

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

THE CITY OF HARTFORD (POLICE)

Involving Certain Employees of

THE CITY OF HARTFORD  
(POLICE DEPARTMENT)

Case 43

No. 53101 ME-795

Decision No. 28956

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of Hartford Police Unit Employees Union Local 1432A, AFSCME, AFL-CIO.

Mr. Roger E. Walsh, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the City of Hartford.

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

The City of Hartford filed a petition on August 13, 1995 requesting that the Wisconsin Employment Relations Commission clarify an existing collective bargaining unit consisting of law enforcement personnel represented by Hartford Police Unit Employees Union Local 1432A, AFSCME, AFL-CIO by excluding from that unit four Patrol Sergeants as supervisors. Hearing was held in the matter in Hartford, Wisconsin on January 4, 1996, by Examiner Debra L. Wojtowski, a member of the Commission's staff. A transcript of the proceedings was prepared and received by the Commission on January 16, 1996, and both parties filed initial and reply briefs, the last of which was received on April 1, 1996. The Commission, having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The City of Hartford, hereinafter the Employer, is a municipal employer and has its principal offices at the Hartford City Hall, 109 North Main Street, Hartford, Wisconsin.

2. Hartford Police Unit Employees Union Local 1432A, AFSCME, AFL-CIO, hereafter referred to as the Union, is a labor organization and its principal offices are located at 212

South James Street, P.O. Box 944, Waukesha, Wisconsin 53187-0944.

3. The Union is the exclusive bargaining representative of a bargaining unit described in pertinent part as follows in Article I of the parties' most recent collective bargaining agreement:

all full time and part time employes of the Employer's Police Department employed in the classifications of Detective, Sergeant, Juvenile Detective, Patrolman, Police Administrative Assistant, Communications Officer, Clerk Typist and Parking Enforcement Aide for the purpose of negotiations on all matters concerning wages, hours and other conditions of employment.

4. The Patrol Sergeants at issue in the case are in the Patrol Division of the Police Department containing, in total, four Patrol Sergeants and 11 Patrol Officers. Members of the Patrol Division work three regular shifts and one swing shift; the first shift is from 7:00 a.m. to 3:30 p.m., the second shift is from 3:00 p.m. to 11:30 p.m., the third shift is from 11:00 p.m. to 7:30 a.m. and the swing/power shift is from 7:00 p.m. to 3:30 a.m. Both Patrol Sergeants and Patrol Officers work their shifts on a five days on - two days off/five days on - three days off pattern. To each of the three regular shifts is assigned one Patrol Sergeant and three Patrol Officers; to the swing shift, is assigned one Patrol Sergeant and two Patrol Officers. At the time of the hearing, Thomas Horvath, Rod Lehl and Gary Fuiten and Timothy Hayes filled the position of Patrol Sergeant. The Sergeants' wages are established by the collective bargaining agreement.

In addition to the Patrol Division, the Department has Investigations and Support Services divisions. The Support Services Division has three full-time Communications Officers, three part-time Communications Officers, a Parking Enforcement Aide, and a Clerk Typist. The Investigations Division consists of a Detective, a Juvenile Detective and a School Liaison Officer.

The Police Department is headed by Police Chief Thomas Jones, who was named Interim Police Chief on July 24, 1992 and appointed Chief of Police on August 14, 1992. In the Chief's absence, the Administrative Lieutenant, Ben Hopkins, has authority as second in command of the Department and, on a day-to-day basis, has direct supervisory authority over the Support Services personnel.

5. The current job description for Patrol Sergeant is as follows:

**SUMMARY:** Supervises and coordinates activities of squad of Police Officers assigned to patrol, in car or on foot, designated area of municipality by performing the following duties.

**ESSENTIAL DUTIES AND RESPONSIBILITIES** include the following. Other duties may be assigned.

Assumes command of squad at precinct or headquarters, inspects uniforms and equipment, and reads orders to squad.

Cruises in car to observe Police Officer on post or in cars for efficiency and appearance and to direct them in duties.

Reports infractions of rules to superiors.

Schedules officers for duty.

Creates monthly activity reports.

Helps Police Chief with annual Departmental budget.

Mediates complaints between department and public.

Assists the Police Chief in hiring new employees.

Performs the duties and responsibilities of Patrol Officers when required.

MARGINAL DUTIES AND RESPONSIBILITIES include the following.

Any specialized skill in which the Sergeant has been trained.

Securing parks and City Hall.

#### SUPERVISORY RESPONSIBILITIES

Supervises from 2 to 14 employees from the patrol, communications and parking enforcement divisions. There are no subordinate supervisors.

Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include interviewing, hiring, and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and resolving problems.

QUALIFICATION REQUIREMENTS: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**EDUCATION and/or EXPERIENCE:**

Bachelor's degree (B.A. or B.S.) from four-year college or university and 2 years of experience; or related combination of education and experience.

**LANGUAGE SKILLS:**

Ability to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

**MATHEMATICAL SKILLS:**

Ability to calculate figures and amounts such as discounts, interest, commissions, proportions, percentages, area, circumference, and volume. Ability to apply concepts of basic algebra and geometry.

**REASONING ABILITY:**

Ability to define problems, collect data, establish facts, and draw valid conclusions. Ability to interpret an extensive variety of technical instructions in mathematical or diagram form and deal with several abstract and concrete variables.

**CERTIFICATES, LICENSES, REGISTRATIONS:**

Valid Wisconsin driver's license

Wisconsin Training and Standards Board Certification

**PHYSICAL DEMANDS:** The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to talk or hear. The employee frequently is required to stand; sit; use hands to finger, handle, or feel objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to walk; climb or balance; stoop, kneel, crouch, or crawl; and taste or smell.

The employee must frequently lift and/or move up to 10 pounds and occasionally lift and/or move up to 100 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to

adjust focus.

**WORK ENVIRONMENT:** The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works in outside weather conditions. The employee occasionally works near moving mechanical parts; in high, precarious places; and with explosives and is occasionally exposed to fumes or airborne particles, extreme cold, extreme heat, risk of electrical shock, and risk of radiation.

The noise level in the work environment is usually moderate.

**COMMENTS:**

Job is performed primarily outside.

6. The current job description for the Lieutenant is as follows:

**SUMMARY:** Controls communications, clerical and parking enforcement divisions of the Police Department and serves as the Emergency Government Director.

**ESSENTIAL DUTIES AND RESPONSIBILITIES** include the following. Other duties may be assigned.

Supervises support services staff, including evaluating performance.

Maintains computer systems-repair or request repairs when necessary.

Maintains 911 systems, radio systems, records data base.

Inspects department facilities to maintain lawful certifications.

Functions as liaison to Fire Department and EMS.

Maintains employee schedules for supervised departments.

Prepares forms to maintain uniformity, efficiency and effectiveness within the Department.

Serves as officer of the court, which includes: maintaining court files; checking citations for accuracy; presenting citations in court for initial appearance; prepare computer disk of citations; update all court dispositions for computer files.

Acts as Emergency Government Director, which includes: maintaining Emergency Government files; writing policy/directives/procedures for Emergency Government; preparing Emergency Government budget; maintaining training and contacts to effectively operate in emergency situations; working as liaison to Washington County Director of Emergency Government; evaluating new computer programs; and maintaining accurate records for statistical analysis.

MARGINAL DUTIES AND RESPONSIBILITIES include the following.

Reviews reports and citations for accurate entry.

Retrieves taped conversations for investigations.

Maintains inventory files for computer equipment.

Assists Police Chief in budget preparation.

Provides support for new projects and maintains proficiency in new technologies.

Trains all employees in the use of computer programs and database systems.

#### SUPERVISORY RESPONSIBILITIES:

Manages up to 18 employees in the Communications Division, Clerical Division, and Emergency Government Department. Is responsible for the overall direction, coordination, and evaluation of these units.

Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include interviewing, hiring, and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and resolving problems.

**QUALIFICATION REQUIREMENTS:** To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**EDUCATION and/or EXPERIENCE:**

Bachelor's degree (B.A.) from four-year college or university and a minimum of three (3) years supervisory experience at a rank not less than Sergeant.

**LANGUAGE SKILLS:**

Ability to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

**MATHEMATICAL SKILLS:**

Ability to calculate figures and amounts such as discounts, interest, commissions, proportions, percentages, area, circumference, and volume. Ability to apply concepts of basic algebra and geometry.

**REASONING ABILITY:**

Ability to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral diagram, or schedule form.

**CERTIFICATES, LICENSES, REGISTRATIONS:**

Valid Wisconsin Driver's License.

Certification by the Wisconsin Training and Standards Board.

**OTHER SKILLS and ABILITIES:**

Knowledge of computer operations, Local Area Networking, DOS and Windows

Knowledge of Federal, State and Municipal laws.

Knowledge of State and Municipal court systems.

**PHYSICAL DEMANDS:** The physical demands described here are

representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel objects, tools, or controls and talk or hear. The employee frequently is required to sit. The employee is occasionally required to stand; walk; reach with hands and arms; climb or balance; and stoop, kneel, crouch, or crawl.

The employee must occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, and depth perception.

WORK ENVIRONMENT: The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is occasionally exposed to risk of electrical shock.

The noise level in the work environment is usually moderate.

7. The Sergeants participate as panelists in the Department's hiring process, but do not recommend a particular candidate for hire. Authority to effectively recommend a hire is exercised by the Chief.

8. The Sergeants have not conducted employee evaluations. The Department plans on creating a system of annual evaluations in January 1997 and plans to send the Lieutenant and the four Sergeants to a three-day performance evaluation course at Lakeshore Technical College. The nature of such evaluations and their affect on officer wages, promotions, and retention has not yet been established.

All the Sergeants have been directed by the Chief to submit their recommendation as to whether probationary employes should be retained or terminated and have done so. Field Training Officers (who may be Sergeants or Patrol Officers) submit a report to the Chief regarding a probationary officer's fitness. Additional information has also been solicited by the Chief from all patrol division personnel and, taking the information presented to him under advisement, the Chief determines the disposition of the probationary employes in the Department. In 1994, he followed the recommendations of the Sergeants when he recommended to the Police and Fire Commission



that a probationary officer be terminated and when he extended an Officer's probationary period.

The Sergeants have not participated in any promotion decisions but will do so in the future. The extent of the future role of the Sergeants in promotions is not known.

9. Prior to July of 1995, the Departmental Rules and Regulation handbook provided that Sergeants were permitted to issue disciplinary warnings, subject to the approval of the Chief. Until July 1995, all departmental disciplinary actions were taken by the Chief with

minimal or no involvement of others. On July 28, 1995, the Chief distributed amended handbook pages which advised all Department employes that sergeants could independently issue oral and written reprimands.

On August 1, 1995, Sergeant Horvath issued a documented oral warning to a Patrol Officer. On August 3, 1995 the warning was reviewed and affirmed by the Chief. Subsequently, however, the employe filed a grievance which the Chief resolved by removing the disciplinary action from the employe's file. In October of 1995, Sergeant Lehl issued a letter of reprimand to a Communications Officer on his shift.

Sergeants' recommendations for suspension or termination of an employe will receive substantial weight from the Chief and the Chief's ultimate decision will be based on the Sergeant's investigation.

10. The Sergeants are responsible for assuring that appropriate staffing levels are maintained, which includes scheduling for regular duty, overtime, vacation, shift-trading, short-notice leave, the use of Patrol Officers by the Investigations Division or the switch of a Patrol Officer to range training. Sergeants must comply with the minimum staffing requirement of two sworn officers per shift. Sergeants and Patrol Officers are counted as sworn officers for the staffing requirement, but not the Chief or the Lieutenant. The shift and work cycle of each Department employe is set by contract as is overtime distribution.

Sergeants have the ability to rotate which officer is on foot patrol, but cannot change the boundaries of the established patrol areas. There is a departmental policy describing how short notice leave time is to be granted which specifies that the employe may be granted time off if the two person staffing minimum is maintained and providing all more senior offices approve. Should an officer with more seniority disapprove, regardless of rank, the senior officer must take the day off. In the event of a vacancy, the Sergeant is required to call in employes to insure the minimum level of staffing is maintained. When call-ins are required, the equalization process in the contract requires that the work is to be offered to the employe with the least amount of overtime in descending order of seniority.

Sergeant Horvath is in charge of scheduling and all requests for time off, vacations, and floating holidays would have to be processed through him. If Sergeant Horvath was on a prolonged absence, schedule changes would be approved by another Sergeant. The level of discretion exercised in performing scheduling functions is limited by contract provisions, departmental policies, and overtime use review exercised by the Chief.

11. Neither the Sergeants nor the Officers have been informed that Sergeants possess the authority to resolve grievances. According to the collective bargaining agreement, grievances are to be presented orally to the employe's immediate supervisor who is to provide a written response. At the time of the hearing, no grievances have been adjusted by the Sergeants.

12. Sergeants spend a majority of their work time in a squad car out of the station. They go on patrol, run radar and watch for traffic violations. The responsibilities of briefing the on-

coming shift and investigating complaints are performed by the Sergeant. Sergeants perform additional duties such as completing activity sheets and processing police complaints while in the squad car.

13. The pay differential between Sergeants and Patrol Officers is established by contract, with the top Sergeant rate being \$17.17 per hour as compared to \$16.46 for Patrol Officers.

14. Patrol Sergeants Horvath, Lehl, Fuiten, and Hayes exercise supervisory responsibilities and duties in sufficient combination and degree to render them supervisors.

#### CONCLUSION OF LAW

The occupants of the position of Patrol Sergeant are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats, and therefore are not municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

#### ORDER 1/

The position of Patrol Sergeant shall be and hereby is excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin,

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1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may (Continued)

this 30th day of December, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

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1/ (Continued)

order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CITY OF HARTFORD

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

POSITIONS OF THE PARTIES

The City

The City requests the Commission to exclude four Sergeants currently in the City of Hartford Police Department bargaining unit, arguing that the Sergeants perform supervisory functions in sufficient combination and degree to warrant a finding of supervisory status. More specifically, the City contends that the Sergeants participate in hiring, discipline, scheduling, work assignments, evaluate probationary employes, spend the majority of their time performing non-bargaining unit work, are responsible for the first stage in the grievance procedure, and will be doing performance evaluations and have an active role in determining promotions.

The City argues that the Sergeants have a major role in the hiring of new Police Department employes and emphasizes that in the hiring procedure used by the City, the scores given the applicants by Sergeants were given equal weight with those of the Chief and the Lieutenant and that after the scores were added to the applicants' previous scores, the Police Officer candidate with the highest total score was hired. The City also stress that when a vacancy occurred in March of 1995 for a part-time Communications Officer, the Chief, Lieutenant and Administrative Assistant and the three Sergeants sat in on oral interviews with each of the candidates and again the scores of the Chief, the Administrative Lieutenant, the Administrative Assistant and the three Sergeants were each given equal weight and the candidate with the highest score was hired.

The City asserts that the Sergeants have a major role in the evaluation of new employes at the end of their probationary period. Chief Jones testified that the recommendations of the Sergeants are instrumental in determining whether or not a probationary period will be extended or whether the employe should be retained or fired. The City distinguishes these recommendations from the evaluations made by a field training officer and argues that a probationary employe was terminated in 1994 based upon the recommendation of Sergeant Fuiten. Other recommendations by the three Sergeants were instrumental in the retention of Police Officer Conrad, Police Officer Wissink and in the eventual retention of an Officer whose probation was extended based also on the Sergeant's concern with the probationary job performance. The Sergeants will evaluate the two Police Officers hired in 1995 to indicate whether or not they feel that these employes should be allowed to continue in their employment. The City points to the testimony of Sergeant Hayes who indicated in the hearing that he was aware that he would be called upon to evaluate the junior Police Officers who are on probation.

One of the Chief's stated objectives is to create and implement a performance evaluation program for all employes in the Police Department which is to take effect January 1, 1997. As part of their preparation, the Administrative Lieutenant and the four Sergeants were enrolled in a three-day performance evaluation course at Lakeshore Technical College in May of 1996. Beginning in

1997, the Sergeants will then conduct annual evaluations.

The Sergeants will also have a major role in the future with respect to promotions. The last promotion to Sergeant, which took place in 1995, involved only one candidate and the Chief therefore the Sergeants were not part of the promotional process. In a competitive situation, however, the Sergeants would participate in the selection process for promotion.

The Sergeants also have a major role in discipline. Although at one time the Police Chief himself took nearly all of the disciplinary actions, that changed in July of 1995. Sergeants now have the independent authority to issue oral and written reprimands and effectively recommend more serious forms of discipline to the Chief. Under the new procedures, Sergeant Horvath wrote a disciplinary warning effective August 1. The Chief's subsequent removal of the discipline occurred as part of the grievance procedure after the Chief's discussion with Sergeant Horvath. Sergeant Lehl also issued a written reprimand to a Communications Officer in October of 1995. The City also points to Sergeant Hayes testimony that he believed himself to have the authority to issue oral and written reprimands. Suspension, demotion or termination recommendations can be made by the Sergeants after investigation and after the matter is brought to the attention of the Chief. The Chief indicates that since the investigation would be entirely made by the Sergeants, he would follow the recommendation of the Sergeants.

The Sergeants have a major role in scheduling the work force. The Sergeants are responsible for assuring that a sufficient number of hours of foot patrol are worked in the downtown area. Sergeants are expected to decide whether or not an employe can go home. All Sergeants have the authority to deny requests for time off and to call-in additional employes. In performing these responsibilities, Sergeants exercise independent discretion. Sergeant Horvath is in charge of scheduling and all requests for time off, vacations, and floating holidays have to be processed through him. The City cites several examples of scheduling changes approved by Sergeant Horvath. Chief Jones testified that if Sergeant Horvath was on a prolonged absence, schedule changes would be approved by another Sergeant. Sergeant Lehl, for example, approved of a vacation request on August 11, 1995. Sergeants must pre-approve overtime concurrent with the employe's duty shift. Discipline may result from overtime work without pre-authorization.

The City also indicates that the Sergeants process employe grievances at Step 1. According to the contract, grievances are to be presented orally to the employe's immediate supervisor which would be the Sergeants. The Chief is not involved until Step 2. In the past, parties may have bypassed Step 1; however, the role of Sergeants has been evolving over the past two years. An example of this new involvement has already occurred with the grievance contained in City Exhibit 3. In that grievance, Sergeant Horvath orally processed a grievance at Step 1 when the Union steward discussed the grievance with Sergeant Horvath who declined to modify management's action. Within a day and a half of that discussion, the Union steward presented a written grievance to the Chief. Therefore, Sergeant Horvath did not file a written response because he did not have time. Sergeant Horvath did file a written memorandum of his discussion with the Chief. The Chief denied this grievance at Step 2. It was appealed and denied by the Finance and Personnel Committee at Step 3, and the Union did not further appeal the grievance. In the future, Sergeants

will take a greater role in the grievance procedure at Step 1.

The City also argues that the Sergeants are supervisors because in they spend a significant portion of their work day in administrative and supervisory tasks. Administrative tasks account for at least five hours per day of the Sergeants' work time. Only two-and-a-half to three hours per day are spent performing routine assignments and duties. Although Sergeant Hayes testified he spent 60% of his work day on patrol, the City points out his administrative paperwork was performed while he was on patrol, and that Sergeant Hayes in his testimony indicated he had less administrative work than the other three Sergeants since he is in charge of a swing shift that overlaps second and third shifts, both of which have their own regularly assigned Sergeant.

Finally, the City argues that Wisconsin precedent in cases involving the supervisory status of Police Sergeants supports the finding that these Police Sergeants are supervisory employees.

#### The Union

The Union maintains that the Patrol Sergeants are not supervisors because they are primarily involved in supervising activities, not employees.

The Union contends that a careful analysis of the examples relied upon to by the City shows that the Chief, Lieutenant, and the Police and Fire Commission retain and exercise authority to supervise Police Department employees in all aspects of the labor relationship. Sergeants therefore do not have the actual authority to hire, promote, suspend, demote, discharge, layoff, transfer, reward or to adjust employee grievances or to effectively recommend the same. Furthermore, the Union maintains that the Sergeants involvement in the scheduling process is basically routine or clerical. Should the Sergeants be found to be supervisory, it would result in an unusually high ratio of supervisors to bargaining unit members.

The Union indicates that the manual for the Hartford Police Department was amended on July 28, 1995 to remove the language that discipline can be imposed "subject to approval by the Chief of Police". The change was not a substantial shift or redivision of authority, but reflects a continuation of their former role as indicated by the testimony of the Chief of Police.

In the hiring process, the Police Chief retains the control and the choice of which individuals to hire. The Sergeants do not recommend a particular candidate despite their scoring and ranking activity. Nothing requires that the Chief select the top ranked candidate and it is the Chief who decides whom to recommend to the Fire and Police Commission, as he indicated in his testimony. Furthermore, the Union argues that there are twenty different components to the hiring process including written, psychological, and physical tests, and an interview with the Fire and Police Commission. The winnowing process culminates in the Chief's selection of a candidate, a selection justly characterized as an "effective recommendation" to the Police and Fire Commission. The Union defines an "effective recommendation" under the statute as one that requires only a rubber stamp of approval by the appointing authority. Such a pro forma process does not apply to these Sergeants who simply grade the candidates. Furthermore, the Sergeants' participation in such



a process does not support a finding of supervisory status because other nonsupervisory employees assist in the hiring process to the same extent as Patrol Sergeants. Despite the addition of the task described as "assisting the Chief with hiring" to their position description, Sergeants are not endowed with more responsibility than nonsupervisory employees who have not had this role added to their job descriptions, but who also help evaluate applicants. Mere "assistance" is neither hiring nor the effective recommendation of a candidate for hire.

The Union argues that Sergeants do not make effective recommendations regarding the retention or status of probationary employees. The evaluation of probationary employees is controlled and orchestrated by the Chief. When an Officer's probation was extended, it was upon the initiative of the Chief who had heard unofficial reports of Department personnel which caused him to elicit opinions from the Sergeant. After receiving the written input he requested from the Sergeants, the Chief made the determination himself to extend the probation.

Similarly, all employee grievances have been initiated with the Chief of Police or the Lieutenant. The Union disputes the contention that one grievance was first filed with Sergeant Horvath. Relying on the testimony of Union steward Russell Wagner, the Union contends that the grievance in question was discussed with Sergeants, but that the grievance had already been written up for presentation to the Chief. Horvath neither responded in writing nor did Wagner have any expectation that Horvath would respond in writing because, as he testified, he did not think that he was filing a grievance with Sergeant Horvath. The Chief of Police admitted on cross-examination that he has not advised the Sergeants or anyone else in the Department that Sergeants had the authority to adjust employee grievances.

There are no annual employee evaluations and although the City discusses plans for future evaluations, there is no indication what impact these evaluations would have regarding employee wages, discipline or promotion.

Regardless of the change in the departmental policy manual on July 28, 1995 regarding the authority of Sergeants to issue discipline, the Chief still retains the authority. The example of a Sergeant's disciplinary action relied on by the City was undertaken on August 3, 1995 and was reversed by the Chief on August 4, 1995 and removed from the employee's disciplinary file at the Chief's behest. The Chief also reviewed a subsequent disciplinary action taken by the Sergeant for a Communications Officer. Thus, the Chief has retained full authority to reject any discipline.

The Sergeants' role in scheduling requires little or no discretion and is merely a clerical or administrative, rather than supervisory, task. There is a mandatory minimum of two sworn personnel per shift and the overtime duty, regular duty, shifts, work cycle and vacations are all specified by contract and/or by policy. Scheduling is merely a matter of filling in the boxes on the computer generated schedule. Overtime provisions of the contract set forth the formula for tabulation of overtime hours worked or declined. In addition, the Chief reviews every overtime slip, routinely questions overtime, and requires written explanations for its authorization. According

to the Chief's testimony, such monitoring is a significant part of his job. The collective bargaining agreement furthermore expressly provides that the Chief authorizes and approves all overtime. Finally, the Sergeants' overtime and short notice time authority pertains to the exigencies of the shift and is identical to that of a Patrol Officer when he or she is the Officer-in-Charge (OIC).

Sergeants spend the majority of their time on routine patrol and perform the essential functions of a Patrol Officer. Completing paperwork such as activity sheets on their patrol does not amount to supervisory work. In fact, the Sergeants act primarily as an OIC and vice-versa and briefing the oncoming shift can be done by either the Sergeant or the OIC.

Lastly, the Union argues that should these Sergeants be found to be supervisors, the ratio of supervisors over Patrol Officers would be one to one and one to two.

## DISCUSSION

Section 111.70(1)(o)1 Stats. defines a supervisor 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 employees, 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.

Historically, we have considered the following factors when applying the statutory definition to the facts of a specific case:

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

activity or is primarily supervising employees.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and

7. The amount of independent judgment exercised in the supervision of employees.

The parties dispute whether the Sergeants can or have effectively issued discipline, whether Sergeants effectively recommend the disposition to be made of probationary employees, whether the majority of Sergeants' time is spent performing bargaining unit work, whether the Sergeants can adjust or have adjusted first step grievances, whether the Sergeants use independent judgment when they direct and assign the work force or merely comply with guidelines set by the contract or administrative policies, and whether the Sergeants effectively recommend the hiring of Department personnel. We proceed to resolve these disputes and then to determine whether a finding of supervisory status is warranted.

Sergeants participate in the hiring process with their evaluation of applicants being given equal weight with the Chief's and the Lieutenant's. Nonetheless, the Sergeants' input is diluted by the multiplicity of factors governing a candidate's final success and does not rise to the level of an effective recommendation. The Chief considers the Sergeant's opinion but clearly makes his own hiring recommendations and decisions.

On July 28, 1995, revised Rules and Regulations manual pages were distributed which clearly give Sergeants the authority to independently impose oral and written reprimands. The written reprimand issued by Sergeant Lehl on October 18, 1995 and documented oral warning issued by Sergeant Horvath on August 1, 1995 demonstrate the independent nature of this authority. The Chief's subsequent review of the discipline after it has been imposed does not negate the independent authority already exercised but rather reflects the Chief's interest in evaluating the performance of his supervisors and meeting his statutory obligations.

We are also satisfied from the record that the Sergeants will play a significant role in any suspensions and terminations. The Chief testified that he would not independently investigate allegations of serious misconduct brought to him by a Sergeant and would likely follow the disciplinary recommendation of the Sergeant. While promises of future developments are usually less impressive than current circumstances, in this instance the current circumstances appear to reveal a situation in transition, beginning with the manual revision distributed on July 28, 1995. Yet change is sometimes difficult and whether the Chief will be able to discipline himself to continue de facto the new process he has initiated de jure is a factual question for possible future review.

The parties disagree as to whether the Sergeants have the authority to adjust grievances at the first step. The City argues that the Sergeants have always been the first step in the grievance procedure, and points out that the contract dictates that grievances are to be brought to the "first level supervisor." However, we are persuaded the reality was that grievances have heretofore been presented to the Chief and the Lieutenant.

The City argues that the Sergeants' role with respect to grievances has been evolving. It draws our attention to two recent instances where the Sergeants participated or were acting as the first step in the grievance procedure.

In the latter instance, Sergeant Horvath was directed to summarize his conversation with the grievant in a memo for the Chief; however, upon examination of that memo we conclude its wording better supports the contention that neither participant in the discussion believed the grievance was being submitted contemporaneous with the discussion, and instead references a grievance the Officer was going to file; this comports with the grievant's testimony that the grievance was drafted for the Chief and that any discussion of the matter with Horvath was informal and without expectation of adjustment. This is also consistent with the fact, undisputed, that Sergeant Horvath never gave the grievant a written response as required by the contract's grievance procedure. Based on all the foregoing, we conclude that the Sergeants have not yet exhibited the authority to bind the City in the resolution of grievances, and their future role in this regard is speculative. Having concluded this, we also note that because the Sergeants are presently in the bargaining unit their inability to bind the City is hardly surprising.

The parties dispute whether the Sergeants make meaningful recommendation regarding the status of probationary employes. The Chief testified that the Sergeants' joint recommendations led to the Chief's extension of the probation of one Officer and, in another instance, to the termination of one a probationary employe. In the latter instance, the Union stresses that such reports as were made by Sergeant Fuiten were pursuant to his role as Field Training Officer, mentors who can be either Patrol Officers or Sergeants. The City, in response, admits that Sergeant Fuiten was a Field Training Officer for the probationary employe, but counters that his report differed from that of a Field Training Officer, who merely reports on the officer's readiness for solo patrol. On balance, we are persuaded the Sergeants play a significant role in the City decision to retain or terminate a probation employe.

To date, the Sergeants have not participated in promotions. The last promotion was in 1995 and was handled by the Chief. The only eligible candidate was promoted. In the event of future competitive promotion, the City argues the Sergeants would be involved. At hearing, the Chief also testified that there will be future evaluations of nonprobationary employes performed by the Sergeants. While these duties are prospective, they offer additional evidence of the transitional nature of the current situation. Nonetheless, without definitive evidence as to the impact of evaluations on employes' wages, job security, promotional opportunities, etc. and as to whether Sergeants' promotional recommendations will be given significant weight, these future duties are

not particularly significant.

The record establishes that Patrol Sergeants spend a significant portion of their work shift performing duties similar to the Patrol Officers. While their paperwork responsibilities are greater than those of Patrol Officers, these record keeping and reviewing tasks are often performed while out of the office in a squad car.

Patrol Sergeants typically direct the work of 1 - 3 Patrol Officers. They have the authority to change Officer's duties and to call in additional Officers if the need arises. However, exercise of this authority and Patrol Sergeants' involvement in scheduling and approval of leave requests does not involve significant independent judgment.

On balance, this is a close case. The number of employes supervised is small and Sergeants perform a significant amount of bargaining unit work. However, their growing disciplinary authority, their role in departmental decision making as to probationary employes, and their involvement in the hiring process is significant enough to make them supervisors.

Dated at Madison, Wisconsin, this 30th day of December, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner