

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
CITY OF TWO RIVERS :
(POLICE DEPARTMENT) : Case 56
Involving Certain Employees of : No. 41678 ME-313
CITY OF TWO RIVERS : Decision No. 21959-A
(POLICE DEPARTMENT) :
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Appearances:
Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Gordon E. McQuillen, 20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf of the Two Rivers Professional Police Association/LEER Division.
Godfrey & Kahn, S.C., Attorneys at Law, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, WI 54307-3067 by Mr. Dennis W. Rader, appearing on behalf of the City of Two Rivers.

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

The City of Two Rivers filed a petition on January 30, 1989, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of law enforcement personnel in the City by excluding from that unit six positions of sergeant/shift commanders and detective sergeant. Six days of hearings into the matter were held on April 26, June 6, June 30, July 10, July 11 and September 26, all in 1989, before Examiner Karen J. Mawhinney, a member of the Commission's staff. Transcripts of the proceedings were prepared and both parties filed initial and reply briefs, the last of which was received on February 6, 1990. 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. The City of Two Rivers, herein the City, is a municipal employer having its offices at the Two Rivers City Hall, P.O. Box 87, Two Rivers, Wisconsin. Among its municipal functions, the City maintains and operates a Police Department.
2. That Two Rivers Professional Police Association/LEER Division, herein the Union, is a labor organization having its offices at Seven North Pinckney Street, Madison, Wisconsin.
3. On October 30, 1984, the Union was certified as the representative of a collective bargaining unit consisting of all regular full-time and part-time law enforcement personnel of the City employed in its Police Department, excluding the Chief of Police, Inspector, Captain and employees not having the power of arrest, supervisory, managerial or confidential employees.
4. On January 30, 1989, the City petitioned the Commission to clarify the bargaining unit by excluding from it six positions of sergeants/shift commander and detective sergeant. The City contends that the six positions are supervisory/managerial. The Union asks that the petition be dismissed and disputes that any of the six positions are either supervisory or managerial.
5. The Police Department is headed by Police Chief Michael Lien, who took that position in October of 1986. There are two captains, Joseph Jasmer and David Hartman. There is one Detective Sergeant, Benjamin Geigel, and five other sergeants -- Randall Ammerman, Wayne Stadler, Thomas Brotski, Michael Mixa and Ronald Handl. There are 15 full-time officers, four part-time officers, four full-time non-sworn telecommunicators, three part-time non-sworn telecommuni-cators and six part-time crossing guards. An organizational chart of the Department, prepared by the City, is attached as Appendix A. Sergeants Handl and Stadler were promoted to sergeant in 1973, Detective Sergeant Geigel in 1975, Sergeants Ammerman and Brotski in 1987, and Sergeant Mixa in 1988. As a general rule, the captains work a shift between 7:00 a.m. and 3:00 p.m., Detective Sergeant Geigel works between 9:00 a.m. and 5:00 p.m., Sergeant Handl works between 6:00 a.m. and 2:00 p.m., Sergeant Ammerman works between 2:00 p.m. and 10:00 p.m., and Sergeant Mixa works between 10:00 p.m. and 6:00 a.m. Sergeant Stadler is considered first relief, filling in on all three shifts but working primarily on the 2:00 p.m. to 10:00 p.m. shift, and Sergeant

Brotski is the second relief, working mostly 10:00 p.m. to 6:00 a.m. Outside of Detective Sergeant Geigel's overlapping shifts with Sergeants Handl and Ammerman, Sergeant Brotski and Sergeant Mixa may work the same shift on occasions when no one is off for vacations or other time off. However, such an occurrence is not frequent. The sergeants come in one hour before patrol officers and leave one hour earlier than patrol officers. The Department has a practice whereby both sergeants and patrol officers going off duty pick up their replacements at their homes. Generally, three to four patrol officers and one dispatcher are assigned to each shift.

6. The Chief revised the job description for sergeant/shift commander in 1988. The current job description, revised by the Chief and which became effective September 1, 1988, is the following:

Sergeant/Shift Commander

DEFINITION AND NATURE

The Sergeant/Shift Commander is a supervisory position of the Police Department. He/she is a representative of the City of Two Rivers and the State of Wisconsin. As such, he/she is governed by not only legal but moral standards of the highest nature. His/her philosophy must be one of dedication to the public service, setting aside his/her own personal interest for the common good.

GENERAL DUTIES AND RESPONSIBILITIES

The Sergeant/Shift Commander is under the direct supervision of the Captain of Field Services. He/she is responsible for assisting the Captain of Field Services in the discharge of his/her duties as outlined in the Captain's Job Description. The Sergeant will execute the orders of the Captain of Field Services promptly and willingly. He/she will stand ready to assume the duties of the Captain of Field Services in the Captain's absence. The Sergeant is a Shift Commander and shall supervise, direct, and assign the performance of the patrol officers/work force under his/her command and shall be thoroughly familiar with and be responsible for enforcing all department rules, regulations, policies, and procedures pertaining to the performance of patrol duties, and to the conduct and performance of all subordinates. This includes annual written performance evaluations of non-probationary employees in their work force and at least bi-annual written performance evaluations of probationary employees. The Sergeant/Shift Commander will be required to complete administrative tasks, as well as supervising all personnel working during his/her shift.

The rank Sergeant/Shift Commander has the authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees or potential employees. The Sergeant/Shift Commander will recognize that besides these duties, he/she must also set an example for his/her subordinates by engaging in active/aggressive patrol duties. He/she shall have a working knowledge of all Federal and State Statutes, and City ordinances and shall assure that the members of his/her command are well aware of these laws, as well as department policies, rules, and procedures. The Sergeant/Shift Commander is required to make decisions and issue orders willingly within the scope of his/her authority and shall accept responsibility for his/her own determinations and decisions. He/she shall not abuse his/her authority but will be ready to shoulder his/her given authority and to exercise it judiciously.

EXAMPLES OF WORK PERFORMED

1. Sergeants/Shift Commanders shall be alert for positive professional performance by subordinates, documenting the same, issuing the relevant performance report. He/she will have the duty to prepare subordinates for team-oriented professional supervisory positions. The Sergeants/Shift Commanders have the authority to effectively recommend the promotion and hiring of subordinates.

Sergeants/Shift Commanders shall also be alert to infractions of: rules; regulations; and/or policies committed by subordinates, and shall discipline subordinates per department policy. The Sergeants/Shift Commanders have the authority to effectively recommend the transfer, discipline, or discharge of those employees.

2. The Sergeant/Shift Commander shall personally respond to any serious emergency, accident, and/or unusual occurrence (sic) and shall take command at the scene of the emergency until such time as a superior officer arrives to take command.
3. Each Sergeant/Shift Commander has the authority to direct and assign their work force which includes the supervision of the work product. The work product should be complete, correct, professional, and in keeping with the management goals of the Chief, agency, and community.

The Sergeant/Shift Commander shall also make regular daily checks with his/her subordinates while they are on duty, observing the condition and completeness of equipment, their appearance, demeanor, and work methods. He/she shall, whenever appropriate, point out positively areas of professional excellence with the subordinate and document the same in performance reports/evaluations. Conversely, he/she shall, whenever necessary, point out firmly and courteously the officer's areas of deficiency and insist upon necessary corrections.

4. Sergeants/Shift Commanders shall make special checks with probationary employees assigned to their shift to assure that they are thoroughly familiar with special assignments and/or routines that are performed specifically by his/her shift and to familiarize them with the performance and ability of these personnel. At least biannually he/she shall prepare service appraisal evaluations on probationary subordinates.
5. Sergeants/Shift Commanders shall attend department staff meetings, unless excused, and take an active part in these meetings by informing their superior officers of areas of positive performance or in areas which deficiencies appear. They shall also have solutions or make recommendations as to what steps might be taken to correct these deficiencies.
6. Sergeants/Shift Commanders shall complete annual written service appraisals on the performance of the non-probationary officers in their command. These reports shall be discussed with each officer to support and develop professional work methods to correct any deficiencies that are occurring. These service appraisals shall then be forwarded to the Captain of Field Services Division.
7. Sergeants/Shift Commanders shall annually provide three realistic, achievable, and measurable objectives which improve their performance or the operations of the Field Services Division.

8. Sergeants/Shift Commanders shall give speeches before civic and social groups as assigned and shall work at promoting public relations in all ways possible. They shall constantly sell the department through demonstration of best possible service to the public.
9. Sergeants/Shift Commanders shall keep all records required of them current and accurate and shall assure that records and reports required of their subordinates are completed promptly and accurately.
10. Sergeants/Shift Commanders shall recognize that he/she is a police officer for the City of Two Rivers and will take appropriate police action which a situation dictates.
11. Sergeants/Shift Commanders shall keep them-selves abreast of modern police techniques and keep subordinates informed in matters pertaining to their duties.
12. Sergeants/Shift Commanders shall attend all in-service and specialized training schools as assigned by their supervisors.
13. Sergeants/Shift Commanders shall be responsible for the proper care and maintenance of department equipment that is used by them or the officers under their command.
14. Sergeants/Shift Commanders shall acquaint themselves with special events scheduled to take place. They shall inform the Field Services Captain of these events and assist him in supervision at these events.
15. Sergeants/Shift Commanders shall issue regular and special assignments to the members of their command, at briefing time. They shall also use this time to conduct periodic uniform inspections and advise officers of changes in department policy.
16. Sergeants/Shift Commanders shall perform all tasks as assigned.
17. Each Sergeant's/Shift Commander's position will also from time to time be assigned certain specific administrative tasks by the Chief of Police or his/her designee which will be the duty and responsibility of the Sergeant/Shift Commander to carry out.

QUALIFICATIONS

Minimum Knowledge, Skills, and Abilities

1. Thorough knowledge of department policies, procedures, and rules governing the operation of the Police Department.
2. Considerable knowledge of firearms and first aid.
3. Working knowledge of Federal Laws, State Statutes, and City Ordinances.
4. Ability to keep records and complete department reports and evaluations.
5. Ability to work cooperatively with fellow employees, other police agencies, and the public.
6. Ability to assign, supervise, and review

the work of subordinate employees.

7. Considerable knowledge of modern police principles, supervision, and management techniques.
8. Ability to evaluate programs and needs of the police function and to suggest improvement.
9. Must be physically able to perform the duties required of the position of a police officer, including, but not limited to:
 - a. Use of equipment and weapons commonly used by law enforcement officers.
 - b. Running for both short and extended distances.
 - c. Lifting and carrying injured people to safety.
 - d. Ability to perform Use of Force Tactics commonly called RISC Management.
 - e. Ability to bend, stoop, crouch, etc., in order to perform CPR and render first aid to injured or ill persons.
 - f. Must have in general the strength and stamina to perform the duties of a police officer.
10. Must possess or be able to acquire a valid drivers license.
11. Commitment to personal, professional, and educational development of himself/herself and his/her subordinates.

Desired Training and Experience

1. Associate degree in criminal justice or equivalent training and experience.
2. Advanced specialized training in police administration and knowledge of supervisory concepts.

Special Requirements

1. Must comply with special requirements as set by the Police and Fire Commission of Two Rivers.

ADDENDUM TO JOB DESCRIPTION -- SERGEANT/SHIFT COMMANDER

Detective Sergeant

DEFINITION AND NATURE

The Detective Sergeant is a supervisory position of the Police Department. He/she is a representative of the City of Two Rivers and the State of Wisconsin. As such, he/she is governed by legal and moral standards of the highest nature. His/her philosophy must be one of dedication to the public service, setting aside his/her own personal interest for the common good.

GENERAL DUTIES AND RESPONSIBILITIES

The Detective Sergeant is a member of the Investigative Services Unit, which is with the Field Services Division; consequently, he/she is under the direct supervision of the Captain of Field Services. He/she is responsible for the investigation of all matters assigned to him/her. The Detective Sergeant must also be thoroughly familiar with court room

procedures.

EXAMPLES OF WORK PERFORMED

1. The Detective Sergeant shall investigate all complaints that are assigned to him/her.
2. The Detective Sergeant shall respond to and investigate all calls from citizens regarding complaints of a criminal nature.
3. The Detective Sergeant shall make all necessary arrests that are warranted as a result of his/her investigations.
4. The Detective Sergeant shall conduct lengthy investigations of major crimes such as but not limited to: murder, arson, etc.
5. The Detective Sergeant shall interview and interrogate suspects of and/or witnesses to a crime.
6. The Detective Sergeant shall become familiar with photographic equipment and use this equipment to photograph crime scenes. He/she shall prepare these photographs for use as evidence in court proceedings.
7. The Detective Sergeant shall locate and lift latent fingerprints at a crime scene and from evidence located and removed from the crime scene.
8. The Detective Sergeant shall testify in court honestly, impartially, and convincingly, bearing in mind that he/she is a witness relating facts to a Judge and/or a jury so that they can make a decision as to the guilt or innocence of a defendant.
9. The Detective Sergeant shall maintain all records required of him/her and shall prepare all required reports completely, promptly, and in a form that can be easily understood.
10. The Detective Sergeant shall collect, properly mark, and secure all evidence of crimes to assure the preservation of the chain of evidence.
11. The Detective Sergeant shall cultivate congenial relations with department personnel, members of other agencies, and the general public for the purpose of promoting mutual trust and respect.
12. The Detective Sergeant shall, when requested, respond to the scene of a major crime, and shall be in charge of that crime scene unless otherwise assigned by Division Commander or the Chief of Police. The Detective Sergeant has the authority to direct and assign needed work force personnel to assure that the major crime scene is adequately protected, and that all evidence is collected and properly processed. The Detective Sergeant will supervise the subordinates assigned or working for him/her.
13. The Detective Sergeant will be responsible for supervising the Police School Liaison Officer and the Crime Prevention Officer and their related programs.
14. The Detective Sergeant shall be responsible for all duties as outlined in

the Sergeant/ Shift Commander Job Description.

15. The Detective Sergeant shall perform all tasks as assigned.

QUALIFICATIONS

Essential Knowledge, Skills, and Abilities

1. Thorough knowledge of criminal investigation procedures, including the lifting of finger-prints and police photography.
2. Working knowledge of court room procedures.
3. Ability to establish a rapport with the public and be able to elicit information from the public.

Desired Training and Experience

1. Associate degree or its equivalent in criminal justice.
2. Some advanced training in criminal investigation procedures.

Special Requirements

1. Must comply with requirements as set by the Police and Fire Commission of Two Rivers.

The previous job description in effect between 1986 and 1988 is the following:

POLICE SERGEANT

NATURE OF WORK

This is responsible and consists of general duty police work in protecting life and property. This position is that of a working foreman. The work involves responsibility for the proper utilization and supervisor of police officers on an assigned shift and participation in the work performed by subordinates. This is the need to accept responsibility and at the same time be available for assignments from headquarters in the field. Incumbents in this class must act independently in sizing up situations and in using available resources to control them. Work is reviewed and evaluated through observation, inspection, conference and written reports to the Captain of Police, Inspector of Police, as well as, the Chief of Police.

ILLUSTRATIVE EXAMPLES OF WORK

Inspects equipment and appearance of subordinates; assigns men to posts; reads special orders and gives special instructions; briefs personnel on activities of past twenty-four hours or greater, dependent upon officer's schedule; receives and checks all officer's reports and maintains record of activities of police officers during tour of duty.

Supervises police officers on posts and in patrol units; gives instruction and assistance as required; assigns and supervises men at fires and other emergencies; investigates and reports on complaints about subordinate personnel; maintains discipline.

Evaluates the behavior of subordinates; makes suggestions on how to improve police services in the community.

In the absence of a Stenographer-Dispatcher, answers police telephone, receiving complaints,

inquiries and requests for police aid; secures information as to nature and location of offense or accidents; dispatches men and equipment to scene of disturbances, accidents, crimes and any emergency, by the use of radio telephone equipment and in accordance with standardized procedures; receives, records, and relays messages to officers.

Keeps radio log record of all communication occurring on assigned shift; answers telephone calls and requests for information, and providing routine departmental information or routing inquiries to appropriate personnel.

Receives and issues receipts for fines, penalties, and permits, and maintains routine and complex records and files.

The incumbent in this class must be available to perform the duties of a shift-commander, special investigator, plain clothes detective, juvenile officer, juvenile crime prevention officer, or in any other capacity so assigned or a need exists, from an officer assignment to foot beat, to patrol, or to a squad driver.

Performs related work as required.

KNOWLEDGES, ABILITIES, AND SKILLS

Considerable knowledge of modern police practices and methods.

Considerable knowledge of controlling laws and ordinances, particularly the laws of arrest and evidence.

Knowledge of the geography of the City.

Knowledge of the rules and regulations of the police department.

Knowledge of the principles of accident investigation and the techniques of interrogation.

Knowledge of first aid principles and skill in their application.

Ability to plan, assign, and supervise the work of other police officers.

Ability to deal firmly and courteously with subordinates and the public.

Ability to analyze situations quickly and objectively, and to determine proper courses of action to be taken.

Ability to speak and write effectively.

Skill in use and care of firearms.

DESIRABLE EXPERIENCE AND TRAINING

Considerable experience in law enforcement and crime prevention work; and graduation from a standard high school or possession of an acceptable certificate of equivalency.

NECESSARY SPECIAL REQUIREMENTS

Must meet such mental and physical requirements as may be established by the Police and Fire Commission.

7. The process for hiring police officers is complex. Candidates first fill out applications which are screened by the Police and Fire Commission (PFC) and its staff. The names of those that pass the paper-screening process are sent to the Wisconsin City-County Testing Service which administers a written test in 14 cities around the state. The PFC receives a list of scores and invites the top candidates for interviews and physical testing. Candidates passing those interviews and physical tests are placed on

an eligibility list established by the PFC. A staff interview with top candidates is also arranged with a panel made up of the Chief, two captains and one sergeant conducting a group interview. At one time, the PFC held interviews in advance of the staff interviews, but now the PFC interviews and staff interviews can be held about the same time, and a candidate must pass both parts to continue to be placed on the eligibility list. Candidates so remaining on the eligibility list are referred for background investigations, done by a member of the Department. If a candidate passes the background investigation, he or she is invited for psychological screening, a medical examination and a final interview with the Chief. The PFC retains the final authority on hiring decisions, and in one instance, overrode a recommendation of the Chief.

8. Sergeants started participating in staff interviews for job applicants after Chief Lien became the head of the Department. In interviews for full-time officers, one sergeant, two captains and the Chief each score candidates and then average their scores. Sergeants draw up their own questions to ask applicants and usually ask two questions. In April of 1989, Sergeant Stadler took part in a team interview process, as described above, for a full-time police officer. However, none of the candidates recommended by that team conducting the staff interview was hired because there were no openings in the Department when the eligibility list was established and the candidates remain on the eligibility list. This was the only time Stadler was involved in an interview for a full-time police officer. In March of 1989, Stadler participated in a group interview for a part-time police officer. He recommended the hiring of three candidates and one of the three was hired, although not his top choice. Sergeant Ammerman has interviewed applicants for positions of school crossing guards by himself, usually by speaking with them at their homes. He makes recommendations regarding the hiring of crossing guards to Captain Jasmer, who forwards them to the Chief. His recommendations are usually followed in hiring crossing guards. Ammerman is always involved in interviews for hiring dispatchers or telecommunicators. Interview panels for hiring dispatchers are composed of Ammerman, Captain Jasmer, and one or two dispatchers. Ammerman drew up a list of about 40 questions which he distributes to other panel members for the interviews. Ammerman's personal recommendations for dispatchers have been followed. Ammerman was on an interview panel for a full-time police officer in May of 1988. Sergeant Brotski had not participated in any interviews for job applicants at the time of the hearing. Sergeant Handl participated in interview panels in July of 1987 and in February of 1988, when he interviewed applicants for police officers along with the two captains and the Chief. Handl also took part in an interview panel in 1987 to select a crime prevention officer, a lateral position for a current police officer. The panel to select the crime prevention officer was composed of six people -- two sergeants (including Handl and a former sergeant), Captain Hartman, and three people from the private sector news media in the Manitowoc-Two Rivers area. Both Sergeant Mixa and Detective Sergeant Geigel participated in the selection process for a police school liaison officer, a lateral position for a current police officer. In addition to Mixa and Geigel, Captain Hartman, two school principals and one instructor sat in on the selection process for the police school liaison officer. Neither Mixa nor Geigel have participated in interviews for job applicants for police officers.

9. Job applicants remaining on an eligibility list following interviews go through background investigations before being hired. Sergeant Mixa is in charge of conducting background investigations. A background investigation entails looking at an applicant's school records, work records, financial records, criminal records, traffic records, personal references, etc. The person assigned to the background check is to make a recommendation as to whether a candidate should be hired. Mixa also performed background investigations while he was a police officer -- about three as an officer and two or three as a sergeant. Geigel checked the background of one candidate. Ammerman performed background investigations for one part-time officer, several dispatchers and all crossing guards since he became sergeant. For the most recent hires, the captains and the Chief performed the majority of the background investigations. Mixa was not available to do the majority of those background investigations because he was absent from the Department for training. If an officer finds something negative in the background investigation of a candidate, he would recommend not hiring the candidate; candidates have been rejected because of information obtained in background investigations. If nothing negative turns up in the investigation, the officer recommends the hiring of the candidate; in some cases, candidates have been subsequently hired and in other cases, they have not been hired due to a variety of reasons.

10. Sergeants have no authority to adjust or process grievances and are bypassed in the grievance procedure by the terms of the collective bargaining agreement which calls for an employee to contact his captain in the first step of the procedure. Adjustment of grievances are not discussed in supervisory staff meetings which sergeants attend. Sergeants Brotski and Mixa have taken part in the grievance procedure to the extent that where officers have grieved matters the sergeants put in performance reports, the sergeants provided information to defend their positions. In one case, Brotski recommended to a captain that part of a performance report on an officer be withdrawn, although

he lacked the authority to take such action by himself. In another case, the Chief asked if both Mixa and the officer involved would agree to delete one sentence from a performance report and they both agreed. Brotski grieved his own evaluation made out by Captain Hartman wherein Hartman had noted that Brotski was doing more of the job of a patrol officer instead of a sergeant. The end result of that grievance was the some items would be deleted from Brotski's annual evaluation and would be included in a counseling session instead.

11. A standardized form called "Service Appraisals" is used for employee performance evaluations. Captain Hartman fills out service appraisals for sergeants, and the sergeants fill out service appraisals for patrol officers and dispatchers. Sergeants have done service appraisals on subordinate officers for at least 10 to 15 years. Until 1988, Sergeant Ammerman filled out service appraisals on dispatchers; however, the sergeants decided collectively that they should be handling service appraisals on those dispatchers with whom they work. The sergeants also decided that they would get together as a group to go over all officers, as officers may work under the direction of different sergeants at different times. Detective Sergeant Geigel fills out a service appraisal only for the police school liaison officer and only for the nine month period that officer is assigned to that duty; the police school liaison officer receives another service appraisal from other sergeants for the remaining period of time. Sergeants discuss the content of the service appraisals with officers before sending the form to the captains and the Chief. Service appraisals are used in the Department to mark an employee's progress, to look back on an employee's record in the promotional process, to decide whether to retain probationary employees, and for disciplinary purposes. Most of the service appraisals made out by the sergeants are not changed by superior officers. The Chief changed two of them since his arrival, mainly because the sergeants had not positively recognized officers' extra-curricular activities or community involvement above and beyond the call of duty. Captains have sent service appraisals back to sergeants where boxes on the forms have been left unchecked. Sergeants also send to the captains a monthly memo with short notations about how officers are doing on the job. Service appraisals are done on an annual basis for regular officers and more frequently for probationary officers. Field training officers also have input into appraisals of probationary officers. The standard form has a list of major duties with percentages of time spent in each category listed. Captain Hartman has used the same form that was in existence when he was promoted to captain and had no knowledge of how those percentages of sergeants' time were devised. Sergeant Brotski does not agree with the percentages assigned to him; most of the other sergeants agree that the percent-ages are somewhat accurate. The service appraisals for the sergeants show that their time devoted to major duties is broken down as the following:

- 5% - administrative department rule, regulations and policies
- 3% - discipline of subordinates
- 20% - inspect subordinates and their work product
- 5% - schedule manpower
- 10% - investigate complaints
- 10% - oversee traffic and ordinance enforcement
- 20% - check and review all reports of subordinates
- 15% - take charge of department in the absence of superiors
- 2 to 7% - train subordinates in policies, patrol, etc.
- 10% - other duties

Detective Sergeant Geigel's service appraisal has the following amounts of time devoted to major duties:

- 5% - report writing
- 20% - investigate complaints
- 5% - testify in court
- 10% - collecting evidence at crime scene
- 25% - interrogating suspects
- 25% - interviewing witnesses
- 2% - fingerprinting individuals
- 5% - drug enforcement
- 3% - training

Sergeant Brotski has a special interest in evaluations or service appraisals. In 1983, when he was still a patrol officer, Brotski prepared a study for the previous police chief regarding service appraisals. Some of his recommendations from that study were implemented piecemeal over the years. Brotski collected materials on service appraisals from different schools he attended during a seven or eight year period. Chief Lien directed Brotski to

prepare a course of instruction to train himself, the captains and other sergeants in the proper application of the service appraisal system in the Department. Brotski presented the program to the group in January of 1989.

12. In the last round of selection of sergeants, the previous job performances of officers as shown through the service appraisals accounted for 20 percent of the criteria for selecting new sergeants. The Chief originally established that previous job performance would account for 15 percent of the promotional process. However, through an arbitration award dealing with the promotions, the amount was increased to 20 percent to give more emphasis to seniority. The sergeants -- particularly Handl -- wanted more points to be given to senior people and recommended to the Chief that each candidate for sergeant be given a half point for each service appraisal. Accordingly, an officer with three service appraisals would get 1.5 points while one on the force only a year with one service appraisal would get 0.5 points. The captains and the Chief also sat in on the process for selecting a sergeant. Other criteria used for promoting a sergeant did not involve the sergeants. Promotions are also governed by the collective bargaining agreement and the PFC.

13. Since Chief Lien's arrival, the only formal disciplinary actions for officers have been two warning letters issued by Captain Hartman. Sergeants have the authority to issue both oral and written reprimands. A form called a "performance report" (or also called a "green sheet") is used extensively by the Department. The performance reports are filled out at random, when an officer or a sergeant does something that is worth noting. The form includes three categories of performance -- to be rated as commendable, satisfactory, or deficient. The form also has a space for comments to support the rating given. Captains or the Chief fill out performance reports on sergeants; sergeants fill out such reports on subordinate officers. The parties dispute whether these performance reports are and should be disciplinary in nature. The Union maintains that performance reports are part of the disciplinary process; the Chief disagrees. Performance reports in which officers have been rated deficient have been the subject of grievances. Stadler has given oral discipline to officers on a regular basis by telling them about something they are doing incorrectly; he does not usually keep any written records of oral reprimands, except one in 1984 where he rated an officer's work as deficient for being late and noting on the form that the officer was given a verbal reprimand. Stadler has not issued any written warnings. Ammerman has had a more active role in discipline than other sergeants, particularly in the discipline of dispatchers and crossing guards. For example, Ammerman issued a written warning to a dispatcher for failing to send an officer to a location. The warning was signed by Ammerman and Captain Jasmer. Ammerman recommended the dismissal of a crossing guard for attendance problems and the person was dismissed. Ammerman also recommended terminating a probationary part-time dispatcher due to absenteeism, and the dispatcher was terminated. Ammerman has filled out a number of performance reports on officers, rating them from commendable to deficient for various conduct. Ammerman investigated a citizen's complaint regarding the manner in which an officer handled a traffic stop. Ammerman made a recommendation that the Department's policy be changed because the citizen's complaint was valid but the officer had acted in accordance with prior training. Captain Jasmer disagreed with Ammerman's recommendations, but the Chief overruled Captain Jasmer and agreed with Ammerman's recommendations. The Chief later issued a memo regarding the citizen's complaint and the policy that resulted from it, namely to have drivers remain seated in their vehicles in the future. Brotski has issued oral reprimands to the extent of telling officers how they should improve their performance. Brotski has issued numerous performance reports which rate officers as both commendable and deficient. In one instance, a performance report became a grievance where the officer objected to Brotski's report. While serving as a field training officer and before becoming a sergeant, Brotski recommended the dismissal of a probationary police officer, but that recommendation was not followed. As a sergeant, Brotski feels he has the authority to issue oral and written reprimands but would check first with a captain before issuing a written reprimand. In November of 1988, Brotski became suspicious -- due to a remark made by one officer -- that another officer about to come on duty may have been drinking alcohol and would be unfit for duty. Brotski called Captain Hartman at home, who told him to have the officer submit to a preliminary breath test to check his alcohol levels and told him that if the officer refused, Brotski should call him back and he would call the Chief. The officer submitted to the test, there was no alcohol content found and the officer stayed on duty. It was later learned that the whole incident had been a joke. At the next staff meeting, the sergeants asked the Chief about what their authority was in the event of a similar incident. The Chief informed the sergeants that they had the authority to place an officer on furlough -- a suspension with pay -- and to relieve the officer of his duty, take his gun and badge and send him home. The Chief issued a memo confirming sergeants' authority to furlough an officer. Geigel has issued an oral reprimand. Geigel investigated the conduct of one officer no longer with the Department because of his conduct. Geigel passed on information he received from an informant about the officer, but did not get more involved because he was a Union officer at the time. He made no official recommendation about that officer. Mixa has not formally reprimanded employees, but has gone through the informal process of

consultations with officers and has written performance reports, including one that was grieved. Handl has issued performance reports and a verbal warning. Two sergeants no longer with the Department -- Lloyd Wilda and Peter Eckley -- recommended written warnings that were issued to a former officer. Captains have the authority to issue oral or written warnings to everyone in the Department under them, including sergeants.

14. Sergeants do not have the authority to lay off employees, recall employees from layoff or transfer employees. The order of layoff is covered in the bargaining agreement. The Department does not have any transfers of employees, except that the contract allows for voluntary demotions -- i.e., a sergeant can "bump back" to the position of patrol officer.

15. In 1988, Sergeants Geigel and Mixa and Captain Hartman were asked by the Chief for their recommendations regarding any changes in the job description of the police school liaison officer. A panel of three people from the school district and the three officers made recommendations which were incorporated into a revised job description by the Chief. The two sergeants, the captain and the panel from the school district also made recommendations regarding the process to be used to select a new police school liaison officer. The group agreed that the criteria to be used consist of 25 percent for occupational interest/psychological profile testing, 25 percent for previous job performance and 50 percent for oral interview and presentation/written lesson plan. Geigel's recommendation of the percentages to be applied were changed slightly, where he had recommended 10 percent for a candidate's resume and 40 percent for the oral interview. The officers also drafted their own questions for the oral interview; Geigel asked one question which the group agreed upon. A similar selection process for a crime prevention officer was set up with two sergeants (Handl and former Sergeant Eckley), one captain and three civilians who were representatives of the local news media. The panel had conducted oral interviews of candidates, with the officers rating the person who got the position as their second choice. The crime prevention officer (Officer Mohr) and the metro drug officer (Officer Gerard) are supervised by Geigel when they perform those functions. Otherwise, Mohr is under the general supervision of Sergeant Ammerman and Gerard is under the supervision of Sergeant Mixa. The metro drug officer spends about 15 hours a month for that assignment; the crime prevention officer is expected to accomplish his duties during regular duty hours, but there is no estimate of how much time that function takes. Captain Hartman sent a memo to Geigel in 1988, notifying Geigel that he is the supervisor of the crime prevention program and the crime prevention officer. The memo specified that the crime prevention officer is to write a monthly report to Geigel; that Geigel must get approval from Hartman for costs of items not budgeted and all budgeted items over \$25.00; that the crime prevention program would be allowed 52 hours of overtime per year; that any unusual requests be approved by Hartman and that any disagreement between Geigel and the sergeant/shift commander for granting time for crime prevention activities would be resolved by Hartman. In conjunction with the crime prevention program, Geigel is responsible for developing new programs, such as the neighborhood watch program, a fleet watch program in which utilities providing public service have direct radio contact with police, and a media watch program where officers get together with the media for public service information. Geigel is also responsible for seeing that the "Officer McRuff" character -- a public relations tool for schools and parades -- is carried out. The crime prevention officer is also involved in security surveys of commercial and business property and making recommendations to upgrade security systems. In 1989, Captain Hartman sent Geigel a memo regarding his responsibilities for the metro drug unit, advising him that Geigel would approve all work done outside the City and all overtime; that Hartman would allow 25 hours of overtime for this program, but that as no overtime was budgeted, Geigel should use officers on duty time as much as possible. Hartman also established that 38 hours of overtime would be allowed for the police school liaison officer. Geigel was also assigned by Hartman to be in charge of the crime stopper tips program, which involves receiving tips, noting them on an incident card and seeing whether a follow up is necessary or what priority the tip has. If Geigel is unavailable, either Hartman or a shift supervisor will assess the incident cards. In connection with that program, Geigel sent a memo to all personnel that a tipster line with an answering machine had been established.

16. Sergeants may approve of shift trades where officers want to trade shifts among themselves. The bargaining agreement provides that such shift trades are to be approved by the Chief, but the Union president requested that the Chief not be the only person allowed to sign for a shift trade. The Chief delegated the authority to both captains and sergeants.

17. Captain Hartman makes up the monthly schedule of shifts. Both sergeants and patrol officers select their preferred shifts by seniority, pursuant to the terms of the bargaining agreement. The contract calls for a 5-2, 5-3 schedule with eight hour work days. Vacations are also selected in part by seniority, under the contract, with some remaining vacation time granted on a first come, first served basis. Sergeants approve vacation requests for those days not previously selected according to the contract. Sergeants may deny requests for time off if there is a lack of manpower. The

contract also provides that overtime will be distributed as equally as possible within the classifications of patrolmen and sergeants. Sergeants have the authority to authorize overtime, call in extra officers or replace officers, change work schedules, grant time off for vacation and sick leave. Sergeants may use their own judgment to call in extra personnel for emergencies. Sergeants can change beat assignments or reassign duties based on needs. Compensatory time was new to the Department at the time of hearing, but sergeants and captains approve compensatory time requests. The sergeants' role in granting requests for time off is to determine whether there is sufficient manpower on duty to accommodate certain requests by officers, such as time off to attend training or schooling. Brotski schedules the hours of part-time officers, using the guideline of 600 hours for each part-timer. Brotski did not establish the guideline; the City Manager probably established that guideline. Ammerman schedules the hours of dispatchers, and he developed an overtime equalization system for dispatchers similar to that used by patrol officers. Geigel may assign overtime within specified allotted hours to the crime prevention officer and the police school liaison officer. The Department has allotted 52 hours per year of overtime for the crime prevention officer and 38 hours per year for the police school liaison officer. Captains assign work to sergeants and other employees. Their authority to grant requests for time off is co-extensive with sergeants, except that captains may additionally grant leaves of absence with permission from the Chief.

18. Sergeants supervise the manner in which officers handle cases in the field. A sergeant or a dispatcher may assign officers to a particular case. A sergeant may also respond to a scene as back-up to officers, but he is there primarily to oversee the officers on the job, rather than to handle details such as an investigation report. Detective Sergeant Geigel manages and supervises all major crime scenes, by assigning personnel or the number of personnel to be on the scene. Geigel directs the work of both officers and sergeants on crime scenes and is responsible for seeing that officers handle evidence properly, that proper statements are obtained and that the proper elements of a crime are established. Geigel manages the case through the court process to see that the District Attorney has information or assigns someone to carry out that function.

19. Sergeants are assigned to certain specialized areas that they direct and control. Stadler is the intoxilyzer coordinator and emergency government liaison (nuclear drills) and a member of the law enforcement committee of the Sec. 51.42, Stats. Mental Health Board, the overtime coordinator and the facility up-date coordinator. Ammerman is the telecommunicator coordinator and the crossing guard coordinator. Brotski is the instructor coordinator and the field training coordinator. Mixa has the following seven assignments: (1) department photo coordinator; (2) lost and found property officer; (3) archive officer; (4) underwater search and recovery team; (5) applicant investigator; (6) roll call film training coordinator; and (7) tavern inspection coordinator. Geigel is in charge of activities relating to the supervision of the police school liaison officer, the crime prevention officer and the metro drug officer. Handl is the special activities coordinator, the vehicle maintenance coordinator, and in charge of a monthly report on overtime and days off. In carrying out their specialized assignments, sergeants may assign all personnel to participate in events such as parades or firearms training. Sergeants send out a wide variety of memos, generally related to their areas of specialty. Detective Sergeant Geigel has sent out memos to all personnel informing them of such things as securing evidence, the method to report evidence collected, handling complaints on forged checks, informing staff where sexual assault kits are kept and that copies of changes in the law regarding domestic abuse and children's code were available. Sergeant Ammerman has sent out memos on topics such as informing officers of what equipment they should have when directing traffic, relaying severe weather information, terrace parking permits, officers' contacts with citizens, the need for accuracy in reporting and recording information, etc. Ammerman, as the person in charge of dispatchers, has sent memos to sergeants and dispatchers regarding response procedures for handling problems with hazardous materials, how breaks and lunch breaks are to be handled, and how forms are handled for part-timers who call in sick. Ammerman has set up a "nominal group process" for dispatchers whereby the group assigns points to problems and establishes priorities and objectives. Ammerman set up a system for officers and dispatchers for transcribing tapes or reports on a priority basis. He also developed a booklet called a training guide for telecommunicators. He conducted most of the research and collected information to be put in the booklet and drafted the document. He presented a training session to other officers and sergeants concerning the telecommunicator training guide. As the special activities coordinator, Sergeant Handl is responsible for all major events in the City, such as the Christmas parade, the homecoming parade, the Memorial Day parade, the Snowfest event, etc. Handl applies to the State for permits for street closings and assigns officers, including sergeants, duties for events. He determines how much personnel is needed for an event, and once he has scheduled the manpower, he checks with a captain to see if any changes need to be made. Handl may check with Sergeant Stadler for extra manpower needs, because Stadler is in charge of overtime. Sergeant Ammerman also fills in for Handl on parades that fall within his shifts and assigns officers to

duties with respect to those parades. When Sergeant Stadler fills in for Handl, Stadler also handles special events. Stadler denied a request from another city for a marked squad unit in a parade, because he determined that manpower would not allow for that. Handl is also in charge of vehicle maintenance and handles bills turned in from officers and gets specifications and bids on new squad cars. Handl sees that officers follow a vehicle maintenance schedule or takes vehicles in for repair himself. Handl checks fluid levels on all vehicles on a daily basis. Sergeant Stadler also takes care of maintenance when working a day shift, and he sent out a memo that an octane booster would be added to gasoline, because mechanics told him that the vehicles would not run well with the low octane gasoline that the City was using. Handl is also the court officer, appearing in municipal court on behalf of the Department on a weekly basis. He also keeps a departmental report on overtime and days off which is later put in monthly and annual reports. Sergeant Stadler, as the intoxilyzer coordinator, sees that officers are certified to run the equipment, that they retain their certification, and that the State provides a service technician for the equipment. Stadler has issued a number of memos to all personnel dealing with changes in the OMVWI law and advising all personnel how to handle intoxilyzer results, notices of intent to suspend driving licenses, subpoenas and affidavits in conjunction with arrests for drunk driving. Stadler serves as the Department's representative on the Local Emergency Planning Commission. Because there are two nuclear power plants in the Two Rivers area, there is an active emergency government planning organization, and drills are often run with the Nuclear Regulatory Commission. Stadler issued a memo to all personnel, notifying them that the Emergency Response Guide Book was put in each squad car. As a member of the Law Enforcement Committee of the Sec. 51.42, Stats. Mental Health Board, Stadler acts as a representative of the Department and is responsible for implementing any change in policy or procedure regarding mental commitments and alcohol commitments. As the facility up-date coordinator, Stadler makes sure that cleaning, painting and janitorial work is done. He also make recommendations for the physical facility. As the instructor coordinator, Sergeant Brotski is in charge of all activities related to firearms, RISC (Rapid Intense Specific Competencies, which are defensive physical maneuvers to protect an officer or to subdue an individual), CPR and first aid. Brotski trains personnel and coordinates training schedules for firearms training or RISC training. Brotski schedules all officers, including the Chief, for practice shoots which are held quarterly, as established by the Department. Brotski is also responsible for overseeing the field training program, which involves training for new police officers. Brotski supervises the field training officers who have specialized training themselves to train probationary officers, but does not train probationary officers himself. There are five field training officers in the Department and Brotski meets with them to see that they are getting information across to the new officers and that they use the proper techniques. The field training officers turn in weekly evaluations on probationary officers to Brotski, who checks them and turns them into a captain. Brotski is assigned to be the firearms coordinator and one of the firearms instructors -- Officer Bero -- told Brotski that he was going to tell the Chief that he wanted to quit the program. Brotski wrote a note to the Chief, telling him that if Bero did not want the assignment, he should be relieved of it. The Chief felt that Brotski was inexperienced in dealing with a personnel matter, that Bero had been doing a good job and that Brotski had not done his job in documenting the request to relieve Bero of the assignment. The Chief sent a memo to Brotski indicating what steps Brotski should take to document his recommendation before relieving Bero of the firearms instructor duty. Sergeant Mixa, as the photo coordinator, supervises another officer who sees that film and equipment is available, and that film is developed, labeled and filed properly. Mixa is also in charge of the underwater search and recovery team and plans Department dives, sees that equipment is in working order and that the team has training and certification. As the roll call film training coordinator, Mixa has roll call training films available to be shown to officers. As tavern inspection coordinator, Mixa coordinates the inspection of licensed establishments to see that they are meeting statutory requirements. Mixa assigns other sergeants to see that inspections are carried out on their shifts, as well as assigning officers on his shift to perform the inspections. The bulk of inspections for 1989 were done by Sergeants Stadler, Handl and Ammerman.

20. The Chief has delegated certain duties to sergeants, such as granting permits for beer gardens and permits for winter terrace parking. Sergeants or captains normally approve terrace parking requests, although one patrol officer has done so in the past and may still do so. Sergeants make news releases to the media in the absence of the captains or the Chief. Sergeants are designated to see that workers' compensation claims forms are filled out and filed. Sergeants give direction to officers on matters of departmental policy or the authority of the agency. For example, Sergeant Ammerman advised Officer McConnell that a complainant should handle a matter himself, as the agency did not have the authority to take the action requested by the complainant.

21. Sergeant Ammerman has an extensive background in firearms training and RISC training. As part of a staff study project for a school, Ammerman decided to look into the possibility of changing service revolvers used by the Department. He encouraged the Chief to consider switching the type of handguns

used and in December of 1987, the Chief assigned Ammerman to chair a group of Sergeant Handl and Officers Bero and Wilson to test and recommend firearms for purchase. Ammerman collected information from gun manufacturers and distributors and tested weapons, which the group rated. Ammerman's personal preference of a gun model was not the top choice of the group. In January of 1988, the group recommended that the Department switch from a traditional revolver to a semi-automatic weapon. The Department purchased several weapons of the model recommended. While Ammerman had been in charge of firearms training and RISC training, Sergeant Brotski took over that role in July of 1988. Both Ammerman and Brotski told the Chief informally that they were displeased with the present direction of the firearms training program, and in December of 1988, the Chief sent a memo to both of them, asking for their written recommendations about the program. Both Brotski and Ammerman recommended that certain officers be sent to firearms instructor schools or instructor development courses and those recommendations were being implemented as courses allowed during 1989.

22. Sergeants are not assigned to specific beats. In 1986, the Union grieved a memo issued by Captain Hartman assigning sergeants to beats, and the grievance was resolved when the City agreed not to assign sergeants to beats. Sergeants spend a majority of their time inside and do not spend significant amounts of time doing the same work as patrol officers. Stadler spends 90 percent of his time inside the office, a change from years ago when he used to cover accidents and go on calls. Ammerman occasionally goes on calls when the need arises due to personnel shortages or when officers need more assistance, and he estimates that he is called out of the office a few times a week to assist patrol officers. Brotski spends more time than other sergeants doing work similar to that of other officers, partly because his shift has the most domestic trouble calls (which require a response by two officers) and partly because he has been more aggressive in arrests and traffic enforcement. Geigel's main duties are to investigate cases, and other officers handle some of the investigations, although Geigel handles most of the major investigations. Mixa spends about 20 percent of his time outside of the station in a marked police car where he is involved in traffic enforcement or expected to take any action like a patrol officer. Handl spends about an hour a day, particularly around the noon hour, out of the station to be around schools but not to set up radar.

23. Sergeants spend the first part of their shifts going over incident reports and cards from previous shifts, taking note of items for briefing officers when they arrive. They brief officers starting their shifts for about 15 to 30 minutes, bringing them up to date on things to watch or areas to concentrate on. Sergeants also relieve dispatchers for lunch and breaks. Sergeants spend part of their time following through on their special areas, such as working on special events or maintaining vehicles.

24. Except for Geigel, the sergeants are considered to be shift commanders on their shifts. When sergeants work shifts that overlap with captains and the Chief, they do not fill in for the captains and the Chief, but they do answer questions from the public or other employees if they are the highest ranking officer on duty. When a sergeant is absent, he is usually replaced by another sergeant. A patrol officer replaced a sergeant on four occasions in 1988 and three occasions during 1989 (up to the date of the last day of hearing in the matter). Captains serve as shift supervisors more frequently than patrol officers. In 1987, captains filled 154 eight hour shifts; in 1988, captains filled 112 eight hour shifts. Up through August 31, 1989, captains filled 36 eight hour shifts and 47 three hour shifts. Geigel is sometimes assigned as shift commander if no other sergeant or captain is available, and he may be designated to serve as shift commander for only a portion of his regular shift or serve as shift commander on an overtime basis. Geigel's main function when serving as shift commander is to answer questions from patrol officers and be available to make necessary decisions. Geigel usually performs his normal investigating work while being assigned as shift commander. He recalled being consulted only once or twice on matters, because usually a captain is also on duty. If no captains are on duty, Geigel makes himself available at all times.

25. The collective bargaining agreement provides that sergeants and the detective sergeant receive \$14.19 per hour effective January 1, 1991 while patrol officers receive \$12.93 per hour. Sergeants are paid on an hourly basis and are compensated at time and a half or double time on Sundays and holidays for over-time. The captains' rate of pay is not controlled by the collective bargaining agreement. Captains receive a higher rate of pay than sergeants, are paid on a salaried basis and are compensated at time and a half for overtime.

26. Sergeants have attended a number of conferences, schools or training sessions at various institutes, schools or police academies. Some of the courses are geared specifically for middle and upper level command positions, such as courses of professional supervisory development, middle management for police supervisors and first line supervisors. Some of the courses may be open to all police officers, but the Department chooses to send only those who have achieved the rank of sergeant to certain training courses.

Sergeants also recommend training and schools for subordinate officers. They make formal requests to the captains for officers' schooling, and captains and sergeants determine who will be able to attend what course depending on available manpower.

27. Patrol officers, unlike sergeants, do not have access to certain files and lockers within the Department. Two filing cabinets are reserved for matters that sergeants work on and a closet where some personnel files, uniforms and equipment is kept is not accessible to patrol officers. Personnel files are also kept by the City in a place outside the Department, but sergeants keep a working personnel file with some matters in it. A weapons ammunition storage locker is accessible only to sergeants and those above them, although the firearm's instructor may have access to it. Officers have access to the evidence room, which is under Geigel's control.

28. Sergeants, captains and the Chief attend quarterly supervisory staff meetings. At one time, the Union president also attended those meetings, but the Chief discontinued that practice in 1987. Such staff meetings may last from three to four hours. While the Chief sets up the time and the agenda, all those attending have input into the meetings. The Chief uses a "nominal group process" where everyone is given equal input through a point system in determining the most important issues to be addressed and to establish priorities. The agenda may deal with departmental goals, assessments, problems, budget matters, personnel problems or long-range planning. Grievances are not discussed, nor are wage rates, although the group has discussed ways in which to get dispatchers merit increases. Sergeants who are not scheduled to be on duty during staff meetings receive overtime for attending. Sergeants are asked for their solutions to problems and feel that their recommendations are taken seriously by the higher commanding officers. As a result of staff meetings and a time task analysis, the sergeants' tasks and assignments were divided up. Sergeants had complained that some had more tasks and assignments than others.

Some of the sergeants hold meetings with patrol officers on times other than the daily briefings and others do not. Sergeants may meet with officers in advance of a supervisory staff meeting to see if officers want anything brought up at the meeting. Ammerman holds separate meetings with dispatchers to discuss problems, solutions and training.

29. The sergeants make budget recommendations for equipment and supplies within their areas of special assignments. For example, Brotski makes recommendations regarding the number and types of firearms to be purchased by the Department. Captain Hartman told Brotski how many weapons were going to be replaced and Brotski sought the recommendations of two officers who were firearms instructors as well as Ammerman in making his budget recommendation. One officer recommended the purchase of a timer for the firearms program, which Brotski in turn recommended. Because the timer put the firearms budget over the amount allotted, the Chief asked Brotski for justification of the purchase.

Brotski justified the request and the timer was purchased. Geigel submitted budget proposals for equipment and supplies for the police school liaison program, the crime prevention program and the investigative unit. Geigel submitted a proposal for a dollar amount to cover overtime in the crime prevention program, after conferring with the crime prevention officer who gave him a set number of overtime hours to be budgeted. Mixa submitted a budget proposal for a citizen survey project, based on an idea he had while attending an institute for schooling. The proposal was being recommended by the Chief to the City and was pending at the time of the hearing. Ammerman submitted a budget proposal covering wages for dispatchers and crossing guards, as well as equipment and supplies. As part of Ammerman's budget proposal, he recommended that a part-time dispatcher be added, due to an excessive workload, and that recommendation was implemented. The City Manager struck Ammerman's budget recommendation for uniforms for the dispatchers. Ammerman also recommended an increase in the hourly wage rate paid to crossing guards but did not know whether they received his recommended increase. Ammerman also met with a private consultant hired by the City to review the pay grade system for non-union employees and gave the consultant his recommendations regarding the dispatchers' pay grade and job duties. The Chief has deleted some items proposed by the sergeants before submitting the complete budget to the City Manager and the City Council. The Chief prepares a long-range budget to show sergeants, captains and the City Manager where the capital outlay items will come from and dates for bid openings. Captains assist the Chief in budget preparation. Once budgets have been approved for the Department, sergeants have the authority to make expenditures for items that have been specified within the amounts allowed.

30. The sergeants' responsibilities under Chief Lien have increased and have been better defined. Sergeants spend considerably more time in the station compared to many years ago. A typical sergeant in the early 1970's would not have been in the station at all during his shift. Captain Hartman counseled Sergeant Brotski about the manner in which he performed his role as sergeant, telling him that he expected him to supervise his people to make sure they were actively looking for violations of the law and that they were following policies, rules and regulations of the Department, state law and court procedure for gathering evidence.

31. Sergeants Ammerman, Handl, Stadler, Mixa and Brotski possess supervisory duties and responsibilities in sufficient combination and degree to be found a supervisory employee. Detective Sergeant Geigel does not possess supervisory duties and responsibilities in sufficient combination and degree to be found a supervisory employee nor does Geigel have sufficient participation in the formulation, determination or implementation of management policy or authority to commit the City's financial resources to be deemed a managerial employee.

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

CONCLUSIONS OF LAW

1. Sergeant/Shift Commanders Ammerman, Handl, Stadler, Mixa and Brotski are supervisory employees within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. Detective Sergeant Geigel is not a supervisory employee within the meaning of Sec. 111.70(1)(o)1, Stats., or a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 2/

1. The position of Sergeant/Shift Commander currently occupied by Sergeants Ammerman, Handl, Stadler, Mixa and Brotski of the Police Department of the City of Two Rivers are excluded from the bargaining unit represented by the Union.

2. The position of Detective Sergeant, currently occupied by Geigel, continues to be included in the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of February, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ Please find footnote 1/ on page 21.

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 therefore 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.

(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.

CITY OF TWO RIVERS
(POLICE DEPARTMENT)

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

POSITIONS OF THE PARTIES

The City:

The City asserts that the sergeants have enough significant responsibilities as supervisors and managers to qualify them as such under MERA. The City notes that the management structure of the Police Department has changed significantly since Police Chief Michael Lien arrived on the scene in 1986, and those changes were not made merely to have the sergeants removed from the bargaining unit. The distribution of management responsibility was supported by the sergeants and is a good management effort by the Chief to make sure that not all of the Department's "eggs are in a few baskets." The City submits that a thorough review of the evidence will show that the sergeants are managers and supervisors within the practical application of the law.

Regarding the ratio of supervisors to subordinates, the City notes that there are 16 full-time officers, four part-time officers and five telecommunicators supervised by six sergeants. The supervisor ratio to subordinates is 1:4 plus, not including the crossing guards that Sergeant Ammerman is responsible for. The ratio of one supervisor to four plus employees has been found acceptable by the Commission in previous cases, such as Village of Butler, Dec. No. 16844 (WERC, 1979). The fact that sergeants exercise supervisory control over telecommunicators who are not bargaining unit employees does not diminish the sergeants' supervisory status.

All sergeants review reports and activities and pass information along to officers on their shifts. The sergeants do not perform work similar to their subordinates, as shown by the numbers of citations and arrests made. Sergeant Brotski, who had the highest number of citations and arrests, was counselled by the City and told that his statistics were unacceptable and that more time had to be spent on supervisory duties. The Union itself filed a grievance and has insisted that sergeants not be assigned to a beat, and the grievance was settled on the basis that sergeants are not assigned a beat.

All of the sergeants have the authority to assign work to their subordinates, authorize overtime, change hours of work, call in officers, allow officers to trade shifts, grant or deny vacations, grant requests to leave work early and grant furloughs (leaves with pay) when they determine an officer is unfit for duty. All six sergeants serve as shift commanders, five of them on a regularly scheduled basis. Detective Sergeant Geigel serves as shift commander as a replacement for other sergeants normally on the day shift.

With the exception of Sergeant Brotski, all of the sergeants have been involved in the hiring process by interviewing applicants for officers, telecommunicators and crossing guards. The sergeants draft question to ask applicants, perform background checks on applicants and draft job descriptions and develop selection procedures for applicants.

Three of six sergeants have issued oral or written reprimands to officers and a fourth felt he was instrumental in getting an officer to leave the Department through his investigation into that officer's conduct. The captains have issued two warning letters, but all other discipline has been issued by sergeants. The Chief has not issued a reprimand or a suspension.

The sergeants evaluate their officers as well as the telecommunicators. Performance evaluations noted as deficient are not official reprimands but can be the basis for future disciplinary action. When the sergeants complete service appraisals on officers, they sit down with those officers to discuss the evaluation prior to consulting with the Chief or the captains. Thus, the service appraisals are the result of the independent judgment by the sergeants and not subject to overview by higher ranking officers. The sergeants have participated in the last series of promotions wherein 20 percent of the criteria used in the selection process was based on prior job performance as determined by five sergeants.

Six sergeants, two captains and the Chief attend quarterly supervisory staff meetings, where recommendations are made on budgets, hiring more personnel, and goals and objectives for the Department. A "nominal group process" is used to prioritize the objects and goals of the Department, with each officer given equal input through a point system. Policies have resulted from the recommendations of officers at the staff meetings, which is a true participatory process where sergeants determine policy and direction of the Department.

Sergeants come in one hour earlier than patrol officers in order to meet with officers at the beginning of the shifts and inform them of changes or projects. Sergeants are replaced on their shifts by other sergeants or one of the captains. During 1988, a patrol officer replaced a sergeant only four times, and through September of 1989, a patrol officer replaced a sergeant only three times. Each sergeant has made recommendations for training subordinates.

The Chief has delegated some of his duties to sergeants, such as granting terrace parking permits, handling tavern inspections, approving beer garden permits and approving shift trades. Sergeants have represented the Chief in recommending non-union pay increases, serving on the local Emergency Planning Commission, making statements to the media and investigating job applicants.

The City further asserts that the sergeants are responsible for formulating, determining and implementing management policy. The quarterly staff meetings are an example of where input from sergeants resulted in the reallocation of supervisory responsibility among sergeants.

The sergeants have the authority to investigate and resolve citizen complaints against subordinate officers and have done so. Sergeants who serve as commanding officers on weekends issue news releases without consulting the Chief or captains. They also issue policy directives on procedures to be followed in the area that they supervise ranging from firearm training, to retention of evidence, to updates in changes of the law, to vehicle maintenance.

Another area that indicates managerial status is the sergeants' responsibility for submitting budget requests without predetermined parameters. Sergeants Geigel, Brotski, and Ammerman, who are responsible respectively for investigation, training, and communications, recommend budgets and expenditures from their own assessments and have the discretion to develop a budget based on their perceptions of need in those areas. The City has given the sergeants specialized supervisory training on a regular basis in the past.

While the collective bargaining agreement does not include sergeants in the grievance process, two of them have represented the City in conferences between the Union and the Chief. The bargaining agreement also shows that there is a significant pay differential between patrolmen and sergeants.

Finally, the City argues that the physical layout of the Department reinforces the differences between supervisors and patrol officers and that only sergeants and captains have lockers in the sergeants' room and access to a closet containing uniforms, guns and equipment.

The Union:

The Union notes that in City of Delavan, Dec. No. 12185-A (WERC, 8/88), the Commission commented on the unique problem in determining supervisory status in the quasi-military organization of police departments. The Union asserts that the quasi-military nature of police departments is complicated in the case of small police departments employing fewer than 30 full-time law enforcement personnel.

The Union argues that the City has attempted to invest the sergeants with authority for hiring and promotion but has not succeeded in doing so. While the veteran sergeants (Handl, Stadler and Geigel) had some involvement in the promotions of Sergeants Ammerman, Brotski and Mixa, their involvement was limited and ministerial, as they were asked to tabulate and assign values to evaluations of sergeant applicants that had been performed by supervisors over the years.

The Union contends that the sergeants' participation in hiring is of minimal importance. Each sergeant asked one or two questions of each applicant, and because several sergeants and other brass interviewed each applicant, there is no evidence that any one sergeant exercised effective recommendation in the hiring of officers. Further, all candidates submit to examinations administered by agencies other than bargaining unit members and to interviews conducted by non-departmental personnel.

While sergeants exercise some effective recommendation as to which officer might fill the positions of Police School Liaison Officer or Drug Prevention Officer, these "transfers" are actually reassignment of duties. These decisions are formed by committees and if one sergeant departs from the consensus recommendation, his own recommendation would be ineffective, the antithesis of the requirement for supervisory status.

No sergeant has been involved with the discharge of any police officer, as there was no evidence that any officer had ever been discharged, at least in the Department's modern history. While Sergeant Ammerman recommended the termination of a crossing guard, he forwarded his recommendation to the Police Chief and the City Manager, who approved it but had the power to ignore it or

substitute lesser or no discipline. Sergeant Ammerman's disciplining of a crossing guard in a meaningful way is notable for its uniqueness. Sergeants testified that they had only issued very low level written reprimands but never characterized their writings as disciplinary in nature.

The sergeants complete evaluations of officers, which are shared, cooperative efforts among the sergeants who work on various shifts. The Chief modified the evaluation of an officer in one instance. The pre-prepared forms call for an assessment of the percentage of time each officer devotes to certain activities and the sergeants were unable to say how those percentages came into existence. While Sergeant Ammerman recommending the hiring of a particular telecommunicator candidate, the Chief has no hiring authority and forwarded the recommendation to the City Manager. The Union submits that the six sergeants have little meaningful involvement in hiring, promoting, transferring, disciplining, discharging or evaluating their fellow officers.

The Union asserts that the six sergeants lack sufficient authority to direct and assign the work force to warrant their exclusion from the bargaining unit. Patrol officers choose their shifts upon an exercise of seniority and vacations are based on seniority preferences. Most police assignments are routine and standard operating procedures are adopted and issued pursuant to a set of departmental rules and regulations. While sergeants have input into the rules and regulations, the Chief finally disseminates any changes in them.

The shift commander has the authority to grant sick leave, approve shift changes, set work priorities, supplement the work force, and assign beats and patrol cars. In the absence of a sergeant, a senior patrol officer can perform any of those duties. The sergeants exercise their authority to direct the work force largely within the corners of the Department's written policies and do not exercise significant independent judgment. The Union points out that the City's exhibits of memoranda, such a "Weekend Telephonic News Releases to Media" and "Sergeants' Authority Regarding Officers' Furloughs and Handling/Completing Complaints on Officers," lay out their authority and foreclose their exercise of independent judgment.

As to the ratio of supervisory personnel to employees, the Union notes that there are 15 patrol officers and four part-time officers who are supervised by every supervisor in the Department. There are four full-time and three part-time non-sworn telecommunicators, all of whom fall into a chain of command involving Sergeant Ammerman, Captain Jasmer and Chief Lien. If the six sergeants were deemed to be supervisors, there will be nine supervisors for 15 full-time officers, or one for every one and two-thirds officers. Adding the part-time officers, there would be one supervisor for every two patrol officers. Adding the full-time telecommunicators raises the ratio to 1:2.6 and adding the part-time telecommunicators raises the ratio to 1:2.9. If Sergeant Ammerman were deemed to be a supervisor for the telecommunicators under some analysis, the telecommunicators' supervisory ratio would be 1:2.3, as the captain and Chief are both supervisors. Moreover, the Union has been generous in calculating staffing ratios, for the figures assume that all part-time officers are 1.0 full-time employees, which is not true.

In Detective Sergeant Geigel's case, the City's organizational chart puts him in direct supervision of three employees. However, Officers Mohr and Gerard perform their duties as Crime Prevention Officer and Metro Drug Officer sporadically and appear again on the chart supervised by up to three additional sergeants. Thus, their supervisory ratio is something on the order of 6:1. The Department has no need for the large number of supervisors for which it has petitioned.

The sergeant's pay is set by the collective bargaining agreement to reflect the skills, rank and longevity of officers but does not contain a component of compensation for supervision of others. The parties' agreement also contains a complete procedure for the promotion of patrol officers to sergeant, which makes no reference to qualities of supervision.

The sergeants supervise activities rather than employees. For example, City Exhibit #5(2) shows Sergeant Ammerman directed a memorandum to all personnel using firearms, including the Chief. A series of other exhibits show Sergeant Ammerman clearly directing an activity rather than employees, such as City Exhibit #5(8), 5(17), 5(20) and 5(26). What the City calls "Performance Reports" are nothing more than declarations of an officer's performance with no evaluative component. A review of numerous exhibits regarding Sergeants Wilda and Eckley (no longer with the Department) and Sergeants Brotski, Stadler, Geigel, Handl, and Mixa, establish that the sergeants supervise activities. The Union argues that the vast array of exhibits is clearly make-weight and should be largely disregarded by the Commission.

Also, the Union asserts that the sergeants are primarily engaged in law enforcement duties as shown by the service appraisals. In Sergeant Ammerman's case, three percent of his duties is devoted to discipline of subordinates, two percent in training them, and Captain Hartman suggested that he increase his own traffic contacts -- perform more law enforcement road work. While the City introduced evidence that sergeants do only a limited amount of traffic

enforcement, there is no evidence as to the nature of law enforcement work in Two Rivers. It would be erroneous for the Commission to conclude, without further evidence, that traffic enforcement constitutes the lion's share of law enforcement work in the City.

While the City has tried to create an image of sergeants who exercise independent judgment, the City exhibits such as #5(1) show that Sergeant Ammerman was stripped of discretion in the exercise of his judgment by the Chief, who designated the chair for a meeting, set the time and date, and set the criteria to be applied by the committee. Similarly, City Exhibit #5(33) shows that Chief Lien reported to Sergeant Ammerman the results of a consulting firm's survey of pay grades for nonbargaining unit employees, and then Chief Lien laid out a course of action for Sergeant Ammerman to follow, leaving him with little or no discretion to act. Other exhibits, such as City Exhibit #8(18), lead to the same conclusion that sergeants do not exercise independent judgment in the supervision of others.

Finally, the Union asserts that the six sergeants are not managerial employees and any managerial functions they perform are of a low degree. Sergeant Ammerman's involvement in weapons testing and procurement was a recommendation made by a committee that required the approval of the Chief before it could be presented as part of a budget request, which is then scrutinized by the City Council. Sergeant Ammerman's budget for telecommunicators is a mathematical exercise, as he lacked the authority to set the hours of work for the hourly rate of pay for them. Sergeant Brotski's budgeting input on firearms was of a de minimis nature. None of the other four active sergeants exercise any meaningful managerial powers.

The City's Reply:

The City asserts that the City of Delavan decision is not applicable to the instant case and it is important to distinguish the facts of Delavan from this case. In Delavan, the Chief took an active and involved role in day-to-day management of the department, as well as an active role in directing the work force, scheduling supplemental personnel and taking direct command at the scene of a major crime. In Two Rivers, the Chief's role is different, and he is not involved in directing the work force on his shift or other shifts. Sergeants have the right to schedule supplemental personnel. Sergeant Stadler issued memoranda on maintenance of new squad cars, DWI arrests, emergency response guide books and statutory changes. Sergeant Handl issued memoranda on handling the Christmas parade and the maintenance of squad cars. Sergeant Brotski issued memoranda on firearms training and Department in-service. Detective Sergeant Geigel issued memoranda on the policy on use of sexual assault kits, changes in the law on domestic abuse and children's code, the securing of evidence and selection of the Police School Liaison Officer. Sergeant Ammerman issued memoranda regarding firearm selection and training, traffic direction equipment, report priority procedure, lunch breaks, etc. The sergeants in Two Rivers send out the type of memos that the Chief sends out in Delavan.

In Delavan, sergeants have no authority to effectively recommend discipline more serious than a verbal or written reprimand, while in Two Rivers, all the sergeants perceive that they could recommend more serious discipline than written reprimands. Each of the sergeants has the authority to call in supplemental personnel and not merely replacements, in distinction to Delavan.

The personnel in Delavan who claimed to be supervisory spent the majority of their time on patrol duties, while none of the Two Rivers sergeants spend the majority of their time on patrol duties. In Delavan, evaluations were sporadic and performed in a formal process. In Two Rivers, annual service appraisals include a requirement that a narrative be included, which are complete and relate to the performance of the individuals.

In Delavan, the senior subordinate officer assumed the position of officer in charge about 50 percent of the time. In Two Rivers, a patrol officer replaced a sergeant only four times in 1988 and three in 1989, with the result that non-supervisory personnel are in charge of a shift less than 1/3 of one percent of the time.

While the Union characterizes the sergeants' input in the promotion process as ministerial, the sergeants proposed a revision of the promotion procedure which was implemented. While no individual sergeant is responsible for hiring any officer, a sergeant's input is every bit as important as the Chief's or a captain who also sits on the interviewing committee. If the sergeant's recommendation is not effective, then neither is the Chief's, which produces an absurd result that no one effectively recommends the hiring but people are still hired.

The Union's point that no sergeant had ever been involved in any officer's discharge is irrelevant where no officer has been discharged in the Department's recent history. Sergeant Geigel was instrumental in getting an officer off the force, a subtle form of recommended discharge, and the sergeants never doubted they could recommend discipline beyond oral or written reprimands.

While the Union discounts the service appraisals as "filling in the blanks," the evaluator provides detailed rationale and explanations. The Union's insinuation that the Chief modifies the evaluation of officers is unsubstantiated -- the Chief overturned one instance of discipline and a captain once sent an appraisal back because it was incomplete. The challenge to Sergeant Ammerman's role in hiring and recommending discharge shows the superficiality of the Union's case -- the Union's credibility might have been enhanced if it had conceded that Ammerman was a supervisor.

Although some vacation time is set by contract, the remaining days are granted with prior approval required by the Chief, who has delegated that authority to the sergeants. It is naive to believe that the Department is run by procedures set forth in the rules and regulations or that it can be run without independent discretion exercised by shift commanders and supervisors.

The Union's characterization of staff meetings as advisory in nature is unsubstantiated. The Chief has used the nominal group process in arriving at the consensus of the group and there is very little he has not delegated to the sergeants. Senior patrol officers are not interchangeable with sergeants, as shown by the amount of time a patrol officer has replaced a sergeant in the last two years. Also, the Union has ignored the memos and directives sent out to officers by sergeants without the Chief's approval.

While the Union claims that the higher pay for sergeants is based on longevity, skills and rank, it presented no evidence that the wage differential between the patrol officers and sergeants was due to any factor other than supervisory responsibilities. The Union filed a grievance challenging the promotion process for having insufficient amount of weight given to seniority.

While the Union calls the performance reports mere declarations of an officer's performance without an evaluative component, the reports reference discussions with officers on how to improve performance. The deficiency reports fall into the category of consultations, which can be used as a basis for future discipline.

The City requests that all six sergeants be excluded from the bargaining unit.

The Union's Reply:

The most important issue facing the Commission in this case is the decision as to what constitutes "police work." It would be an error for the Commission to assume that patrol officers constitute the entire body of City employees who are engaged in "police work." The Union believes that police work is performed by a variety of officers, including police school liaison officers, field training officers, detectives, traffic enforcement officers, accident investigators, sergeants, firearms instructors, metro drug unit officers, crime prevention officers and RISC training officers. There are dozens of different duties carried on by different officers from time to time, and the Union believes that the sergeants function as lead workers in the classical sense of that term.

The Commission needs to be aware that the City has attempted to persuade the it of the supervisory/managerial status of its sergeants through the sheer weight of the evidence. Most of the excessive pounds of exhibits offered by the City are either irrelevant or rebut a conclusion of the supervisory/managerial status or demonstrate nothing more than a de minimis involvement in supervisory/managerial activities.

While the City asserts that sergeants now evaluate the telecommunications assigned to their shifts, the evidence shows that the sergeants had to request such a change from the Chief -- they could not exercise their own authority to make that change. The collective bargaining agreement controls matters of overtime, hours of work/schedules, call-in, granting vacation requests, allowing sick leave, allowing early leave from work, leave with pay and shift trades. Not only do sergeants have virtually no discretion in these areas, neither do captains nor the Chief.

While the City asserts that the captains have issued two warning letters but all other discipline has been issued by sergeants, the only discipline apparently ever meted out by the Department has been letters of reprimand. The City plays on the notion that the Chief has divested himself of so much discretion that it leads to the oddity that the Chief is no longer a supervisor. The Chief has not ceded his authority, he has merely asked his lead worker sergeants to exercise that authority on a day-to-day basis, subject at all times to review.

Regarding the last promotion process, Sergeant Handl accurately describes the process in his testimony (Tr. Vol. VI, 9/26, pp. 141-143). The Commission is urged to review this description by Sergeant Handl and see that sergeants were engaged in ministerial duties that telecommunications could probably have

done.

No one knows what the Chief means by the term "nominal group process." It is some sort of administrative gobbledygook which has no meaning within the law of unit determination insofar as the Union has been able to determine. The role of sergeants at supervisory staff meetings is severely circumscribed by the Chief. While sergeants may offer input, most of that input comes from rank and file officers who pass it along to sergeants, who in turn pass it along to the Chief, much like "quality circles" involving lead workers.

While the City points out that sergeants report to work one hour earlier than officers on their shifts, it fails to point out that sergeants also leave one hour earlier, pursuant to the collective bargaining agreement. Otherwise, they would draw overtime.

In terms of issuing policy directives, the City misses the point. Who issues the policy is not dispositive of the issue of supervisory/managerial status; it is who develops the policy that makes the distinction possible. Various policy subjects described by the City are in fact transmittals of policies developed by the State or some authority other than the City. While some sergeants have undergone supervisory training while they were patrol officers, other patrol officers who have not been promoted have undertaken the same training. The City's photographs, Exhibits #16-A through 16-H, are meaningless in terms of drawing distinctions between sergeants and patrol officers. The functions of the Department itself are carried out in rather cramped quarters.

One item in Sergeant Stadler's testimony deserves specific rebuttal. The City notes that Sergeant Stadler perceives himself as having the right to issue oral and written warnings and believes he could effectively recommend discharge of an officer. Oral and written warnings are minimal levels of discipline and do not provide evidence of supervisory status. The fact that sergeants can issue only oral and written warnings strips them of any supervisory status. The Commission cannot disregard the law, pursuant to Sec. 62.13, Stats., wherein only a specially constituted body of a municipality can discharge a police officer in Wisconsin and then only upon the formal presentation of charges by the Chief of Police.

Also, the City asserts that Sergeant Stadler completes service appraisals on his subordinates without review by the Chief. However, Sergeant Stadler testified, "They go right up the line. They go from me to Captain Hartman and then to the Chief." While the City claims Sergeant Stadler has managerial duties, the facts reveal otherwise. For example, the City asserts that Sergeant Stadler, having been informed by mechanics about problems in gasoline for patrol vehicles, made the decision to provide a booster in the gasoline used in patrol cars. It was the mechanics who effectively recommended the change.

While the City says that Sergeant Ammerman feels he can effectively recommend discipline including discharge of an officer, Sergeant Ammerman's testimony says nothing about discharge, as he presumably knows the limits set forth by Sec. 62.13, Stats. While the City notes that Sergeant Ammerman is charged with the investigation of citizen complaints, Sergeant Ammerman was overruled by his captain who was in turn overruled by the Chief. Both the captain and the Chief have independent authority to overrule Sergeant Ammerman, whose authority in this regard is not an effective recommendation but rather a preliminary determination subject to review by his supervisors.

The City states that Sergeant Brotski perceives his job to be one of a supervisory nature and participating in management. What Sergeant Brotski may or may not conclude about his own role in the conduct of the affairs of the Department is not dispositive of the question before the Commission. While the City suggested that Sergeant Brotski submitted a budget for firearms, Captain Hartman told Sergeant Brotski how many weapons to order. The sergeants do not have independent budget-making authority. Moreover, while the City asserts that Sergeant Brotski represented the City in a grievance, Sergeant Brotski did not represent the City -- he was a witness on behalf of the City, which is not the same thing.

When sergeants were asked specifically whether they could do any of the duties that the City asserts are supervisory/managerial, the sergeants answered that they were allowed to do so within the parameters established by the City. For example, Sergeant Geigel testified when asked if he could authorize overtime that he could where it fits within the allotted hours already established by the City. Although Sergeant Geigel serves as shift commander, he could only remember being consulted by employees once or twice while serving in that capacity, presumably because one of the captains was on duty. When Sergeant Geigel participated in selecting an officer to be Police School Liaison Officer, he recommended an officer other than the one that was selected for that position. Sergeant Geigel's advice and training is offered to all officers, including the Chief, which would apparently be, in the City's view, a supervisor supervising his own supervisor. It is the paramilitary nature of police work that allows these things to happen, as well as the job

specializations which have nothing to do with determining supervisory or managerial status.

Sergeant Mixa's predecessor was Sergeant Wilda, which is interesting because the City had not previously contended that its sergeants were supervisors. Much of the City's argument in its current petition is that the sergeant duties have changed over time such that they have now matured into supervisors or managers. The reference to Sergeant Wilda's duties cuts both ways -- if Sergeant Wilda was not a supervisor, then Sergeant Mixa should not be one. But if Sergeant Mixa is a supervisor, then Sergeant Wilda should have been asserted as a supervisor by the City, and the argument that the duties have changed materially to make all sergeants now supervisors must fall on deaf ears.

DISCUSSION

Supervisory Status:

General Considerations:

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 skill 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. 3/

We have previously commented that the quasi-military organization of police and fire departments present a unique problem in making determinations regarding alleged supervisory status. 4/ Officers of higher rank will generally have the authority to issue orders to subordinates, regardless of our determination of supervisory status. Accordingly, we have considered the present case in light of our past decisions affecting protective services.

When we have found officers such as sergeants or lieutenants to be supervisors, it has been because the record demonstrates a high level of supervisory responsibility. For example, the sergeants we have previously found to be supervisors had the authority to suspend employees with pay, to participate in hiring decisions, and to conduct meaningful performance evaluations; 5/ to issue oral or written reprimands, or impose a day's suspension, pursuant to written policies; 6/ to serve as the first step in contractual grievance process, to participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders, and to conduct meaningful performance evaluations; 7/ and to participate in hiring decisions, to take or effectively recommend oral and/or written discipline, to conduct performance

2/ Town of Brookfield, Dec. No. 26426 (WERC, 4/90).

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

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

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

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

evaluations, and to do work substantially distinct from patrol officers. 8/

Those officers whom we have found to be non-supervisory have displayed few, if any, of these factors. For example, we found sergeants to be non-supervisory where they had no role in the hiring or transfer decisions, could not recommend promotions, conducted evaluations which were only preliminary, and shared many work features with those whom they oversaw. 9/ A lieutenant who had the authority to call in replacements, change work schedules, and approve days off, but who performed the same duties as patrol officers, had no role in grievance adjustments, did not conduct written evaluations, and was often the sole officer on duty, was found to be non-supervisory. 10/ We have even found a chief deputy, in command of a department on a regularly recurring basis, to be non-supervisory because he did not make any notable supervisory decisions. 11/

In this case, we find that the positions of sergeants as held by Sergeants Ammerman, Brotski, Handl, Mixa and Stadler, are supervisory and therefore excluded from the bargaining unit, while the position of detective sergeant as held by Sergeant Geigel is neither supervisory nor managerial and is included within the bargaining unit.

There is no single factor upon which we reach this conclusion, but rather, the record as a whole. We do not mean to imply that the sheer volume of documents introduced into the record by the City has given the City the benefit of the doubt; indeed, many of the documents introduced only tended to show that the sergeants were supervising activities rather than employees. We also note that while there is a clear indication that Sergeant Ammerman acts as a supervisor, the other four supervisors -- Brotski, Handl, Mixa and Stadler -- present a closer call. We also believe it reasonably clear that the Detective Sergeant Geigel does not have supervisory status.

Initially, we note that when determining supervisory status, it is appropriate to consider an employee's exercise of supervisory authority over both bargaining unit and non-bargaining unit employees. 12/ Thus, in this case we have considered the authority sergeants exercise over patrolmen, dispatchers, and crossing guards.

In addition, we would point out that supervisory ratios are only one of the factors we consider when determining issues of supervisory status. Exclusion of five sergeants as supervisors yields a ratio of roughly 1:3 (or 1:4 if crossing guards are included). While we acknowledge that the 1:3 or 1:4 supervisory ratio which our decision produces is high, we are satisfied the evidence as to other relevant factors warrants our result.

Sergeant/Shift Commander Ammerman:

Sergeant Ammerman has clear supervisory status based on his role in hiring, disciplining, and discharging dispatchers and crossing guards, as well as his independent judgment in carrying out his other day to day supervisory responsibilities.

Ammerman is always involved in interviewing dispatcher applicants as part of a panel. He drew up the questions for the other panel members, and his recommendations for hiring dispatchers have been followed. He interviews applicants for crossing guards by himself and his recommendations are usually followed by the Chief.

Ammerman has taken an active role in discipline, as shown by his written warning to one dispatcher and his effective recommendation of discharge for a part-time dispatcher and a crossing guard.

This sergeant has additionally shown a great deal of independent judgment in handling personnel matters. He set up a departmental group process to deal with problems, assign priorities, and find solutions. He also makes effective recommendations as to which officers are selected for schooling and additional

7/ La Crosse County, Dec. No. 19539 (WERC, 4/82).

8/ Milwaukee County, Dec. No. 74855 (WERC, 10/87).

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

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

11/ City of Lake Geneva, Dec. No. 18507 (WERC, 3/81).

training programs.

We find the foregoing sufficient to deem his position supervisory.

Sergeant/Shift Commanders Brotski, Handl, Mixa and Stadler:

Since Chief Lien's arrival, there has been a consistent attempt to reorganize the Department into a different supervisory and managerial scheme. The Chief has attempted to redefine the sergeants' role to grant them more authority over their subordinates, and to give them a genuine participatory role in running the Police Department. The sergeants themselves testified that their roles had significantly changed over the years, from several years ago when they were working primarily as patrol officers.

Under Chief Lien, the sergeants have started participating in staff interviews for job applicants. One sergeant is asked to take part in a panel interview, and his scoring of an applicant is given the same weight as each other panel member (the two captains and the Chief). While some of the sergeants had not yet participated in interviews for job applicants at the time of the hearing in this matter, their future participation is anticipated. We deem this change in the hiring process to be significant.

Sergeants also evaluate subordinate officers, filling out service appraisals and discussing the evaluation with officers before sending the forms up to the higher chain of command. The service appraisals are used as 20 percent of the criteria for selecting new sergeants. Thus, we do not agree with the Union's characterization of the sergeants' role in the promotional process as merely ministerial -- one of adding up the numbers -- because it is the sergeants who in the first instance fill out those appraisals which produce the numbers rating for officers who are eventually selected for promotion. We perceive the sergeants' evaluations as forming the underlying basis for promotions to a great extent.

The sergeants have the authority to issue oral and written reprimands. The fact that they use such authority infrequently does not necessarily diminish that authority. Sergeants are more inclined to use a form called "performance reports" which rate officers as commendable, satisfactory, or deficient. Although the parties dispute the role of such performance reports -- with the Union contending that they are part of the progressive disciplinary process and the City contending that they are not -- we find significant that these performance reports have been grieved by officers. We recognize that higher levels of discipline are reserved by statute to police and fire commissions, which limits the disciplinary authority of even the top command. Accordingly, we cannot place much emphasis on the inability to suspend or discharge as showing the lack of supervisory authority in cases involving the status of city law enforcement positions.

The testimony further demonstrated that the Chief has delegated the authority to approve shift trades between officers to sergeants and captains. While regular shifts and vacations are controlled by the terms of the collective bargaining agreement, sergeants approve vacation requests for days not selected according to the contract and may deny requests for time off, using their judgment regarding manpower concerns. Sergeants are usually replaced on their shifts by other sergeants or captains. Although patrol officers have on occasion filled in for a sergeant, the record shows that this is infrequent.

The pay for a sergeant at the top of the wage schedule is approximately 10% above the top rate paid to patrol officers. We conclude that except for the detective sergeant, this differential is to compensate the sergeant/shift commanders for their additional responsibilities which we have found to be supervisory. As to the detective sergeant, we conclude that he is paid at this level primarily for his investigatorial skill and his activity supervision.

Sergeants can authorize overtime, call in extra officers, replace officers, change work schedules, grant time off for sick leave, change beat assignments or reassign duties. They brief officers coming on duty, and supervise officers handling cases in the field. Sergeants may place officers on furloughs (suspensions without pay) and relieve officers of their guns and badges. Sergeants are not assigned to specific beats and do not spend significant amounts of time doing the same work as patrol officers. For example, Sergeant Stadler estimated that he spends 90 percent of his time in the office, which is a major change from years ago when he used to go out on patrol.

The changes instituted by Chief Lien do not appear to us to be window dressing for the purpose of removing sergeants from the bargaining unit; the changes rather appear to reflect a different approach to managing the Department, a team-oriented approach. The sergeants themselves have noted that their responsibilities have increased under Chief Lien; the Chief describes his philosophy as one of not placing "all his eggs in one basket." While some of

the changes in the Department have involved reorganization of activities, we find sufficient evidence of actual increased supervisory authority over personnel as to warrant excluding these positions from the bargaining unit.

The Union argues that sergeants or the Union had to request certain changes from the Chief, such as evaluating the dispatchers assigned to their shifts and being relieved from working beats. But this fact does not diminish the substantial authority that the Chief did, in fact, relinquish. Moreover, it is unrealistic to expect the titular head of a para-military organization to delegate all of his authority.

Yet, we view the record in this case as showing that the Chief has not retained the ultimate control in a number of matters for himself, but has indeed invested sergeants with supervisory authority. It did not happen overnight, but evolved as matters came to the attention of the top command. The fact that some of those changes came were originally suggested by bargaining unit members does not affect our determination that the sergeants now have supervisory status.

Moreover, our decision is consistent with other cases involving shift commanders. We found shift commander/lieutenants to be supervisors when their primary duty was supervising a four member staff rather than performing patrol duty and they prepared forward standardized evaluations. 13/ We found sergeants to be supervisors when they were primarily assigned to supervise a shift of three patrol officers, had the authority to arrange vacation schedules and prepare an annual employee Development Review for each employee. 14/

The Union points to Delavan 15/ as authority to include shift commanders in the bargaining unit. But, in Delavan, the shift commanders were included in the unit primarily because the Chief took an active role in the day to day supervision and management of the department, by reviewing written warnings prior to issuance, by scheduling supplemental personnel, by taking charge of crime scenes outside of his normal work schedule, and by directing the work force on other shifts. The record in the present case does not include this type of activity by the Chief or the two captains. In fact, the record supports that the sergeants/shift commanders operate very independently even when the Chief and captains are on duty.

The Detective Sergeant:

There are several differences in the position of detective sergeant as held by Sergeant Geigel which lead us to conclude that this position is more involved with supervising activities rather than personnel. Therefore, consistent with our decision in City of St. Francis, Dec. No. 24473 (WERC, 5/87) we have determined that this position is not supervisory.

Sergeant Geigel's involvement in panels interviewing job applicants has been to select officers for the positions police school liaison officer, crime prevention officer, and metro drug officer. Those positions are lateral positions within the Department; thus, rather than the detective sergeant being involved in the hiring process, he has been involved in a process involving the assignment of special duties.

We also find that Geigel's authority over three special positions (school liaison, crime prevention, and metro drug officers) is limited by the higher command. Captain Hartman established that 38 hours of overtime would be allowed for the police school liaison officer, 25 hours of overtime for the metro drug program, and 52 hours of overtime for the crime prevention program.

The crime prevention officer and metro drug officer perform their functions on a sporadic basis and are supervised by other sergeants when performing the bulk of their duties.

Sergeant Geigel's main duty is to investigate cases. He does not routinely serve as a shift commander. His hours are normally 9:00 a.m. to 5:00 p.m., which overlap those of the first shift sergeant, the second shift sergeant, the captains and the Chief. He is from time to time assigned to be the shift commander when the first or second shift sergeant is absent for part or all of a shift. Significantly, in contrast to other sergeant/shift commanders, he continues to perform his normal investigating work when filling in as shift commander, except in the rare occasion when a captain is also absent. Given the foregoing, Geigel's responsibilities in this regard are not sufficient to find that he is a supervisor within the meaning of the Municipal Employment Relations Act.

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

13/ La Crosse County, Dec. No. 19539 (WERC, 4/82).

14/ City of Delavan, Dec. No. 12185-A (WERC, 8/88).

Even the role that Geigel plays in evaluations differs from that of the other sergeants. While Geigel evaluates the police school liaison officer, he does so only for the time that that officer is assigned to that duty, and the officer receives another evaluation from other sergeants for the rest of the time. Clearly, Geigel's role in evaluations is more limited than the other sergeants. Geigel's own service appraisal shows that the majority of his time is involved in investigating complaints, collecting evidence at crime scenes, interrogating suspects, etc.

In sum, we find insufficient evidence of supervisory status.

Managerial Status:

A managerial employee is one who participates in the formulation, determination and implementation of management policy or has effective authority to commit the municipal employer's resources. 16/ To yield managerial status, the involvement with the municipal employer's policies must be "at a relatively high level of responsibility" 17/ and "to a significant degree." 18/ Effective authority to commit the employer's resources is evidenced by significant involvement in the establishment of an original budget or by the authority to allocate funds for program purposes which differ from the original budget. 19/ However, preparation of a budget, per se, is not sufficient to establish managerial status. To confer managerial status, an individual's budget preparation duties must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 20/ Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. 21/

We need not address the managerial status of the five sergeants/shift commanders who we have already excluded as supervisors. As to the detective sergeant, the City argues that Detective Sergeant Geigel should be granted managerial status because he submits budget proposals, coordinates criminal investigations and independent programs, trains officers and assisted in developing a job description and a selection procedure. We do not find sufficient evidence of managerial authority in the detective sergeant position to exclude the position from the bargaining unit.

The record demonstrates that the detective sergeant submitted budget proposals which were approved by the Chief. However, the record does not address the latitude or degree of independent judgement with which the detective sergeant operated when constructing the budget proposals. Based on this record, we are thus unable to conclude that his budget preparation involved resource allocations which significantly affect the nature and direction of the employer's operations. However, the record does show that the detective sergeant is under severe constraints in administering the crime prevention component of the budget. The Captain of Field Services has directed that Geigel receive prior approval to purchase items that have not been discussed or specifically budgeted. Geigel is also required to receive advance approval to purchase budgeted items that cost more than \$25.00. There is no indication in the record that Geigel has greater administrative discretion for the other program areas in which he is involved. Given the foregoing, Geigel's role in preparing and administering a small portion of the Department's budget is not supportive of managerial status.

While Geigel coordinates criminal investigations and certain Department programs, there is little evidence to demonstrate that he developed procedures or policies for these areas. The record does not establish that Geigel recommended or decided that the City would participate the programs with which

15/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Door County, Dec. No. 14810 (WERC, 7/76).

16/ City of Milwaukee, Dec. No. 11971 (WERC, 7/73).

17/ City of Milwaukee, Dec. No. 12035-A, (WERC, 6/73), aff'd No. 142-170 (CirCt Dane 2/74); City of New London, Dec. No. 12170 (WERC, 9/73).

18/ Kewaunee County v. WERC, 141 Wis.2d 347 (1987); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Milwaukee v. WERC, 71 Wis.2d 709 (1976).

19/ DePere Unified School District, Dec. No. 26572 (WERC, 8/90).

20/ Jackson County, Dec. No. 17828-B (WERC, 10/86).

he is involved. In fact, an application for federal funds for the Metro Drug Program had been completed without Geigel's input or participation. Thus, we conclude that the detective sergeant is supervising activities rather than exercising managerial authority as to his program responsibilities.

It is clear that Geigel does disseminate departmental policies through memos and provides training to other officers. However, there is no evidence that he formulates those policies or decides what training is to be provided. Although he was involved in developing a job description and a selection procedure, this activity does not rise to the level of managerial authority.

Given the foregoing, the record does not demonstrate that the detective sergeant has sufficient participation in the formulation, determination and implementation of management policy or sufficient effective authority to commit the City's resources to warrant an exclusion from the bargaining unit as a managerial employee.

Dated at Madison, Wisconsin this 8th day of February, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner