

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GREEN BAY POLICE PROTECTIVE ASSOCIATION
Involving Certain Employees of
CITY OF GREEN BAY

Case 359
No. 63909
ME-1114

Decision No. 31417

Appearances:

Thomas J. Parins, Parins Law Firm, S.C., Attorneys at Law, 422 Doty Street, P.O. Box 817, Green Bay, Wisconsin 54305, appearing on behalf of Green Bay Police Protective Association.

Steve Morrison, Assistant City Attorney, City of Green Bay, City Hall, 100 North Jefferson Street, Green Bay, Wisconsin 54301, appearing on behalf of the City of Green Bay.

Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of the Labor Association of Wisconsin, Inc.

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 Wisconsin Council 40, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On August 10, 2004, the Green Bay Police Protective Association (Union) filed a petition with the Wisconsin Employment Relations Commission seeking to clarify the positions of Lieutenant/Road Supervisor, Training Instructor, Computer Technician and Desk Officer within the City of Green Bay Police Department into the bargaining unit currently represented by the Union.

The City of Green Bay (City) opposed the petition as to all sought positions. The Green Bay Police Department Supervisory Personnel Association (Supervisory Association) opposed the petition as to the Lieutenant/Road Supervisors who are currently represented by the Supervisory Association for the purpose of negotiating with the City. AFSCME Council 40, Local 1889 (AFSCME) opposed the petition as to the Desk Officer, which position AFSCME asserted it currently represents for the purposes of collective bargaining with the City.

Dec. No. 31417

On December 14, 2004, hearing on the positions of Training Instructor, Computer Technician and Desk Officer was conducted in Green Bay, Wisconsin by Commission Examiner Peter G. Davis. During the hearing, the unit status of those positions was voluntarily resolved.

On January 19, 2005, hearing on the position of Lieutenant/Road Supervisor was conducted in Green Bay, Wisconsin by Examiner Davis. The City and the Supervisory Association, contrary to the Union, asserted that the 16 Lieutenant/Road Supervisors are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore cannot be included in the Union bargaining unit. Post hearing argument was filed until April 11, 2005.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The City is a municipal employer that provides law enforcement services to its citizens through its Police Department (Department). The Department comprises employees filling the ranks of Chief, Captain, Lieutenant and various bargaining unit positions represented by the Union. As of 1/1/04, the bi-weekly pay rate for Captains was \$2,435.31, for Lieutenants was \$2,279.09, and for the highest paid position in the Union's bargaining unit (Specialist II) was \$2,129.81.

2. The Union is a labor organization serving as the collective bargaining representative of the full-time non-supervisory law enforcement employees of the City.

3. The Supervisory Association serves as the representative of the Department's Lieutenants for the purposes of negotiating with the City.

4. The Department provides patrol law enforcement services 24 hours per day seven days per week. For the purposes of patrol, each day is divided into four shifts: 6:00 am to 2:30 pm; 2:15 pm to 10:00 pm; 6:00 pm to 3:00 am; and 10:00 pm to 6:00 am. Each shift is staffed by a Shift Commander (either a Captain or a Lieutenant), by a Lieutenant/Road Supervisor, and at least 12 patrol officers.

Captains and Lieutenants work a cycle of five days on/three days off. On approximately half of all shifts, a Lieutenant serves as the Shift Commander because it is the Captain's regular day off or the Captain is absent on leave. When serving as Shift Commander, a Lieutenant has all of the authority of a Captain and receives additional pay. The sixteen individual patrol Lieutenants

served as Shift Commander for a range of 5% to 33% of their individual annual work shifts, depending on such variables as whether the Lieutenant shares a schedule with a Captain and thus is less available to fill in for that Captain.

When serving as Shift Commanders, Lieutenants possess supervisory authority in sufficient combination and degree to be supervisors.

5. When serving as Road Supervisors, Lieutenants spend 30% of their time in the office doing paper work. For the remaining 70% of their time, Lieutenants are in a squad car observing/supervising the activity and performance of patrol officers and use independent judgment when doing so. While the Lieutenants are available to be dispatched to calls for assistance from citizens, their primary function is to observe, direct and supervise the work of the patrol officers. They have the authority to change the patrol location of the patrol officers and to call in additional personnel if appropriate in their judgment, which may result in overtime. If a patrol officer were in charge of a crime scene, in the absence of a Lieutenant, the patrol officer similarly would have authority to call for additional personnel and thus occasion overtime. The distribution of such overtime opportunities is largely, if not exclusively, controlled by the collective bargaining agreement. Road Lieutenants can relieve an officer from duty if circumstances warrant, although that decision would normally be in the province of the Shift Commander.

6. When serving as Road Supervisors, Lieutenants have the authority to issue verbal reprimands but do not effectively recommend more serious discipline or the termination of probationary employees.

7. When serving as Road Supervisors, Lieutenants assist in screening and interviewing applicants for employment but do not effectively recommend the hiring of employees.

8. When serving as Road Supervisors, Lieutenants do not effectively recommend transfers, promotions, layoffs, or recall from layoff and do not have the authority to adjust grievances or reward employees. The Chief of Police is the first step in the contractual grievance procedure.

9. When serving as Road Supervisors, Lieutenants informally evaluate the performance of patrol officers

10. Lieutenants and Captains, but not patrol officers, attend and fully participate in monthly Department "staff meetings" conducted by the Chief of Police.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

Lieutenant/Road Supervisors are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

The Lieutenant/Road Supervisors shall continue to be excluded from the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of August, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

City of Green Bay (Police Department)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

A supervisor is defined in Sec. 111.70(1)(o)1, Stats., as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, 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.

When applying this statutory definition, we consider the following factors:

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 alleged supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).

Not all of the above factors need to reflect supervisory status for an employee to be found a supervisor. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the

position is a supervisor. CITY FIREFIGHTERS UNION V. CITY OF MADISON, 48 WIS.2D 262 (1970); CITY OF TWO RIVERS, DEC. NO. 21959-A (WERC, 2/91).

The quasi-military organization of police departments presents unique problems in determining supervisory status of certain employees because officers of higher rank will generally have the authority to issue orders to subordinates, regardless of our determination of supervisory status. CITY OF MADISON, DEC. NO. 11087-A (WERC, 12/72). We are also cautious about reaching a result in a given case that might split a rank within a department, for example finding that some officers of a specific rank are supervisors while others are not. Such rank splitting can cause difficulty in collective bargaining and police operations. See CITY OF MADISON, SUPRA.

We begin by applying the statutory definition and the above-recited seven factors to the Lieutenant/Road Supervisors when they are not serving as Shift Commander. We will then discuss the impact of their service as Shift Commanders on our ultimate conclusion.

As to Factor 1, the Lieutenant/Road Supervisors do not have any authority to promote or transfer employees or to effectively recommend same. More importantly, the evidence establishes that they do not have any significant participation in the hiring process and have limited disciplinary authority. As to hiring, their role is limited to and no different than bargaining unit employees with whom they serve on committees that screen applicants. As to discipline, they can verbally warn employees but, contrary to the arguments of the City and the Association, we conclude that the authority to issue or effectively recommend written reprimands generally remains with the Shift Commander, who usually assesses the facts and the level of discipline independently of a Road Supervisor's recommendation. More serious discipline remains the province of the Chief of Police and the Police and Fire Commission. To the extent the decision to terminate an employee's probationary period can be viewed as akin to the exercise of disciplinary authority, the record establishes that the recommendation of a Road Supervisor is only one piece of the decision-making process and thus is not determinative.

As to Factor 2, we are satisfied that the Lieutenant/Road Supervisors have substantial authority to direct the work of the patrol officers and exercise independent judgment when doing so. The Lieutenants are the only street presence the Department has in terms of assessing the performance of patrol officers and have the authority to direct the officers' work as the Lieutenants see fit, based on service needs.

Turning to Factor 3, the Lieutenant/Road Supervisors direct the work of at least 12 patrol officers, although the Shift Commander also has authority over those officers.

As to Factor 4, the Lieutenant/Road Supervisors are paid \$3900 more per year than the highest paid patrol officer whose work they direct. Although this differential is not

appreciably more than the pay differential among sub-ranks of patrol officers, the Road Supervisors spend most of their time directing the field work of the patrol officers, leading us to conclude that this pay differential reflects the Lieutenants' additional responsibility in directing/supervising work rather than superior law enforcement skills.

Regarding Factors 5 and 7, we are satisfied that the Lieutenant/Road Supervisors largely supervise the activity of the patrol officers, exercising substantial independent authority when doing so.

As to Factor 6, the record establishes that the Lieutenant/Road Supervisors spend a majority of their time directing/monitoring the work of the patrol officers.

Regarding the Lieutenant/Road Supervisors authority to layoff, recall, reward employees or adjust grievances, the record establishes that they have none.

A review of the foregoing satisfies us that, when serving solely as Road Supervisors, the Lieutenants in dispute do not possess supervisory authority in sufficient combination and degree to be supervisors. Although they have and exercise some supervisory authority when observing/directing the work of patrol officers, they play no significant role in hiring and have very limited disciplinary authority. Thus, the outcome of this case turns on the weight to be given the Lieutenant/Road Supervisors' service as Shift Commanders.

The Union argues that we should not give this service substantial weight because it is in the nature of temporary assignment (the Lieutenants are "Acting Captains") and that this work is therefore not part of the job duties of a Lieutenant/Road Supervisor as such. We disagree. Service as a Shift Commander is a recurring portion of the Lieutenant/Road Supervisors' duties and is also formally recognized in their job description. Thus, such service is a relevant and potentially important consideration in this proceeding.

All parties agree and the record supports the conclusion that, when so serving, the Lieutenant/Road Supervisors are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats. The record further establishes that roughly half the time the Shift Commander role is filled by a Lieutenant. Although we acknowledge that the amount of time any given Lieutenant serves as Shift Commander varies substantially, it is desirable in the context of paramilitary structure to avoid rank-splitting when making supervisory determinations, as noted earlier. Given that consideration and the fact that some Lieutenants serve as Shift Commander for one-third of their yearly work shifts, we conclude that the percentage of time the Shift Commander role is filled by a Lieutenant is more significant to our determination than the amount of time any individual Lieutenant so serves.

On balance, we conclude that the amount of time the Shift Commander role is filled by a Lieutenant/Road Supervisor is sufficient, when combined with the supervisory attributes otherwise possessed by Lieutenant/Road Supervisors, to warrant the conclusion that the Lieutenant/Road Supervisors are supervisors within the meaning of Sec. 111.70(1)(o) 1, Stats. Therefore, the Lieutenant/Road Supervisors shall continue to be excluded from the Union's bargaining unit.

Dated at Madison, Wisconsin, this 3rd day of August, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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