

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
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WISCONSIN PROFESSIONAL POLICE :  
ASSOCIATION/LAW ENFORCEMENT EMPLOYEE : Case 43  
RELATIONS DIVISION : No. 47336 ME-573  
: Decision No. 19798-A  
Involving Certain Employes of :  
:   
PORTAGE COUNTY :  
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Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Richard Thal, 20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.  
Mr. Gerald E. Lang, Personnel Director, Portage County, 1516 Church Street, Stevens Point, Wisconsin 54481, appearing on behalf of Portage County.

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

On April 21, 1992, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission to clarify a bargaining unit of municipal employes of Portage County by including four Lieutenants in the Association's bargaining unit. At the request of the parties, hearing was not held until October 6, 1992, in Stevens Point, Wisconsin, before Examiner Lionel L. Crowley, a member of the Commission's staff. The hearing was transcribed and the parties filed briefs on November 23, 1992. The Commission having reviewed the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as the Association, is a labor organization with its offices located at 7 North Pinckney Street, #220, Madison, Wisconsin 53703.
2. Portage County, hereinafter referred to as the County, is a municipal employer with its offices located at 1516 Church Street, Stevens Point, Wisconsin 54481.
3. In Portage County (Sheriff's Department), Dec. No. 19798 (WERC, 9/82), the Commission certified the Association as the exclusive bargaining representative of the following bargaining unit:

All regular full-time and regular part-time law enforcement employes with the power of arrest employed in the Sheriff's Department of Portage County, excluding the Sheriff, Captains, Lieutenants, supervisory, managerial, confidential and all other employes.

4. On April 21, 1992, the Association filed a unit clarification petition requesting that four Lieutenants be included in the existing unit represented by the Association. The County opposes the inclusion of the Lieutenants on the grounds that they are supervisors.

5. The job description for Lieutenant provides in pertinent part as follows:

#### DESCRIPTION OF DUTIES

##### Objectives and Tasks/Knowledge, Skills and Abilities

- A. Traffic Control and Investigation
  - 1. Patrols county highways to enforce traffic laws - issue citations and summons.
  - 2. Investigates traffic accidents.
  - 3. Investigates traffic-related complaints.
  - 4. Completes written reports on all traffic law enforcement activities.
  - 5. Appears and testifies in court on traffic cases.
- B. Crime Control and Criminal Investigation.
  - 1. Responds to criminal complaints.
  - 2. Investigates criminal activity such as homicide, robbery, rape, sexual assaults, burglaries, thefts, vandalism, criminal assaults.
  - 3. Completes and types written reports to Sheriff upon completion of investigations.
  - 4. Gather evidence pertaining to crimes.
  - 5. Interviews victims, suspects and witnesses.
  - 6. Provides for security, reassurance, and safety of victims and witnesses.
  - 7. Presents testimony and evidence to the courts in criminal proceedings.
  - 8. Advises officers on appropriate investigative procedures and more complex or difficult aspects of cases.
  - 9. Directs and coordinates law enforcement efforts at major altercations, riots and routs.
  - 10. Reviews and investigates complaints, civil disturbances feuds and disputes, meets with individuals involved and attempts to negotiate settlements.
- C. Assistance in Jail Operations.
  - 1. Supervises inmates in county jail.
  - 2. Transports prisoners to and from correctional facilities county and circuit courts.
  - 3. Maintains jail security and provides for medical, mental or other attention necessary for inmate's welfare.
  - 4. Transports mentally incompetent individuals requiring or seeking mental assistance to and from mental health facilities and to and from the courts.
  - 5. Receives calls of need or distress and dispatches necessary agencies, manpower, or equipment needed to handle the complaint or report.
  - 6. Monitors jail facilities and activities to ensure compliance with state and federal standards and law.

D.Administration of Civil and Criminal Process.

- 1.Reviews, prioritizes and assigns execution and delivery of civil and criminal process.
- 2.Executes and delivers criminal process for the courts as an agent of the court in the most sensitive situations.
- 3.Executes and delivers criminal process and executions for other law enforcement agencies in the county in the most sensitive and technical situations.
- 4.Directs the service of jury summons and delivers to the court affidavits that proper numbers of jurors have been summoned.

E.Provision of information, consultation and coordination regarding law enforcement and crime prevention countywide.

- 1.Coordinates emergency responses and personnel of other agencies in the county to include fire departments, wrecker services and ambulance needs.
- 2.Responds to inquiries and complaints from the public.
- 3.Coordinates emergency responses to spills or removal of hazardous chemicals and materials with other agencies and personnel.

F.Maintaining of Records.

- 1.Supervises the receiving and recording of all incident cards for the county computer system.
- 2.Screen and classification of UCR codes for the incident cards.
- 3.Review all incident reports for the purpose of the computer cards
- 4.Over all knowledge of the operation of the County computer system.

The job description for the Sergeant-Traffic provides, in pertinent part, as follows:

DESCRIPTION OF DUTIES

Objectives and Tasks/Knowledge, Skills and Abilities

A. TRAFFIC CONTROL AND INVESTIGATION

- 1.Patrols County highways to enforce traffic laws; issues citations and summons.
- 2.Investigates traffic accidents.
- 3.Investigates traffic-related complaints.
- 4.Completes written reports on all traffic law enforcement activities.
- 5.Appears and testifies in court on traffic cases.
- 6.Responds to accidents with the Rescue Vehicle.
- 7.Operates all equipment within the Rescue Vehicle.

A.(sic) CRIME CONTROL AND CRIMINAL INVESTIGATION

- 1.Responds to criminal complaints.
- 2.Investigates criminal activity.
- 3.Completes and types written reports to the Sheriff upon completion of investigations.
- 4.Gathers evidence pertaining to crimes.
- 5.Interviews victims, suspects, and witnesses.
- 6.Provides security, reassurance, and safety of victims and witnesses.

7.Presents testimony and evidence to the courts in criminal proceedings.

C.ASSISTANCE IN JAIL OPERATIONS

1.Supervises inmates in the County Jail.

2.Transports prisoners to and from correctional facilities, county and circuit courts.

3.Maintains jail security and provides for medical, mental or other attention necessary for the inmates' welfare.

4.Transports mentally incompetent individuals requiring or seeking mental assistance to and from mental health facilities and to and from the courts.

5.Receives calls of need or distress and dispatches necessary agencies, manpower or equipment needed to handle the complaint or report.

D.ASSISTANCE IN OTHER DEPARTMENTAL OPERATIONS

- 1.Serves civil and criminal process and assists the Sheriff in replevins and executions ordered by the courts.
- 2.Maintains record of all activities while on duty and submits same to the immediate supervisor.
- 3.Responds to disturbances and altercations and investigates as appropriate.
- 4.Assists in crowd control at events in the County or other counties as directed by the Sheriff or designated supervisor.

E.COORDINATES EMERGENCY RESPONSES

- 1.Coordinates emergency responses and personnel to include fire department, wrecker services and ambulance needs.
- 2.Responds to inquiries and complaints from the public.
- 3.Coordinates emergency responses to spills or removal of hazardous chemicals and materials with other agencies and personnel.
- 4.Does related work as required or directed.

In the absence of the Lieutenant, the Sergeant assumes the Lieutenant's responsibilities.

6. The Sheriff heads the Sheriff's Department and the next in command is the Chief Deputy, Stanley Potocki. Under the Chief Deputy are two Captains; one for Operations and the other for Corrections. Under the Operations Captain are the four Lieutenants. The Lieutenants are assigned to the two shifts; noon until 10:30 p.m. and 10:00 p.m. until 7:00 a.m. On a normal shift there is a Lieutenant, three Deputies and one Sergeant. The Lieutenant spends about 60-65 percent of his time on the road essentially performing duties similar to Deputies and Sergeants. The rest of the time the Lieutenant classifies unified crime reporting (UCR) cards, makes routine assignments to the road deputies as to their areas for the particular shift and passes on any special instructions or orders. From approximately 5:00 p.m. until 7:00 a.m., a Lieutenant is in charge of the entire Department. The Lieutenants must punch a time clock and although they work overtime, they receive no compensation for such overtime. In the past because Lieutenants have not been paid overtime, the Deputies have been paid more on an annual basis than the Lieutenants. The Lieutenants may make reports on employee conduct but have no authority to administer discipline or to effectively recommend discipline. The Lieutenants do not evaluate any employees and are not involved in any layoff or recall decisions. They are not involved in any step of the grievance procedure. They may make suggestions as to the need for manpower on a given occasion, but must get approval from the Captain or Chief Deputy to make changes. The Lieutenant's role in hiring is limited to serving on an initial screening panel with a Deputy, Sergeant, and a Captain to interview applicants. The Lieutenants along with the two Captains and the Chief Deputy collectively evaluate individuals for promotion. Their collective evaluation accounts for 35% of the applicant's grade.

7. The Lieutenants do not possess supervisory responsibilities and duties in sufficient combination and degree to render them supervisory employees.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The Lieutenants are not supervisory employees within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Lieutenant is hereby included in the bargaining unit described in Finding of Fact 3, and the bargaining unit description is hereby modified to read:

All regular full-time and regular part-time law enforcement employees with the power of arrest employed in the Sheriff's Department of Portage County, excluding the Sheriff, Captains, supervisory, managerial, confidential and all other employees.

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of February, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

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1/ (See footnote on Pages 7 and 8)

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- 1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(footnote continued on Page 8)

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- 1/ (footnote continued from Page 7)

(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. 227.57 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.



## PORTAGE COUNTY

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

The Association seeks to include the position of Lieutenant, currently occupied by four employees, into the bargaining unit it represents. The County opposes the inclusion on the basis that the position is supervisory.

## POSITIONS OF THE PARTIES

### Association

The Association contends that the Lieutenant's position is non-supervisory when the seven factors historically considered by the Commission are applied to the position. It submits that the Lieutenants play a minor role in the hiring procedure and a minor and preliminary role in promotions. The Association points out the Lieutenants do not transfer, discipline or discharge employees and asserts the evidence indicates that three Lieutenants with over 35 years in the position have never disciplined an employee and that only one employee was given a written reprimand as a result of a report by a Lieutenant. Although Lieutenants are designated shift commanders, the Association argues that assignments made by them are routine and do not require significant independent judgment. It refers to the Sheriff Department's organizational structure which indicates that the four Lieutenants are in the same division as 11 Sergeants and 18 Deputy Sheriffs. The Association contends that if Lieutenants are supervisors, there would be seven supervisors for the Deputies which the Association claims is too high a ratio. It submits that the Lieutenant's pay is comparable to the bargaining unit employees because the Lieutenants do not receive any overtime pay. The Association claims that the Lieutenant's job description does not list a single task which requires the Lieutenants to supervise personnel as opposed to an activity. The Association maintains that the Lieutenants are primarily engaged in law enforcement duties spending 60-65 percent of the time on road patrol and most of the rest entering data into the computer system. The Association contends Lieutenants spend a de minimis amount of time assigning routine tasks to other employees.

The Association asserts that the real supervisory authority rests with the Sheriff, the Chief Deputy and Captains and that the Lieutenants do not exercise any more independent judgment than the Sergeants. It therefore insists that the four incumbents of the Lieutenant position should be found to be non-supervisory and included in the existing collective bargaining unit.

### County

The County contends that the Lieutenants are supervisors and cannot be included in the bargaining unit. The County claims that the Lieutenant position is that of shift commander whose major responsibility is the management and supervision of the personnel and equipment, including the jail, during the shift. It asserts the Lieutenants direct activities relating to riots, rescue operations and other serious emergencies, assign and review work of subordinate staff and assume responsibility for the Department in the absence of the Sheriff, Chief Deputy and Captains. The County argues that as shift commander, the Lieutenants are in charge of their respective shifts and they authorize changes in shift and work assignment, overtime, time off for sick or compensatory leave and call in employees when needed. It insists that

they devote a majority of their time to supervising employees.

The County notes that Lieutenants attend meetings with other management staff, attend instructional sessions that involve supervisory training, participate in the hiring process for new Deputies, and in the promotion process for Sergeants.

The County claims that the Lieutenants recommend discipline of employees and are compensated at a higher level than their subordinates. The County maintains that the Lieutenants use independent judgment in their job.

The County contends that when the seven factors for supervisory positions are applied, the Lieutenants are supervisors as defined in the Municipal Employment Relations Act. The County claims that inclusion of Lieutenants in the unit would create a conflict of interest between the Lieutenants' management responsibilities and loyalty to bargaining unit members. The County asserts continued exclusion would allow the bargaining unit members to exercise their rights without interference by employees who are closely aligned with management. It requests that the Commission retain the status quo and dismiss the petition.

#### DISCUSSION

A supervisor is defined as:

. . . any individual who has authority, in the interest of the municipal employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Section 111.70(1)(o)1, Stats.

Historically, we have considered the following factors in determining if a position is supervisory in nature:

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 skills or for 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; and
7. The amount of independent judgment exercised in the

supervision of employees. 2/

Not all of the above factors need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is supervisory. 3/

We have previously commented that the quasi-military organization of police and fire departments presents a unique problem in making determinations about alleged supervisory status. 4/ We have considered the present case in light of our past decisions affecting law enforcement departments. 5/

When we have found officers, either sergeants or lieutenants, to be supervisors, it has been because the record demonstrates a high level of involvement in major labor relations decisions. For example, the sergeants we have found to be supervisors had the authority: to independently issue verbal and written reprimands and to effectively recommend more severe forms of discipline, to consistently participate in hiring decisions, to conduct meaningful performance evaluations and to call-in additional employees; 6/ to issue oral or written reprimands, or impose a day's suspension, pursuant to written policies; 7/ to consistently participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders and to conduct meaningful performance evaluations; 8/ and, to independently change work schedules, to consistently participate in hiring decisions, to independently take oral and/or written disciplinary action and to effectively recommend more severe discipline, to conduct performance evaluations and to do work substantially distinct from other patrol officers. 9/

Those officers we have found to be non-supervisory have displayed few, if any, of these factors. For example, we found sergeants to be non-supervisory because they had little or no role in the hiring or transfer decisions, could not effectively recommend discipline above a written warning, could not recommend promotions, conducted evaluations which were only preliminary, and shared many work features with those they oversaw. 10/ A lieutenant, who had the routine authority to call in replacements, change work schedules, and approve days off, who performed the same duties as patrol officers, had no role

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2/ City of Rice Lake, Dec. No. 20791 (WERC, 6/83).

3/ City of Wisconsin Rapids (Police Department), Dec. No. 20779-B (WERC, 8/87).

4/ City of Madison, Dec. No. 11087-A (WERC, 12/72).

5/ See Lincoln County, Dec. No. 27789-A (WERC, 10/91); City of Delavan, Dec. No. 12185-A (WERC, 8/88).

6/ Sauk County, Dec. No. 17201-A (WERC, 6/87).

7/ Dane County, Dec. No. 21406 (WERC, 2/84).

8/ City of St. Francis, Dec. No. 24473 (WERC, 4/87).

9/ LaCrosse County, Dec. No. 19539 (WERC, 4/82).

10/ Milwaukee County, Dec. No. 24855 (WERC, 10/87).

in grievance adjustments, did not conduct written evaluations, lacked the authority to impose or effectively recommend discipline, and was often the sole officer on duty, was found to be non-supervisory. 11/ We have also found a chief deputy, in charge of the department on an "on-call" basis every third weekend, to be non-supervisory because the record demonstrated that ". . . he never hired, fired, laid off, adjusted the grievance of, promoted, transferred or rewarded an employee. . .," and his ". . . discipline of employees have (sic) been limited to 'talking to' one or two employees. . . ." 12/

In this case, we find that the Lieutenants are not supervisors because they possess few indices of supervisory status. The Lieutenants do not adjust grievances and do not play a role in the grievance procedure. The Lieutenants do not have the authority to discipline employees or to effectively recommend same. The Lieutenants' disciplinary robe is limited to preparing reports of wrongdoing by lower ranking officers.

The Lieutenants have not evaluated anyone. With respect to new hires, the Lieutenant serves on a panel with Deputies, Sergeants and a Captain on the initial interview. Thus, they do not effectively recommend the hiring of new employees.

With respect to promotions, the Lieutenants, along with the Captains and the Chief Deputy, fill out an evaluation for each review category which combined rating forms a portion of the applicant's total score.

The Lieutenants spend about 60-65 percent of their time doing patrol work and spend other time reviewing and classifying uniform crime reporting (UCR) cards.

Two Lieutenants are paid \$35,689 per year and the other two are paid \$34,990 per year. They receive no overtime pay although they work overtime and are required to punch a time clock. In both 1990 and 1991, based on overtime pay, a significant number of bargaining unit employees received greater gross pay than the Lieutenants. We are not persuaded that any salary difference is for supervising subordinates as opposed to supervising activities and performing non-supervisory duties unique to the Lieutenant position such as classifying the UCR cards.

The Lieutenants do act as shift commanders in the absence of the Captain, Chief Deputy and Sheriff. However, the shift commander only makes routine assignments and special assignments as instructed. If additional manpower is needed for a given occasion, the shift commander makes suggestions to the Captains and the Chief Deputy and has to get their approval to make changes.

The Lieutenants' general assignment functions are routine and do not involve the exercise of independent judgment. The Lieutenants may direct the Deputies and Sergeants at an accident scene or a crime scene but are not thereby supervising the employees in a labor relations sense. A review of the respective job descriptions for the Lieutenant and the Sergeant indicates the Sergeant operates the rescue vehicle and the Lieutenant advises officers on investigative procedures in more complex cases, directs and coordinates law enforcement efforts at major altercations, riots and routs, administers civil and criminal process and maintains the UCR cards for the County's computer

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11/ City of Kiel, Dec. No. 11370-A (WERC, 3/85).

12/ Menominee County, Dec. Nos. 23352-23355 (WERC, 3/86).

operations. These duties primarily involve supervision of activities and not employees.

Given the foregoing, we conclude that the position of Lieutenant does not possess supervisory authority in sufficient combination and degree to make it supervisory. 13/ Accordingly, because the Lieutenants' responsibilities do not

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13/ The County argues that the Lieutenants should be found to be supervisory based in part upon our conclusion in City of Marshfield, Dec. No. 25700-A (WERC, 10/92). However, the two cases can be readily distinguished. In Marshfield we found the Sergeants/Shift Commanders to be supervisory employees in part because they (1) approved work schedule changes, (2) approved vacation, holiday time off, compensatory time, and hour changes between officers, (3) assigned overtime and called in off-duty officers, (4) issued verbal warnings, written discipline and could effectively recommend suspension, (5) evaluated probationary employees and made decisions about retention, (6) played a significant and consistent role in the hiring process, and (7) served as the first step in the grievance procedure. The Sergeant/Shift Commanders in Marshfield exhibit many more factors we consider in determining supervisory status than do the Lieutenants in Portage County.

warrant their exclusion as supervisors, we have included them in the bargaining unit and modified the unit description.

Dated at Madison, Wisconsin this 3rd day of February, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner