

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LABOR ASSOCIATION OF
WISCONSIN, INC.

Involving Certain Employees of

CITY OF ST. FRANCIS
(POLICE DEPARTMENT)

Case 50
No. 36960 ME-2579
Decision No. 24473

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, 2825 North Mayfair Road,
Wauwatosa, Wisconsin 53222, appearing on behalf of Labor Association of
Wisconsin, Inc.

Lindner & Marsack, S.C., Attorneys, by Mr. Roger E. Walsh, 700 North Water
Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Employer.

Cullen, Weston, Pines & Bach, Attorneys, by Mr. Steven Dettinger, 20 North
Carroll Street, Madison, Wisconsin 53703, and Mr. Robert Pechanach,
Business Agent, 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226,
appearing on behalf of Wisconsin Professional Police Association/LEER
Division.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Labor Association of Wisconsin, Inc. having, on May 12, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among law enforcement personnel in the employ of the City of St. Francis, to determine whether said employees desire to be represented by said petitioner for the purpose of collective bargaining; and hearing in the matter having been conducted on July 28 and September 10, 1986 at St. Francis, Wisconsin, before Examiner Christopher Honeyman, a member of the Commission's staff; and at said hearing Wisconsin Professional Police Association/LEER Division having been permitted to intervene as the incumbent bargaining representative; and post-hearing briefs having been filed, the last of which was received on December 15, 1986; and on March 17, 1987, the Commission having received a letter from the Wisconsin Professional Police Association/LEER Division disclaiming interest in remaining exclusive representative of the employees involved, waiving any interest in these proceedings and requesting its name be removed from the ballot; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Labor Association of Wisconsin, Inc., herein referred to as LAW is a labor organization within the meaning of Sec. 111.70(1)(h), Wis. Stats., and has its offices located at 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222.

2. That the City of St. Francis, hereinafter the Employer, is a municipal employer within the meaning of Sec. 111.70(1)(j), Wis. Stats., and has its principal offices at the City Hall, 4235 South Nicholson Avenue, St. Francis, Wisconsin 53207.

3. That the Employer and the Wisconsin Professional Police Association/ LEER Division were parties to a collective bargaining agreement effective from January 1, 1985 through December 31, 1986, covering wages, hours and conditions of employment of employees of the City in the following collective bargaining unit:

All police officers of the St. Francis Police Department who
have chosen the Association to represent them.

4. That in the petition initiating this proceeding, LAW seeks an election to determine whether employees in the following described unit desire to be represented by it for the purposes of collective bargaining:

All regular full-time and regular part-time employees of the St. Francis Police Department, excluding supervisory, confidential and managerial employees.

and that at hearing LAW described the unit it desired to represent as follows:

All regular full-time and regular part-time employees of the St. Francis Police Department with powers of arrest, excluding supervisory, confidential, and managerial employees.

5. That there have never been any part-time employees of the St. Francis Police Department, and that the City, contrary to the Petitioner, contends that regular part-time employees should be excluded from the bargaining unit herein.

6. That regular part-time employees, if any are hired, share a substantial community of interest with regular full-time employees and are routinely and appropriately included in collective bargaining units; and that the unit described above in Finding of Fact 4, as amended at hearing, is an appropriate unit for purposes of collective bargaining.

7. That the City, contrary to the Petitioner, contends that Sergeants Alfred Ast, Gregory Blunt and Terry Bronstad and Detective Gary TeKampe are supervisory employees and should be excluded from the collective bargaining unit.

8. That the Police Department operates on a three-shift, twenty-four hour basis with a staff consisting of the chief of police, one lieutenant, three sergeants, one detective, one investigator, twelve police officers and one police clerk; that the chief of police normally works from 8:00 a.m. to 5:00 p.m., Monday through Friday; and that the lieutenant normally works from 6:00 p.m. until 2:00 a.m., Monday through Friday.

9. That the three sergeants work shifts respectively from 8:00 a.m. to 4:00 p.m., 4:00 p.m. to midnight, and midnight to 8:00 a.m.; that the sergeants and patrol officers have a work cycle of five days on; two days off; four days on; two days off; that as a result of the work cycle, for 4 days out of every 13 there is no sergeant present on a shift; that also as a result of the work cycle, two or three of the four patrol officers assigned to a shift are actually present on any one day; that each of the three sergeants acts as a shift commander and is responsible for the direction and supervision of a shift; that the sergeants have authority to assign a patrol officer to desk duty, but are instructed by the Chief not to take desk duty themselves; that the sergeants perform all duties normally performed by patrol officers and spend a substantial amount of their time (approximately half) on road patrol; that if the shift is not fully manned, the sergeant is required to take the assigned patrol area nearest the station, while if the shift is fully manned the sergeant has no assigned patrol area; that sergeants conduct roll calls at the beginning of each shift and review and correct written reports of the patrol officers; that sergeants have issued oral reprimands on their own authority; that sergeants investigate allegations of misconduct lodged against police officers by citizen complaints or those which otherwise come to their attention (sometimes by the Chief); that as a result of said investigations, sergeants have issued written "In the Matter of" documents wherein they effectively recommended written reprimands be issued against police officers; that the Chief usually issues written reprimands in concurrence with sergeants' recommendations; that only the Chief can suspend employees and the Fire and Police Commission discharges them; that sergeants have served as members of oral interview boards for purposes of hiring and promotion within the Department, along with the Chief, members of the Police and Fire Commission, and other bargaining unit members; that sergeants have been doing written performance evaluations of probationary police officers since at least 1985; that beginning in 1986, the Chief initiated a new evaluation system; that pursuant to the evaluation system, police officers file daily reports of their activities, sergeants compile the data from these reports into monthly reports and the monthly reports include sergeants' rating of police officers' performance; that in addition, sergeants prepare quarterly performance evaluation reports; that the first such performance evaluation reports were completed and signed by the sergeant, police officer and Chief on or about July 20, 1986; that these reports evaluate police officers'

conduct and performance in nine areas and use a 1-5 rating scale evaluating each area; that the reports contain written goals set by the sergeant for each police officer and that the sergeants discuss these goals with each police officer; that according to Chief Hayes, "failure to follow goals will be the basis for disciplinary actions"; that the sergeants constitute the first step of the contractual grievance procedure, but that there is no evidence that sergeants have in fact resolved grievances; that scheduling of employees is not handled by sergeants, but is handled by a specified patrol officer; that sergeants have authority to grant time off, call in extra help, request assistance from or provide it to other area police forces, and have exercised said authority; that sergeants can authorize overtime; that each sergeant can choose which patrol officer will serve as acting shift commander in the sergeant's absence; that acting shift commanders have not been chosen on the basis of seniority, and are paid at the sergeant's rate; that sergeants assign work to patrol officers, can move patrol officers into and out of the normally assigned patrol areas, and have been given the authority on at least one occasion to select which one employee per shift would be given radar training; that sergeants, along with the chief, detective, lieutenant and investigator, attend a monthly staff meeting; that acting shift commanders have the same authority as sergeants, and upon the 1985 creation of the position of lieutenant an employee who had served as acting shift commander for two years was promoted to lieutenant without ever having served as sergeant; that sergeants have not been in charge of training employees, cannot approve shift changes, have no substantial role in the budget process of the department, are paid overtime, and have the same benefits as patrol officers; that the maximum monthly rate of pay for sergeant in 1986 was approximately \$200 more than the maximum rate for patrol officer and approximately \$54 less than the lieutenant's rate; and that sergeants have authority to assign patrol cars to patrol officers on their shifts.

10. That the detective works from 10:00 a.m. to 6:00 p.m. Tuesday through Saturday; that the one investigator who works under the detective works 5:00 p.m. to 1:00 a.m. Monday through Friday; that the detective is paid at the top sergeant rate, while the investigator is paid at a rate equal to the patrol officer's rate plus 75% of the difference between that and the sergeant rate; that the detective, unlike the investigator, works flexible hours; that the detective has been given authority over the investigator similar to sergeants' authority with respect to hiring, promotions, discipline, transfers, work assignment, and evaluation; that the investigator and detective work in a cooperative manner; that the detective has never reprimanded any employee; that the detective spends a substantial majority of his time performing work similar to the investigator's; that the detective does not prepare a budget, but like other Department employees can submit recommendations for equipment purchases; and that the detective has, but rarely exercises, authority to make minor purchases.

11. That the sergeants possess supervisory duties and responsibilities in sufficient combination and degree to render them supervisory employees.

12. That the detective does not possess supervisory duties and responsibilities in sufficient combination and degree to render him a supervisory employee.

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

CONCLUSIONS OF LAW

1. That the occupants of the position of sergeant are supervisory employees and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats., and may not be included within the collective bargaining unit herein.

2. That the detective is not a supervisor and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

3. That a question of representation has arisen among the employees included in the collective bargaining unit described in Finding of Fact 4, above and deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive, in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of St. Francis Police Department who have the power of arrest, excluding supervisory, confidential and managerial employees, who were employed by the City of St. Francis on May 4, 1987, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by Labor Association of Wisconsin, Inc., for the purpose of collective bargaining with the City of St. Francis concerning wages, hours and conditions of employment or not to be represented.

Given under our hands and seal at the City of
Madison, Wisconsin this 4th day of May, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

CITY OF ST. FRANCIS

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

In this proceeding LAW requests the Commission to conduct an election among regular full-time and regular part-time nonsupervisory law enforcement personnel employed by the City of St. Francis Police Department. LAW would include the Department's three sergeants and one detective however, the City contends that these positions are supervisory. The City, contrary to LAW, also contends that regular part-time employees should not be included in the bargaining unit. The essential facts are stated in the findings and need not be repeated here.

Part-time Employees

The crux of the Employer's argument with respect to part-time employees is that there have never been any employed by the City of St. Francis Police Department and it is speculative to surmise that were any hired they would share a community of interest with the existing full-time employees, or be entitled to the same benefits. LAW takes the position that part-time employees are routinely found to have a community of interest with regular full-time employees, if the part-time employees are also employed on a regular basis. We agree.

While it is true that the inclusion of regular part-time employees in a unit description is speculative, where none have been employed, it has been a routine practice to include regular part-time employees with regular full-time employees under MERA. Since by definition such employees are regular enough to be considered other than casual in their employment, the statute's mandate to the Commission to avoid undue fragmentation of bargaining units adds to the long-standing policy that such employees share a community of interest with full-time employees to justify their inclusion. Indeed, the City makes no substantive argument to the effect that any other conclusion would be reached, nor does it cite any authority for exclusion of regular part-time employees. The City of Milton 1/ case cited by the City is inapposite on this point because the issue there concerned whether the employees were regular part-time or rather were casual employees. The parties agreed that if the Commission found them to be regular part-time they belonged in the unit involved. We therefore conclude in this case that a unit comprised of all regular full-time and regular part-time law enforcement personnel as described in Finding of Fact 4, above, is appropriate.

Sergeants

We have addressed the question of the supervisory status of sergeants in the City of St. Francis Police Department before. In that decision 2/ we stated:

The Municipal Employer contends that Sergeants are in charge of the operational requirements of their respective shifts, and therefore are responsible for the discipline of Patrolmen working said shifts; the assignment of responsibilities to the Patrolmen, the control of the shift's operations and the adjustment of grievances. The Municipal Employer does not claim that Sergeants have the power to hire, transfer (between shifts), suspend (except in emergencies), layoff, recall, promote or discharge Patrolmen. Such powers are vested in the Chief, or the Fire and Police Commission.

On the basis of the evidence presented, the Commission concludes that Sergeants often perform work comparable to that

1/ Decision No. 13442-A.

2/ Decision No. 13177-A, 4/75.

performed by "working foremen". However, the Commission concludes that Sergeants are not vested with sufficient supervisory authority to require their exclusion from the bargaining unit. Their power to discipline is limited, in practice, to explaining the rules of the department and mediating conflicts that arise under those rules as well as occasionally filing reports with the Chief if there is a substantial breach of discipline. The assignment of duties to Patrolmen is limited to desk duty or patrol duty and is normally handled on a consensual arrangement between the Sergeant and Patrolmen involved. While the Sergeants theoretically act as the first step in the grievance procedure, in practice their function is merely to relay the grievance to the Chief. The great majority of a Sergeant's time is spent on patrol work and is of the same nature of work as performed by the Patrolmen. In dealing with Patrolmen, Sergeants exercise independent judgment to the same extent that any experienced Patrolman would, and his experience provides the basis for that exercise of independent judgement, rather than his rank. Sergeants do not evaluate the work of patrolmen on a regular and formal basis. . . .

The record shows that until the November, 1984 appointment of the present Police Chief, Mark Hayes, little changed concerning the use and authority of sergeants in this Department. Since then, the record shows, Chief Hayes has embarked on a determined effort to establish the sergeants as supervisors. LAW contends in essence that the Chief's changes have been a contrivance designed to create the impression of substantial authority while changing little in fact. The City contends that the current use and authority of sergeants parallels recent decisions of the Commission in which sergeants in other departments were found supervisory.

Sergeants' roles in the hiring and promotion processes are limited to serving on committees that interview applicants and make recommendations as to who should be hired or promoted. These committees also contain higher ranking officers or members of the Police and Fire Commission, however, and there is nothing in the record to indicate that sergeants have had the controlling or even a major voice in the final selection. Furthermore, in this small department both new hires and promotions are infrequent. The creation of the position of lieutenant in 1985 means that the Department now has a higher-level supervisor on hand for two out of three shifts, which tends to indicate that less authority is vested in sergeants in that respect since 1975, when the only officer superior to the sergeants was the Chief. In this respect we find unpersuasive the City's contention that the lieutenant is primarily occupied on paperwork and has little to do with the day-to-day supervision of other employees; were that the case, working hours from 6:00 p.m. to 2:00 a.m. would be difficult to explain. Ignoring (for reasons explained below) the detective and investigator, finding the sergeants to be supervisors would change the supervisory ratio from two supervisors for eighteen employees to five supervisors for fifteen employees. A one-to-three ratio of supervisors to employees is unusually high, though not unprecedented. 3/

Several factors, however, combine to persuade us that on balance the City has changed the nature of the sergeants' positions sufficiently to render them supervisory. In our 1975 St. Francis decision the absence of authority to evaluate employees was a significant factor. That has now changed. Sergeants have been evaluating probationary police officers since at least 1985. Further, the record reveals that beginning in 1986, the Chief initiated a new performance evaluation system which includes a requirement that sergeants quarterly evaluate police officers' performance in nine conduct and performance areas and rate their performance. These reports also contain goals for improvement and according to the Chief, failure to meet the goals will result in disciplinary action. The fact

3/ See, LaCrosse County (Sheriff's Department), Dec. No. 19539, 4/82, discussion of patrol sergeants in the Traffic Department, page 5.

that the City has not yet used these evaluations long enough for it to be clear whether or not they actually will be given any major effect does not make this change entirely inconsequential. 4/ Furthermore, the record shows sergeants issue oral reprimands on their own authority and effectively recommend written reprimands be issued against subordinate police officers. Sergeants have investigated citizen complaints or instances of misconduct or rule violations which come to their attention (sometimes by the Chief). They have issued written reports entitled "In the Matter of" wherein they recommend the Chief place said documents in the personnel files of police officers. In all instances noted in the record the Chief adhered to the sergeants' recommendations in this regard. While the parties disagree as to whether the Chief ordered written reprimands be issued by the sergeants involved, we find on this record the sergeants effectively recommend same.

Sergeants' pay is closer to that of the lieutenant than to the top patrol officer rate, and unlike the detective's pay it is unclear what the differential is for, if not supervisory responsibility. Paperwork and other supervisory chores occupy a greater percentage of sergeants' time than was the case before Chief Hayes' arrival, though the exact amount of time spent on various pursuits was disputed in the record. And while each of these facts, taken separately, could be consistent with the union's theory that management here is engaging in a contrivance, the overall picture is influenced by their total effect, particularly because some clear delegation of real authority is evidenced. This is particularly true in the role given to the sergeants in selecting outright which officer on each shift was to be sent for radar training, and more so by the right of sergeants to select or change which patrol officer will serve as acting shift commander. The latter is a standing designation, which is effective for four days out of every thirteen and carries the sergeants' pay rate; the fact that sergeants were given authority to make that choice indicates that the employer's determination to upgrade their status is not simply a matter of pretense. On balance, we are persuaded that the sergeants' duties have been sufficiently upgraded to render them supervisory.

Detective

The job description for the newly created position of detective was written similarly to the sergeant's job description, and on the surface the detective has authority over what the City chooses to call the Bureau of Investigation similar to sergeants' authority over patrol officers on their shifts. In practice, however, a substantial difference emerges. First, the Investigation Bureau contains only one other employee besides the detective. The evidence in the record is that not only do the two work cooperatively, but also that they have relatively little contact, since the investigator's shift overlaps the detective's by only one hour - and then only four days a week. The detective has authority to assign work to the investigator and can borrow other employees, but the vast majority of his time is spent investigating crimes and essentially performing the specialized duties characteristic of a detective's work. The investigator works independently for most of his shift, and is entrusted with considerable independence of movement, unlike the patrol officers. The detective is paid at the sergeant's rate, but it is clear in his case that he is paid primarily for his particular skill and not for supervision, both because of the low amount of time spent supervising anyone and because the investigator is paid closer to the detective/sergeant's rate than to the top patrol officer rate. The detective has little authority to make purchases for the department and no authority to establish an original budget or divert monies to differing program purposes. While he has done background checks on prospective employees, this plainly fits with his specialty, and his service on interview committees for new hires and promotions is so sporadic as to count for little in this small department. The detective has authority to reprimand the investigator, but has never done so. The most substantial possible authority for the detective is in his inclusion on the Department's roster as the substitute for the Chief in the Chief's absence; but it developed during the hearing that this was an error remaining from the period

4/ See our discussion of the earlier St. Francis case in City of Verona (Police Department), Dec. No. 14776-C, 7/80, particularly footnote 2.

before the appointment of the lieutenant, and there is no evidence that the detective has in fact served as acting chief at any time since the lieutenant's appointment. We conclude, for these reasons, that the detective supervises an activity rather than employees in a labor relations sense, and does not possess or exercise supervisory responsibilities in sufficient combination or degree to render him a supervisor.

Dated at Madison, Wisconsin this 4th day of May, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner