

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
WISCONSIN PROFESSIONAL POLICE :
ASSOCIATION/LAW ENFORCEMENT : Case 1
EMPLOYMENT RELATIONS DIVISION : No. 43223 ME-2961
: Decision No. 26426
:
Involving Certain Employees of :
TOWN OF BROOKFIELD :
(POLICE DEPARTMENT) :
:
- - - - -

Appearances:
Mr. Richard T. Little, Business Agent, 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226, on behalf of the Wisconsin Professional Police Association/Law Enforcement Employment Relations Division.
Mr. Harlan A. Ross, Police Chief, 645 N. Janacek Road, Waukesha, Wisconsin 53186, on behalf of the Town of Brookfield.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association/Law Enforcement Employment Relations Division having on November 30, 1989, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain law enforcement personnel in the employ of the Town of Brookfield, to determine whether said employees desire to be represented by said Association for the purpose of collective bargaining; and hearing in the matter having been conducted on February 19, 1990 in Brookfield, Wisconsin before Examiner Mary Jo Schiavoni, a member of the Commission's staff; and the stenographic transcript of said hearing having been received on March 7, 1990, and the parties having completed their briefing schedules on March 23, 1990; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Professional Police Association/Law Enforcement Employment Relations Division, hereinafter referred as the WPPA, is a labor organization and has its principal office at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.

2. That the Town of Brookfield, hereinafter referred to as the Town, is a municipal employer and has its principal offices at the Town Hall, 645 N. Janacek Road, Waukesha, Wisconsin 53186; and that among its various governmental functions, the Town operates a police department wherein individuals occupying the following classifications are employed:

<u>Classification</u>	<u>Number of Employees</u>
Chief of Police	1
Captain	1
Lieutenant (part-time)	1
Sergeant (full-time)	2
Corporal (part-time)	1
Patrol Officers (part-time)	10

3. That in the instant proceeding, the WPPA seeks a representation election among all regular full-time and regular part-time employees of the Town of Brookfield Police Department excluding confidential, managerial and supervisory personnel.

4. That during the course of the hearing, the parties stipulated to the inclusion of and eligibility of the Patrol Officers and Corporal as municipal employees in the bargaining unit set forth in Finding of Fact 3 above.

5. That the parties further stipulated to the exclusion of Police Chief Harlan Ross and Captain Calvin Williams as supervisory employees within the meaning of Sec. 111.70(1)(o), Stats.

6. That during the course of the hearing, the parties agreed that the only issue for resolution is the supervisory status of Lieutenant Chris Perket and Sergeants Andrew Weber and Michael Mudlitz; and that the Town contends that both the Lieutenant and Sergeant positions are supervisory, while the WPPA contends such positions are properly included in the unit.

7. That Lieutenant Perket is the only part-time employee who is regularly scheduled onto the duty roster; that he schedules himself and the only two regular full-time employees, Sergeants Weber and Mudlitz, to cover the available shifts and then solicits the part-time Patrol Officers and Corporal to sign-up to fill the remaining shift vacancies; that the Patrol Officers are all trainees who volunteer to work along with the Sergeants on any shift for which there is a vacancy utilizing the additional squad car; that the Lieutenant currently earns approximately \$8.66 per hour which will be increased to \$10.02 per hour after his fourth year in contrast to \$12.80 per hour earned by the Captain, \$11.05 per hour earned by the Sergeants, and \$7.00 to \$9.54 range earned by various Patrol Officers; and that both the Lieutenant and Sergeants are hourly employees, the only salaried employees being the Chief and the Captain.

8. That Lieutenant Perket reports to the Captain and the Chief; that he works approximately 24 hours each week, usually three eight-hour shifts; that fifty (50%) per cent of his time is spent in performing the duties of a Patrol Officer; that the other fifty (50%) per cent is spent on duties that Patrol Officers do not have; that these duties consist of: scheduling employees; performing various administrative and clerical tasks; performing background checks for potential job applicants; monitoring new Patrol Officer's progress in the training academy; investigating citizen complaints with respect to the conduct of other officers; and participating in the interview and hiring process.

9. That Lieutenant Perket possesses authority in the area of scheduling, which requires the use of independent judgment; and that Lieutenant Perket sits on a hiring panel along with the Chief and Captain and has the authority to effectively recommend the hiring of new employees.

10. That Lieutenant Perket directs Patrol Officers who are scheduled to take the other squad car out during his shift; that he possesses the authority to issue oral and written reprimands to the Patrol Officers, Corporal and Sergeants; that he had recently issued an oral reprimand which was reduced to writing to Sergeant Mudlitz; and that Lieutenant Perket has the authority to call in additional Patrol Officers or to relieve an Officer from duty in the event of an emergency if neither the Chief nor Captain can be reached.

11. That Lieutenant Perket does exercise supervisory responsibilities and duties in sufficient combination and degree to make him a supervisory employee.

12. That Sergeants Weber and Mudlitz have been employed about four and five years respectively; that they report to the Captain, the Chief and Lieutenant Perket; that the Sergeants are assigned to a shift along with other Patrol Officers who have volunteered to drive the squad car for that specific shift; that the Sergeants spend the major portion of their time performing the duties of a Patrol Officer, but that they also direct the activities of any other Patrol Officers who happen to sign up for any given shift by teaching or training Patrol Officers in proper police methods and procedures and monitoring the activities of the Patrol Officers in a routine fashion; that the Sergeants perform monthly evaluations of Patrol Officers who work the same shifts as they do, but that said evaluations are not used for promotions, raises, or retaining probationary employees; that the Sergeants possess the authority to issue oral reprimands to the Patrol Officers and may notify the Chief if further discipline is warranted, but that in five years they have never disciplined anyone; that in the past, the Sergeants have neither issued a written warning or been aware that they possessed the authority to suspend a Patrol Officer, but that they have recently been informed by the Chief that they can recommend that a Patrol Officer receive a written warning and that they may under certain circumstances "suspend" an Officer; that "suspension," under these circumstances, is not an exercise of disciplinary authority, but rather the relieving of an Officer from duty with pay according to police protocol should that Officer have shot someone or the relieving of a Patrol Officer from duty during an emergency should the Chief, Captain, and Lieutenant be unavailable; that the Sergeants have in the past participated in the hiring process and applicant background checks, but that they did not participate in the most recent hiring because Lieutenant Perket has currently assumed these duties and that it is not contemplated that they will significantly participate in the hiring process in the future; that any Patrol Officer may from time to time become involved in the hiring and background check functions; and that the Sergeants do not possess the authority to effectively recommend hiring, discipline or discharge because the Chief may or may not follow any of their recommendations.

13. That Sergeants Weber and Mudlitz do not exercise supervisory responsibilities and duties in sufficient combination and degree to render them supervisory employees.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Lieutenant is a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. That the occupants of the position of Sergeant are not supervisory employes within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

3. That a question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.:

all regular full-time and regular part-time employes of the
Town of Brookfield Police Department who possess the
power of arrest excluding confidential, managerial and
supervisory employes.

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 shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in a collective bargaining unit consisting of all regular full-time and regular part-time employes of the Town of Brookfield Police Department who possess the power of arrest but excluding confidential, managerial and supervisory employes who were employed by the Town of Brookfield on April 17, 1990, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether

a majority of said employes desire to be represented by the Wisconsin Professional Police Association/Law Enforcement Employment Relations Division for the purpose of collective bargaining with the Town of Brookfield 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 17th day of April,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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

BACKGROUND:

In the proceeding the WPPA requests the Commission to conduct an election among regular full-time and regular part-time employees of the Town's Police Department. The Town does not oppose conducting an election in the above unit but contends that certain employees should be excluded as supervisory. WPPA would include both the Sergeants and the Lieutenant positions in the bargaining unit, while the Town contends that all three positions are supervisory. The essential facts are stated in the findings and need not be repeated here.

POSITIONS OF THE PARTIES:

The Town asserts that the Lieutenant should be excluded from the bargaining unit because he performs supervisory functions, thus providing a chain of command between the Chief, the Captain and the other Patrol Officers. It argues that the Lieutenant participates in hiring decisions, makes background checks on potential hires, assigns and schedules the work force, supervises employees on his shift and possesses authority to issue oral and written warnings and to effectively recommend other more serious forms of discipline, all of which add up to make him a supervisory employee.

The basic position of the WPPA is that the Lieutenant does not exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisor. The WPPA argues that the Lieutenant should be considered a working foreman or lead employee. It claims the Lieutenant does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees; and that he does not have the authority to direct and assign the work force. According to the WPPA, the Lieutenant position is also non-supervisory due to the limited number of employees which he oversees and the level of pay which he receives. It stresses that the Lieutenant is primarily a working supervisor who supervises activities rather than employees. The Lieutenant does not spend a majority of his time supervising employees and exercises little independent judgment and discretion while supervising employees.

The parties make virtually identical arguments with respect to the Sergeants.

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.

Furthermore, the Commission has previously concluded 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/ When the Commission has found Officers, either Sergeants or Lieutenants to be supervisors, it has been because the record demonstrates a

1/ City of Madison, Dec. No. 11087-A (WERC, 12/72); Village of Maple Bluff, Dec. No. 24994 (WERC, 11/87).

high level of involvement in major labor relations decisions. 2/

LIEUTENANT:

The record in the instant case indicates that although the Lieutenant spends a substantial portion of his time performing bargaining unit work, he does possess the authority to issue oral and written warnings. He also investigates citizen complaints of police misconduct and makes recommendations to the Chief regarding the appropriate disposition of same. The Lieutenant effectively recommends the hiring of new employees. Moreover, the Lieutenant possesses the authority to effectively direct and assign work to the Sergeants as well as the Patrol Officer. He would serve as third in command should the Chief or Captain be unavailable. In our view, although the Lieutenant's salary is not commensurate with a finding of supervisory status and such a supervisory finding will result in a rather high ratio of supervisory to non-supervisory personnel within the Police Department, the supervisory authority possessed by the Lieutenant exists in sufficient combination and degree for us to conclude that the Lieutenant is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats. Therefore, the Lieutenant is appropriately excluded from the bargaining unit.

SERGEANTS:

The Sergeants spend the major portion of their time performing bargaining unit work. While the Town maintains that the Sergeants possess significant disciplinary authority, in the past five years, they have never even issued a written warning. While they do possess the authority to independently issue oral warnings, their recommendations as to further disciplinary action may or may not be followed. Although they have recently been informed that they possess the authority to "suspend" Patrol Officers under emergency conditions, this authority is not really disciplinary in nature but rather premised upon following police protocol in various circumstances, such as relieving an Officer from duty if a Patrol Officer were to shoot a civilian. The record also makes it clear that any disciplinary recommendation that a Sergeant might make is subject to review by the Captain, Chief and the Town Board.

The Sergeants do perform monthly evaluations on Patrol Officers but such evaluations consist primarily of observations as to whether the Patrol Officers are following police protocol appropriately. Moreover, there is no indication that these evaluations are utilized for disciplinary actions, promotions, or other personnel actions. Sergeants no longer participate in hiring decisions.

A Sergeant may frequently be the only person on duty out in a squad car. When other Patrol Officers have signed to take the additional car out, the Sergeants supervise their activities as part of training them in appropriate police procedures. While the Sergeants receive an hourly rate greater than the Lieutenant, they along with the Chief and Captain are the only full-time personnel employed by the Town and there is evidence that their wage rates reflect their skills and years of service rather than the amount of time spent in supervising Patrol Officers. Given the small size of the Department, a determination that the Sergeants are supervisors would result in a supervisory ratio of 1 to 3, or 1 to 2 if the Lieutenant were included.

In summary, the record establishes that the Sergeants possess no personnel authority other than issuing oral warnings and writing evaluations which are not used for personnel actions. Several other officers exercise greater authority over the same employees. The Sergeants spend the majority of their time performing the same patrol duties as the other employees they oversee. Accordingly, the record fails to establish that the Sergeants possess the customary indicia of supervisory status in sufficient combination and degree to warrant a finding of supervisory status. We therefore conclude that they are municipal employees and properly included in the bargaining unit.

Dated at Madison, Wisconsin this 17th day of April, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

2/ Ibid.