

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DANE COUNTY WISCONSIN
MUNICIPAL EMPLOYEES LOCAL 60,
AFSCME, AFL-CIO

Involving Certain Employees of

VILLAGE OF MAPLE BLUFF

Case 2
No. 39164 ME-2727
Decision No. 24994

Appearances:

Mr. Darold O. Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Dane County Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO. Melli, Walker, Pease and Ruhly, S.C., by Mr. James K. Ruhly, 119 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53703, appearing on behalf of the Village of Maple Bluff.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Dane County Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO having, on July 27, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all regular full-time and regular part-time employees of the Village of Maple Bluff Police Department and Fire Department, excluding supervisors, confidential and craft employees, 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 September 23, 1987 at Maple Bluff, Wisconsin, before Examiner Douglas V. Knudson, a member of the Commission's staff; and at said hearing a stenographic record having been made; and at said hearing the Union having been permitted to amend its petition to remove from its terms references to the employees of the Village Fire Department; and the stenographic record being prepared by October 7, 1987; and post-hearing briefs having been filed, the last of which was received on October 26, 1987; 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 Dane County Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.
2. That the Village of Maple Bluff, herein referred to as the Village, is a municipal employer and has its offices at 18 Oxford Place, Madison, Wisconsin 53704.
3. That the Union did, on July 27, 1987, file a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all regular full-time and regular part-time employees of the Maple Bluff Police Department and Fire Department, excluding supervisors, confidential and craft employees; and, that the Union, at hearing, did amend its petition by removing from it the inclusion of Village Fire Department employees, which amendment was not objected to by the Village.
4. That at hearing the Union and Village did agree that three police officers, namely Hugh Morrison, Donald Schmudlach and John Montgomery are properly included in the claimed unit and are eligible to vote in an election.
5. That the Village, contrary to the Union, claims that the only remaining position in the Department other than Chief, that of Sergeant, is properly classified as a supervisor, and thus should be excluded from the bargaining unit.

6. That the incumbent of the position of Sergeant, Dennis Schmelzkopf, had held such position for approximately three months at the time of hearing, prior to which time he had served as an officer in the Village Police Department; that Schmelzkopf devises the duty roster, which is the master work schedule indicating the basic rotation of days on and days off and the particular assignment of specific officers to particular shifts; that a temporary vacancy in the duty roster, caused by an officer's unavailability due to illness, vacation, leave, or other reasons, is filled either by the assignment of an extra shift to a permanent employe, or by the use of a casual part-timer, and that the determination of how to fill such a temporary vacancy is made by either the Chief or the Sergeant, depending on who is on duty when the need arises; that the regular schedule calls for the Chief to work on weekdays from 7:00 a.m. to 3:00 p.m., during which times the Chief frequently is the only law enforcement officer on duty; that the Sergeant works weekends from 7:00 a.m. to 3:00 p.m., as well as rotating on the standard shifts of 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m., plus a shift, unique to him, of 11:00 a.m. to 7:00 p.m.; that the Sergeant is often the only law enforcement officer on duty; that, during their duty tours, the Chief and the Sergeant both operate squad cars and perform patrol responsibilities similar to the three other officers; that the Chief and the Village Administrator both have the authority to revise the duty roster as prepared by the Sergeant; that officers cannot work overtime without the approval of either the Chief or the Sergeant; that neither the Chief nor the Sergeant have exercised their authority to grant overtime pay during the time they have occupied their current positions; that prior to their appointments as Chief (May 1, 1987) and Sergeant (mid June 1987), the current incumbents were Sergeant and Officer, respectively; that neither the Chief nor the Sergeant participated in the hiring process by which the Village filled the vacancy caused by the promotion of Schmelzkopf to Sergeant, which process was handled by the Village's Police and Fire Committee; that Sergeant Schmelzkopf has the authority to recommend discipline, but that he has never done so; that any recommendations the Sergeant may make regarding discipline are subject to the effective review of the Chief, the Village Administrator, the Police and Fire Committee, and the Village Board; that the Sergeant was not involved in the one instance in which the current Chief disciplined an officer with a letter of reprimand; that the Sergeant and the Chief can both make recommendations for salary raises for officers, but that such recommendations are subject to review by the Village Administrator, the Police and Fire Committee and the Village Board; that the Police Department has no formal or written grievance procedures; that the Sergeant has the authority to suggest a resolution of a grievance; that Schmelzkopf has not been involved with any grievances; that the Sergeant has access to the officers' personnel files; that Sergeant Schmelzkopf received a raise of approximately \$2,000 upon his appointment as Sergeant, a raise primarily reflecting his increased responsibility; that in the absence of the Chief, the Sergeant is in command of the force; and, that Schmelzkopf does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time employes of the Village of the Maple Bluff Police Department, who have the power of arrest, excluding supervisory, managerial, confidential and craft employes, constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That the position of Sergeant in the Village Police Department is not supervisory within the meaning of Sec. 111.70(1)(o), Stats., and therefore, the occupant of said position is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., exists among the employes in the bargaining unit described in Conclusion of Law 1.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days of this directive, in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Village of Maple Bluff Police Department, who have the power of arrest, excluding supervisory, managerial, confidential and craft employees, who were employed by the Village of Maple Bluff on November 19, 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 Dane County Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO, for the purpose of collective bargaining with the Village of Maple Bluff concerning wages, hours and conditions of employment or to not be represented.

Given under our hands and seal at the City of
Madison, Wisconsin this 19th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

VILLAGE OF MAPLE BLUFF

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

Positions of the Parties

The Village contends that the position of Sergeant in the Police Department is supervisory as evidenced by the Sergeant's full responsibility for preparing the duty roster and for handling other scheduling matters, which reflects the exercise of a significant amount of independent judgement, and by the authority of the Sergeant to effectively recommend discipline, even though the current incumbent has not done so. The Village further notes that the Sergeant, a former patrol officer, received a substantial raise at the time of his promotion, which it ascribes to his increased supervisory duties. The Village acknowledges that there are several areas, including hiring and promoting, in which the Sergeant has no authority, but contends that the decision by the Village to reserve such powers to its Board and Police and Fire Committee is typical of small municipalities in Wisconsin. The Village discounts the high ratio of supervisors to non-supervisors (2 to 3) that would result from a determination of supervisory status for the Sergeant, contending that this is often the case in small departments. Finally, the Village raises a concern that a determination of non-supervisory status would result in a supervisor being on duty during less than one-third of the work week.

In support of its position that the Sergeant is not a supervisor, the Union notes the Commission's criteria for a finding of supervisory status, and concludes that the established duties and record evidence fail to satisfy the well-established test.

DISCUSSION

The WERC considers the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

We have previously commented that the quasi-military organization of police and fire departments "presents a somewhat unique problem" in making determinations with regard to alleged supervisory status. 1/ Accordingly, we have considered the present case in light of our past decisions affecting the protective services, and have found that the duties of the Maple Bluff Sergeant are closer in scope and nature to those of positions we have found to be non-supervisory.

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

When we have found officers, either Sergeants or Lieutenants, to be supervisors, it has been because the record demonstrates a high level of involvement in major labor relations decisions. For example, the Sergeants we have found to be supervisors had the authority: to suspend employees with pay, to participate in hiring decisions, and to conduct meaningful performance evaluations; 2/ to issue oral or written reprimands, or impose a day's suspension, pursuant to written policies; 3/ to serve as the first step in a contractual grievance process, to participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders, and to conduct meaningful performance evaluations; 4/ and, to participate in hiring decisions, to take or effectively recommend oral and/or written discipline, to conduct performance evaluations, and to do work substantially distinct from patrol officers. 5/

Those officers whom we have found to be non-supervisory have displayed few, if any, of these factors. For example, we recently found Sergeants to be non-supervisory because 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. 6/ 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. 7/ And we have even found a Chief Deputy, in command of the department on a regularly recurring basis, to be non-supervisory because the record was void of his making any major labor relations decisions. 8/

In the instant matter Schmelzkopf has significant, even the primary, responsibility in one aspect of the assigning of the work force, namely the development of the duty roster and the related scheduling of replacements. This pertains only to the scheduling of the other officers, however, and not to the assignment of actual duties.

As was the case in Menominee County, there is little, if any, evidence in the record establishing significant involvement by Schmelzkopf in major labor relations actions or decisions. For example, he has neither recommended promotions nor participated in hiring new officers. The authority to effectively recommend discipline is an important indicia of supervisory status. The Village, while acknowledging that Schmelzkopf has himself never recommended discipline, contends that such authority is attendant upon the position itself, as demonstrated by the purported actions of the former Sergeant (the current Chief). The record, however, does not conclusively establish that the former Sergeant did actually effectively recommend discipline. Further, Schmelzkopf was not involved in the discipline of an employee by the current Chief. The record also makes it clear that any disciplinary recommendation that the Sergeant might make is subject to review by the Chief, the Village Administrator, the Police and Fire Committee, and the full Village Board, thus curtailing the effectiveness of such recommendation.

We also note that Schmelzkopf is frequently the only officer on duty, and therefore has no need or opportunity to directly supervise other officers, and that when on duty, he commonly performs the same patrol tasks as the three patrol officers. And, unlike most of the Sergeants we have found to be supervisors in

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

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

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

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

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

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

8/ Menominee County, Dec. No's. 23352-23355 (WERC, 3/86).

other areas, he does not conduct meaningful performance evaluations nor does he serve an established function in a standardized grievance process. Furthermore, given the small size of the department, a determination that the Sergeant is a supervisor would result in a supervisor to employee ratio of 2 to 3, or 3 to 3 if the Administrator were included.

The Village contends that a finding of supervisory status is necessary for Schmelzkopf to have the imprimatur of authority he needs to issue certain directives. However, our function is to determine an employee's status based upon actual duties and responsibilities already given an employee.

In summary, the record establishes that Schmelzkopf does not effectively recommend the hiring or promotion of employees, that several other persons or entities exercise greater authority over the same employees whom he oversees, that Schmelzkopf spends a substantial majority of his time performing the same patrol duties as the other employees whom he oversees, and that his authority to direct and assign the work force is subject to review by his own superiors and the vagaries of when scheduling problems arise.

Accordingly, because the record fails to establish that Schmelzkopf possesses the customary indicia of supervisory status in sufficient combination and degree to warrant finding him a supervisor, we conclude that his position of Sergeant is properly included in the bargaining unit.

Dated at Madison, Wisconsin this 19th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner