial.

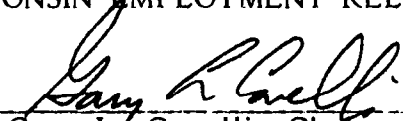
No evidence was adduced as to establish that any of the three individuals involved herein performed executive or confidential duties.

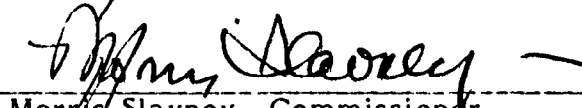
On the basis of the foregoing the Commission concludes that the occupants of the positions of Police Captain, Police Lieutenant and Fire Captain are properly included in the bargaining unit involved herein.

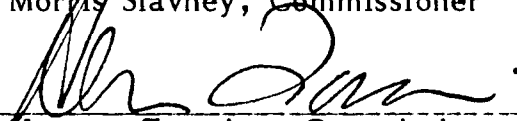
Dated at Madison, Wisconsin this 29th day of January, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

4/ City of Oak Creek, supra; Shawano County (Sheriff's Department) , (15357) 3/77.