

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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WISCONSIN PROFESSIONAL POLICE :
  
ASSOCIATION/LEER DIVISION : Case 73
  
: No. 46061 ME-511
  
Involving Certain Employes of : Decision No. 25700-A
  
:
  
CITY OF MARSHFIELD :
  
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Appearances:

Mr. Gary W. Wisbrocker, Business Agent, Wisconsin Professional Police Association/LEER Division, E1125 South Radley Road, Waupaca, Wisconsin 54981, appearing on behalf of the Association.  
Mr. Dean R. Dietrich, Ruder, Ware & Michler, S.C., Attorneys at Law, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the City.

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

On July 9, 1991, the Wisconsin Professional Police Association/LEER Division (hereinafter Association) filed a petition with the Wisconsin Employment Relations Commission (hereinafter Commission) to clarify a bargaining unit of municipal employes of the City of Marshfield. The Association seeks to include the position of Sergeant in the bargaining unit represented by the Association consisting of regular full-time Corporal, Police Officer, Detective and Police Technician ranks, excluding the Chief, Captain, Lieutenant and Sergeant ranks. Hearing in this matter was originally scheduled for November 11, 1991. Hearing was held on January 9, 1992, in Marshfield, Wisconsin, before James W. Engmann, a member of the Commission's staff. The hearing was transcribed, a copy of which was received on January 24, 1992. The parties filed or waived the filing of briefs and reply briefs, the last of which was received on April 17, 1992. Being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Wisconsin Professional Police Association/LEER Division (hereinafter Association), and its local affiliate, Marshfield Police Officer's Wage and Grievance Committee, are labor organizations with an office located at E1125 South Radley Road, Waupaca, Wisconsin.
2. City of Marshfield (hereinafter City or Employer) is a municipal employer with offices located at City Hall, 630 South Central Avenue, Marshfield Avenue, Marshfield, Wisconsin.
3. The Association is the exclusive bargaining representative for the regular full-time Corporal, Police Officer, Detective and Police Technician ranks within the Marshfield Police Department, excluding the Chief, Captain, Lieutenant and Sergeant ranks within said department.
4. On July 9, 1991, the Association filed a petition with the Commission to clarify the bargaining unit described in Finding of Fact 3 above by including the position of Sergeant. The City opposes the inclusion of the position of Sergeant because the parties' previously agreed to exclude the position of Sergeant from the bargaining unit described above and because the

position is supervisory.

5. In 1968, the bargaining unit included the positions of Lieutenant, Sergeant and Patrol Officer. In the early 1970's, a dispute arose within the bargaining unit concerning the selection of union representatives. As a result, the Sergeants and the Lieutenants withdrew from the bargaining unit and formed their own bargaining unit. Subsequently, the Association and the City entered into a collective bargaining agreement which specifically excluded the positions of Sergeant and the Lieutenant. Said exclusion was not based upon an agreement by the Association and the City that the positions of Sergeant and Lieutenant were supervisory, confidential, managerial or executive employes. Since then, the Association and the City have entered into numerous collective bargaining agreements which continue to exclude the position of Sergeant, the latest of which reads as follows:

ARTICLE 1 - PURPOSE OF AGREEMENT

1.It is the intent and purpose of the parties hereto that this agreement shall promote and improve working conditions between the City of Marshfield and the Marshfield Police Department "Corporal", "Patrol Officers," "Detectives," and "Police Technicians," to set forth herein rates of pay, hours of work, and other terms and conditions of employment to be observed by the parties heretofore mentioned.

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ARTICLE 2 - RECOGNITION

1.This agreement made and entered into at Marshfield, Wisconsin, pursuant to the provisions of Chapter 111.70 and 62.13 of the Wisconsin Statutes by and between the City of Marshfield, a municipal corporation, as municipal employer, with the Chief of Police as its agent, hereinafter referred to as the "City", and the Marshfield Police Officer's Wage and Grievance Committee as sole bargaining agent for the rank of Corporal, patrol Officers, Detectives and Police Technicians within the Marshfield Police Department . . . hereinafter referred to as "Police Officer."

2.The City recognizes the Marshfield Police Officer's Wage and Grievance Committee as the exclusive bargaining agent for the regular, full-time Corporal, Police Officer, Detective and Police Technician ranks within the Marshfield Police Department, excluding the Chief, Captain, Lieutenant and Sergeant ranks within said department.

6. The bargaining unit consisting of the positions of Sergeant and Lieutenant continued until around 1978. After that time, the Sergeants and Lieutenants did not enter into a collective bargaining agreement with the City. The bargaining unit disbanded and the Sergeants and Lieutenants agreed to be covered by Chapter 25, a City ordinance related solely to law enforcement

personnel. In or about 1983, Chapter 25 of the City ordinances was abolished through agreement with the management group, and the Sergeants and Lieutenants became subject to the same ordinance which covers other non-represented and management employes of the City. That situation continues to the present.

7. The Marshfield Police Department has three Lieutenants and three Sergeants who are assigned to supervise 22 patrol officers, including one Corporal. One Lieutenant and one Sergeant are assigned to the Detective Bureau. There are three work shifts; each shift includes one Lieutenant, one Sergeant and seven or eight patrol officers. The patrol officers work a 5-2, 5-3 work schedule. The work days of the Lieutenant and Sergeant are varied to insure that a supervisor is on duty. The Sergeant and Lieutenant are on duty on the same shift at the same time approximately five days out of a 15 day period. A Sergeant will be on duty without the Lieutenant and function as the shift commander approximately five days out of a 15 day period, while having the additional five days off. The work schedule may vary depending upon sick leave, vacation or other absences.

8. The job description for Sergeant states in pertinent part:

This is a position involving the direction of assigned personnel and activities of the Marshfield Police Department.

The work involves responsibility for the protection of lives and property in the city, through the supervision of assigned police functions. The responsibilities include the supervision of subordinates on a patrol shift, and also recommending departmental policies, procedures and priorities. Assisting in the development and implementation of police programs, assisting in the training of their subordinates, and supervision of police equipment maintenance.

. . .

Examples of Work:

- To assist in the development and implementation of department policies, programs, methods, procedures and goals.
- Helps to prepare work schedules, assigns patrol officers to shifts, helps to schedule vacations, days off, etc.
- Conducts daily meeting with their assigned shift, plus their shift supervisor.
- Gives assignments as needed.
- Assists the Police Lieutenant in administrative duties.
- Recommends the department's enforcement needs through analysis of crime statistics and traffic records.
- Orders needed supplies, equipment and uniforms.
- Instructs the subordinate officers as to work assignments and procedures.
- Interprets new laws, ordinances, rules and regulations for subordinate officers, coordinates with the supervision, training and scheduling of subordinates of their shifts.
- Assumes command of their shift during the absence of their immediate lieutenant.

-Performs related work as required.

Knowledge, Skills and Abilities:

- Thorough knowledge of modern policy supervisory methods and procedures.
- Thorough knowledge of Federal, State and local ordinances, rules and regulations.

. . .

9. A shift commander, either the Lieutenant or Sergeant, is responsible for the direction and supervision of the shift. The duties of the Sergeant while serving as shift commander are the same as a Lieutenant. When a Sergeant works on a shift when the Lieutenant is present, approximately 60 percent of his time is spent with patrol-related responsibilities. The other 40 percent of his time is spent in supervisory/administrative capacities. In addition to supervising patrol officers, the shift commander is also responsible for supervising dispatchers who are on the shift. Normally two dispatchers work each shift. When a Lieutenant or Sergeant is unavailable to serve as shift commander, a senior patrol officer may be designated acting shift commander by the Lieutenant or Sergeant. While serving as an acting shift commander, the patrol officer receives additional compensation and performs most of the duties of the shift commander. The Lieutenant or Sergeant, who normally would be on duty as shift commander, is responsible for the patrol officers' actions as acting shift commander and remains responsible for the performance of the shift.

10. The shift commander assigns work and makes changes in assignments when necessary. Although the basic work schedule is reasonably fixed, changes in scheduling must be approved by the shift commander. Shift commanders schedule vacation, holiday time and compensatory time off. They also approve work hour exchanges between patrol officers. Shift commanders can authorize overtime and call in off-duty patrol officers on an overtime basis when the need arises. The shift commander also directs auxiliary police officers when they are on duty. Currently there are approximately 30 auxiliary police officers participating in the Department's program. When on duty, auxiliary officers receive assignments and direction from the shift commander. Shift commanders have the authority to discipline patrol officers. They may issue verbal warnings and written warnings. Shift commanders may recommend suspensions and relieve officers from duty without consulting higher level authority. 1/ When citizen complaints are made, the shift commander is responsible for receiving and investigating the allegations. This would include interviewing the complainant, obtaining evidence, interviewing the officer and taking statements from other appropriate parties. Shift commanders are the first step in the grievance procedure and have the authority to settle grievances. Shift commanders participate in the hiring process. After candidates are interviewed by the Police and Fire Commission, representatives from the Department conduct interviews. Shift commanders rate candidates based upon the interview. The ratings of each member of the interview team are given equal weight.

11. The Police Chief conducts weekly management staff meetings. These

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1/ The parties stipulated that officers up to and including the Chief of Police do not have the authority to suspend without pay or terminate a police officer. These decisions are made by the Police and Fire Commission.

meetings are attended by the shift commanders. Shift commanders also attend daily staff meetings that are held by the Chief of Police. Sergeants are paid approximately \$30,360 per year, while patrol officers at the three-year increment are paid \$24,871 per year. Lieutenants are paid approximately \$33,000 per year. Patrol officers receive overtime payment for hours worked beyond their normal schedule. Sergeants do not receive payment for overtime hours worked unless the Department is being reimbursed by an outside agency. Sergeants are granted "staff time" off. Under this arrangement if the shift is staffed properly, Sergeants may take time off from work. The "staff time" arrangement is also provided to the Chief of Police, Deputy Chief and Lieutenants.

12. The Department presently does not evaluate employes. The Sergeants oversee the training of new employes. The Sergeants determine whether recruits satisfactorily pass the probationary period and continue employment with the City. Sergeants recommend patrol officers to serve as field training officers for new recruits. Individuals serving as field training officers receive additional compensation. Patrol officers, who request specific training, submit the request to the shift commander who then in turn makes a recommendation regarding the request.

13. The Sergeants who serve as shift commanders on a regular and significant basis exercise supervisory duties and responsibilities in sufficient combination and degree to render them supervisors.

14. The Detective Bureau is a separate operational unit of the Department. It consists of a Lieutenant, a Sergeant, three Detectives and one police school liaison officer. Eleven police chaplains, nine school crossing guards, thirty police auxiliary officers, Officer Leu and one traffic safety technician also report through the Detective Sergeant to the Lieutenant. The Detective Bureau is also responsible for overseeing the training function, crime prevention and the neighborhood watch. The Lieutenant has overall responsibility for the functioning of the Bureau. The Detective Sergeant is in charge when the Lieutenant is not present, however both work approximately the same schedule. The Sergeant can make and change work assignments, insure that cases are investigated in a timely manner, and serves as a resource when Detectives have questions. The Sergeant can investigate citizen complaints. The Sergeant can assign overtime to employes and approves compensatory time and vacation requests. When the Lieutenant is present, the Detective Sergeant discusses decisions with him prior to them being made. The Detective Sergeant attends management staff meetings. From time to time he handles cases. The Detective Sergeant also coordinates the training function. After training requests are approved, the Sergeant coordinates the details. He monitors the types of training that are conducted in the Department.

15. The Detective Sergeant does not exercise supervisory responsibilities in sufficient combination or degree to render him a supervisor.

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

#### CONCLUSIONS OF LAW

1. The Sergeants who serve as shift commanders on a regular and significant basis are supervisory employes within the meaning of Sec. 111.70(1)(o)1, Stats. and therefore are not municipal employes with the meaning of Sec. 111.70(1)(i), Stats.

2. The Detective Sergeant is not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats. and therefore is a municipal employe with the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER 2/

1. The Sergeants who serve on a regular and significant basis as shift commanders shall continue to be excluded from the bargaining unit represented by the Association.

2. The Detective Sergeant is hereby included in the bargaining unit represented by the Association.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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

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2/ 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.

Continued

(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.

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(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 MARSHFIELD

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

The Association seeks to include the position of Sergeant, currently occupied by four employes, into the bargaining unit it represents. The City opposes the inclusion of the basis that the petition is barred by the parties' prior agreement to exclude the Sergeant position from the bargaining unit and on the basis that the position is supervisory.

POSITIONS OF THE PARTIES

Association

On brief, the Association argues that an analysis of the seven factors considered by the Commission shows that the Sergeants should be placed in the non-supervisory bargaining unit in that they are working foremen, not supervisors, and therefore they are municipal employes. The Association asserts that because one or two of the supervisory criteria exist and can be applied to the position in this case, this does not mean that the position is automatically supervisory and that, indeed, the criteria must be sufficient in both quality and degree before it can be concluded that the disputed position is supervisory, citing City of Verona, Dec. No. 14776-B (WERC, 2/80).

The Association argues that the Sergeants do not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes; that they do not have unrestricted authority to direct and assign the work force; that the position of Sergeant is non-supervisory due to the limited number of employes they oversee; that the Sergeants' level of pay and the fact that they are paid for their skills rather than their supervision of employes illustrates that the positions are non-supervisory; that Sergeants primarily supervise activities rather than employes; that Sergeants are working supervisors who do not spend a substantial majority of their time supervising employes; and that Sergeants exercise little independent judgment and discretion while supervising employes.

Because the Sergeants operate as experienced lead workers, the Association requests the Commission to determine that the position of Sergeant should be included in the non-supervisory law enforcement bargaining unit.

On reply brief, the Association argues that even though the parties have agreed to include or exclude certain positions from a collective bargaining unit, the Commission will entertain a position regarding the scope of the bargaining unit if the positions in dispute were voluntarily excluded from the unit, citing Manitowoc Co., Dec. No. 7116-C (WERC, 11/91). The Association also asserts that because the circumstances which originally resulted in the voluntary exclusion of the Sergeants from this unit have changed in a material way, the Commission should process the petition for unit clarification.

City

The City argues that the Association's petition is barred by the parties' prior agreement to exclude the Sergeant positions from the bargaining unit, citing Mid-State VTAE, Dec. No. 14526-A (5/85), and West Allis - West Milwaukee School District, Dec. No. 16405-C (1/89), among others. Specifically, the City asserts that the Association and the City agreed to language excluding



Sergeants from the bargaining unit, and that the record does not show any intervening event which has materially affected the status of the Sergeants. Therefore, the City argues, to permit the Association to proceed in this unit clarification proceeding, contrary to the parties' mutual agreement to exclude the Sergeants from the bargaining unit, would be inappropriate.

In addition, the City contends that the position of Sergeant is clearly supervisory and, therefore, must be excluded from the collective bargaining unit; that relevant case law clearly establishes that the duties and responsibilities of the Sergeants qualify them as supervisors entitling them to the exemption in the Municipal Employment Relations Act, citing numerous cases; and that the evidence unequivocally establishes that the position of Sergeant is supervisory. Specifically, the City argues that the Sergeants possess the effective authority to recommend hiring, transfer, or discipline of employes and to direct and assign the work force; that the Sergeants supervise a substantial number of employes, none of whom exercise the same authority over other employes; that they supervise employes rather than activities; that the Sergeants expend a substantial majority of their time supervising employes; and that they exercise substantial independent judgment and discretion in regard to the supervision of employes.

Therefore, the City requests the Commission to dismiss the petition or, in the alternative, to hold that the Sergeant position is supervisory and continue to exclude it from the bargaining unit.

#### DISCUSSION

The record is clear that the Union and the City have agreed to exclude the position of Sergeant from the collective bargaining unit.

The Commission has held that where the parties have agreed to include or exclude certain positions from a collective bargaining unit, it will honor that agreement and will not allow a party to the agreement to pursue alteration of the bargaining unit's scope through a unit clarification petition unless:

1. The position(s) in dispute did not exist at the time of the agreement; or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential, managerial or executive (the so-called "statutory exemptions"); or
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act. 3/

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3/ Edgerton School District, Dec. No. 18856-A (WERC, 5/90); City of Sheboygan, Dec. No. 7378-A (WERC, 5/89); West Allis - West Milwaukee Schools, Dec. No. 16405-C (WERC, 1/89); Milwaukee Board of School Directors, Dec. No. 13134-A (WERC, 1/76); and City of Cudahy, Dec. No. 12997 (WERC, 9/74).

If we determined it was appropriate to honor the agreement to exclude Sergeants and if some or all of the Sergeants are not supervisory employes, those Sergeants would be entitled to seek union representation in a unit separate from that which the parties' agreement had excluded them from. Thus, under such a scenario, there would be the potential for two sworn law enforcement units. Because two such units would not be appropriate given the statutory fragmentation language of Sec. 111.70(4)(d)2.a., Stats., 4/ the existing unit would be repugnant to the Act because it would not contain all regular sworn municipal employes of the City. Thus, the fourth exception set forth above is potentially present and precludes us from continuing to exclude Sergeants based on the parties' agreement. Therefore, we proceed to determine whether the Sergeants' exclusion is warranted by supervisory status.

A supervisor is defined as:

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

We have considered the following factors in applying the statutory definition in order to determine if a position is supervisory:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.
6. Whether the supervisor is a working super-

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4/ Section 111.70(4)(d)2.a., Stats. states in pertinent part:

The Commission . . . shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force.

visor or whether he spends a substantial majority of his time supervising employes; and

7. The amount of independent judgment exercised in the supervision of employes. 5/

Not all of the above factors need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employe occupying the position is supervisory. 6/

We have previously commented that the quasi-military organization of police and fire departments presents a unique problem in making determinations about alleged supervisory status. 7/

#### Sergeants/Shift Commander

We are satisfied that the Sergeants service as shift commanders on a regular and significant basis warrants their continued exclusion from the unit as supervisors. During a normal 15-day period, a Sergeant has five off days, serves as a shift commander for five days, and works with a Lieutenant on the same shift for five days. When working with the Lieutenant, approximately 40 percent of the Sergeant's time is spent performing supervisory functions. As shift commander, the Sergeant is responsible for the direction and supervision of a shift. They assign work to employes as well as change assignments when the need arises. Although basic schedules are reasonably fixed, Sergeants approve alterations to these schedules. This includes approving vacation, holiday time off, compensatory time, hour changes between patrol officers, and other requests. Sergeants also oversee the work of dispatchers and auxiliary officers. While the duties of the dispatchers are reasonably fixed, auxiliary officers receive assignments and direction from the Sergeants. Shift commanders/Sergeants can assign overtime, call in off-duty patrol officers when the need arises. Sergeants may also request assistance from other police departments in emergency situations.

Sergeants as shift commanders can issue verbal warnings and written discipline. They can relieve officers from duty and effectively recommend suspensions. Sergeants handle citizen complaints about patrol officers. This involves interviewing the officer and the complainant, obtaining evidence and taking other necessary action to complete an investigation.

The Department does not have an employe evaluation system. Although the Chief plans to develop one in which the Sergeants will evaluate patrol officers under their supervision, at this point it is speculative. Sergeants do, however, evaluate the performance of probationary employes and make decisions about whether or not the employment of the new employe should be continued.

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5/ City Firefighters Union v. City of Madison, 48 Wis.2d 262, (1970); and City of Two Rivers, Dec. No. 21959-A (WERC, 2/91).

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

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

Sergeants also select officers who are to serve as field training officers for new recruits. Field training officers receive increased compensation while serving in this role.

Requests for training are submitted by patrol officers to the shift commander. The shift commander reviews the request and makes a recommendation as to whether the request should be granted.

Sergeants are involved in the hiring process. After candidates are interviewed by the Police and Fire Commission, Sergeants participate as part of the departmental interviewing panel. The rating provided by the Sergeant is given equal weight along with all other interviewers, including the Chief of Police. This "equal status" while serving as an interviewer is significant.

Sergeants, as shift commanders, serve as the first step in the grievance procedure. They receive grievances and have the authority to settle grievances.

Sergeants receive approximately \$30,360 per year; patrol officers at the third year increment receive \$24,871 per year. The Sergeants' salary is obviously closer to the Lieutenants' salary which is approximately \$33,000 annually. We conclude that the salary differential between patrol officers and Sergeants exists primarily because of the Sergeants' supervisory responsibilities.

Our conclusion as to supervisory status is similar to those reached in other cases. For example, the Sergeants we have previously found to be supervisors had the authority to suspend employees with pay and to participate in hiring decisions, 8/ to serve as the first step in the contractual grievance process, to participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders, 9/ to participate in hiring decisions, to make or effectively recommend oral and/or written discipline, and to do work substantially distinct from patrol officers, 10/ to interview candidates when scoring is given the same weight as other panel members including the Chief, to issue oral and written reprimands, to approve shift trades between officers, authorize overtime, call in extra officers, grant time off, change assignments or reassign duties, and effectively recommend suspensions. 11/

In summary, while the Sergeant/shift commander positions do not exhibit all of the factors we consider in determining supervisory status, they exhibit a sufficient combination of these factors for us to find them to be supervisory.

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

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

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

11/ City of Two Rivers, Dec. No. 21959-A (WERC, 2/91).

Detective Sergeant

The Detective Sergeant can assign cases, provide assistance to detectives when needed, call employes in on an overtime basis, approve compensatory time off and schedule vacation. While these are responsibilities associated with a supervisory finding, the record does not support that the Detective Sergeant possesses the other components crucial to a supervisory conclusion. While the incumbent in the Detective Sergeant position (Beres) clearly had the authority to discipline employes when he served as a shift commander, the record does not support that he possesses that authority as Detective Sergeant. Further, the fact that the Lieutenant to which he reports works the same shift and same hours leads us to conclude that he is operating much less independently than a shift commander. In fact, Sergeant Beres testified that since the Lieutenant was on duty when he was, he would seek his guidance when decisions had to be made.

Further, a major component of the Detective Sergeant's position is to oversee training activities. He is involved in responding to and identifying training needs, coordinating training activities and maintaining training records.

Given all of the foregoing, we conclude that the Detective Sergeant is primarily involved in supervising activities rather than employes and does not possess or exercise supervisory responsibilities in sufficient combination or degree to render him a supervisor.

Dated at Madison, Wisconsin this 9th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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