

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

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DOUGLAS COUNTY : Case 13

: No. 50873 ME-704

Involving Certain Employes of : Decision No. 7831-A

:

DOUGLAS COUNTY :

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Appearances:

Mr. John Mulder, Personnel Director, 1313 Belknap Street, Superior,
Mr. L. Keith Dooley, Representative, 1055 North Mayfair Road, Wauwatosa,
America, Local 4646, AFL-CIO.

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

On April 14, 1994, Douglas County filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing collective bargaining unit by excluding therefrom the positions of Assistant Zoning Administrator and Office Manager in the Sheriff's Department. The Communications Workers of America, exclusive collective bargaining representative for the unit, opposed the request. Hearing in the matter was held in Superior, Wisconsin on August 17, 1994, before Examiner Stuart Levitan, a member of the Commission's staff. During hearing, the parties agreed that the Assistant Zoning Administrator should be excluded from the unit as a professional employe but did not resolve their dispute as to the status of the Office Manager who the County asserts is a supervisory, managerial and confidential employe. A stenographic transcript was offered to the parties by September 6, 1994. The parties filed written arguments on October 10, 1994, and, on October 18, 1994, waived their right to request permission to file reply briefs. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Douglas County, herein the County or the Employer, is a municipal employer with offices at 1313 Belknap Street, Superior, Wisconsin, operating and maintaining, among other functions, a Sheriff's Department.
2. Communication Workers of America, Local 4646, AFL-CIO, herein the Union or CWA, is a labor organization with offices at 1055 North Mayfair Road, Wauwatosa, Wisconsin.

3. At all times material, a collective bargaining agreement between the County and the CWA has recognized the CWA as:

. . .the exclusive collective bargaining representative for all its Court House clerical employes ... except those excluded by State or Federal law.

4. At all times material, a separate collective bargaining agreement between the County and the Wisconsin Professional Police Association (WPPA) has recognized the WPPA as the exclusive collective bargaining representative for municipal employes in the Sheriff's Department with the power of arrest.

5. Mary Drobot is the incumbent Sheriff's Department Office Manager, one of four departmental clerical positions, all within the bargaining unit described in Finding of Fact 3, the other positions being Secretary/Receptionist, Grants Coordinator and Data Entry Clerk. The collective bargaining agreement in effect for 1993 provided for hourly wage rates of \$10.50 for the Office Manager, \$10.50 for the Grants Coordinator, \$9.98 for the Secretary/Receptionist, and \$9.47 for the Data Entry Clerk. The current job description, also in place at Drobot's hire in 1984, is as follows:

JOB DESCRIPTION

DEPARTMENT: Law Enforcement

JOB TITLE: Office Manager

CLASSIFICATION: CWA #6

REPORTING RESPONSIBILITY: Report directly to the Sheriff
and Undersheriff or
their designee

SUPERVISORY RESPONSIBILITY: Office personnel

GENERAL JOB FUNCTION: This position is responsible for the general management of office personnel including assisting the Duty Sergeant. Position also requires management of accounts and the operation of the department computer terminal.

DUTIES AND RESPONSIBILITIES: (illustration, not a limitation, of activities):

1.Management of office personnel and operations and insuring departmental policy and procedure.

2.Assisting the Duty Sergeant in the daily operations and

various bookkeeping in the office.

3. Management of accounts including accounts payable, accounts receivable and departmental billing.
4. Operating the department computer terminal which involves accurate keypunching, verifying incoming source documents, identifying possible errors or problem conditions and maintaining data confidentiality.
5. Insuring compliance of state statutes pertaining to the Sheriff's Department.
6. Record keeping (i.e. accounts payable, accounts receivable and departmental billings).
7. Delegation of work load to office clerical personnel.
8. Answer sheriff's office business telephones and receive reports
9. When necessary, receive walk-in traffic at the front desk and perform general office duties.
10. Performing other job related functions as required or directed by the Sheriff, Undersheriff or their designee.

MINIMUM QUALIFICATIONS

Education: High School Diploma and course work relating to Data Processing.

Experience: Minimum one year experience in the operation of a computer terminal required. Previous experience in accounting, bookkeeping and the processing of payroll preferred. Experience in office management also preferred.

Knowledge and Skill: Good knowledge of the operation of computer terminal keypunching equipment as well as knowledge of methods used in data entry procedures. Must also be able to efficiently operate various office machinery such as a typewriter, 10-key calculator, photocopying machine and word processor. Must be able to learn the complex operations of the Sheriff's Department involving office procedures and rules and regulations. Excellent telephone demeanor required.

The County Personnel Department has developed a job description for Drobot in the position of Business Manager, as follows:

Douglas County
Job Description

JOB TITLE: Business Manager

Exempt (Y/N): Yes	JOB CODE:
SALARY LEVEL:	DOT CODE:
SHIFT:	DIVISION: Administration
LOCATION: City/County Complex	DEPARTMENT: Law Enforcement
EMPLOYEE NAME: Mary Drobot	SUPERVISOR: Sheriff
PREPARED BY: John Mulder	DATE: 12/28/93
APPROVED BY:	DATE:

SUMMARY: This position is responsible for the general management of office personnel including supervising and coordinating the activities of clerical workers by performing the following duties.

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

Manages office personnel and operations insuring departmental policy and procedure, makes work assignments and evaluates performance.

Supervises departmental records management to ensure that documents, reports and fiscal data are processed and maintained as required.

Assists the Sheriff in budget development and fiscal administration.

Administers the departmental operating budget and capital outlay program, provides accountability for all office funds and monies

Consults with County Finance Director to establish and maintain an accounting system

Makes recommendations for working procedures and departmental practices to improve efficiency of subordinates

Performs other job related duties and functions as required or directed by the Sheriff or designee.

SUPERVISORY RESPONSIBILITIES:

Directly supervises three employees in the sheriff

department's office. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include 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; or one to two years related experience and/or training; or equivalent combination of education and experience.

LANGUAGE SKILLS:

Ability to read and interpret documents such as safety rules, operating and maintenance instructions, and procedure manuals. Ability to write routine reports and correspondence. Ability to speak effectively before groups of customers or employees of organization.

MATHEMATICAL SKILLS:

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

REASONING ABILITY:

Ability to apply commonsense understanding to carry out instructions furnished in written, oral, or diagram form. Ability to deal with problems involving several concrete variables in standardized situations.

OTHER SKILLS and ABILITIES:

Good knowledge of computer operations including working with both main frame terminals and personal computers.

Ability to efficiently operate various office machinery such as a type writer, 10 key calculator, photocopying machine, and word processor.

Ability to learn and understand complex operations of Sheriff's Department including procedures, rules and regulations.

Neither the appropriate standing committee, nor the full County Board, has approved the job description for Business Manager.

Drobot and the Sheriff have never established explicit guidelines on Drobot's authority to impose discipline. On one occasion, during the tenure of the prior Sheriff, Drobot recommended that an individual who was mishandling mail be suspended, which discipline was then imposed. Given her status as a unit employe, Drobot's current disciplining authority extends only to giving verbal advice and correcting problems. In the event the position is excluded from the bargaining unit, the incumbent Sheriff would give the position authority to independently issue written reprimands and written warnings, and, in extreme and exigent circumstances, impose paid suspensions.

The current collective bargaining agreement provides for grievances to be submitted to an employe's immediate supervisor. Pursuant to this provision, clerical employes submit grievances to the Sheriff.

At the time of Drobot's hire, the County used a main frame computer system, with most data entry and other administrative tasks handled by the Treasurer and County Clerk. Recently, separate departments, including the Sheriff's, have assumed greater responsibility for their own data entry and reporting. Drobot approves and authorizes all purchases and accounts payable; she supervises the employe who handles accounts receivable.

Drobot has authority, in processing approximately 40-60 time cards per payroll, including those of part-timers, to make decisions on various aspects of leave and pay status, including actually changing time card entries.

All three current incumbents in the other Sheriff's Department office positions have been hired during Drobot's tenure. The current Secretary was formerly a limited term employe whom Drobot recommended be hired into the full-

time, permanent position. The current Grants Coordinator is someone whom Drobot recommended be hired, first as a contract employe, then as a permanent, full-time position. Drobot played no role in the hiring of the current Data Entry Clerk, handled by the Personnel Department as an interdepartmental transfer. Drobot interviews and hires summer youth employes and certain non-permanent, training-based employes, and has effectively recommended the hiring of a limited-term employe.

Drobot has made recommendations to the Sheriff regarding language changes in the collective bargaining agreements, particularly the one governing the WPPA unit, which she believes would save the County money, especially as relates to staffing levels and overtime usage.

Drobot has the authority to approve or deny vacation requests, and all other leaves, for the three other departmental clericals, based on the employe's workload, availability of leave, and leaves of other employes. She also assigns overtime.

6. The County commissioned a consultant's study of the organization, management and staffing in the Sheriff's Department. Its recommendations, endorsed by the Sheriff, include the following:

Recommendation #10: Remove Lieutenants and the Office Manager from the same bargaining unit as the rank and file officers and Sheriff's Office clerical support staff.

As management team employes, these employes should not be in the same union as the people they supervise and evaluate. It is currently a conflict of interest and impedes effective management, supervision, and oversight of Department operations. The salary levels for these positions should be reviewed after removal from the bargaining unit for internal and external equity with other non-represented County positions, to determine if upward revisions are warranted.

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FISCAL, ADMINISTRATIVE, AND CLERICAL SUPPORT

Recommendation #42: Remove the Office Manager (re-titled Business Manager) from the bargaining unit and review the position's salary level.

This position serves as the primary administrative officer for the Department regarding all non-law enforcement matters. Some of this position's responsibilities include: budget control, general management of office personnel, management of the Department's accounting system including interfacing and coordination with the County Finance Director, coordination development and

management of the Department's budget, management of business office services equipment including computer terminals, payroll administration and related personnel activities, confidential communication including grievance and employee discipline activity. As indicated in Recommendation #10, the salary level for this position should be reviewed after removal from the bargaining unit for consistency with other non-represented County positions.

The day-to-day nature of activities places this position in frequent access to confidential and sensitive information pertaining to employee-related issues. In consideration of the responsibilities of this position it is recommended that it be considered non-represented and reviewed for proper placement within the classification and compensation plan of Douglas County.

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Recommendation #45: Establish a budget development/monitoring team.

Under the coordination of the Business Manager, a budget development and monitoring team should be established consisting of the Sheriff, Chief Deputy, and Division Lieutenants. The purpose of this team will be to assign areas of responsibility for budget development and monitoring. As the County's accounting and budgeting systems continue to become more sophisticated, it will be incumbent upon the Department to provide for greater accountability of all budgeted funds as well as justification for continued or increased funding. By assigning budget development responsibility to the various division heads, the Department should obtain a better understanding of its total operating expenditures and revenues along with a better awareness of the changes in staffing needs and reasons for overtime.

7. Drobot possesses and exercises supervisory responsibility in sufficient combination and degree to be deemed a supervisory employe.

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

CONCLUSION OF LAW

The incumbent Office Manager in the Sheriff's Department, Mary Drobot, is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of

Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Office Manager, Sheriff's Department, is hereby excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 6th day of December,
1994.

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

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 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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

(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.

DOUGLAS COUNTY

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

In support of its position that the Office Manager should be excluded from the bargaining unit, the County states as follows:

The facts, especially those relating to current and proposed changes in the position's function, establish this position to be supervisory, managerial and confidential.

A recommended internal reorganization places the subject position in charge of the Sheriff's Administrative Division, with a proposed new job description giving the position supervisory responsibilities for the department's three clerical positions. The incumbent testified that she has already reviewed and corrected the staff's work, has been involved in disciplinary procedures against other staff, and has recommended disciplinary action to the Sheriff. The Sheriff testified he would give the Office Manager authority to issue verbal and written reprimands, warnings, and paid suspensions.

The position is also managerial, as shown by the duties and responsibilities found in the proposed new job description and the recommendations of an internal management study, particularly such managerial duties as managing the office personnel and operations, administering the operating budget and maintaining an accounting system. These duties, reflected in the proposed new position description and the management study, reflect interests that are significantly at variance with those of the represented department employees.

The position is also confidential, especially as relates to contract administration and grievances relating to the incumbent's payroll duties.

Because the incumbent formulates and implements policy, has authority to initiate discipline and works with confidential labor relations material, the subject position should be excluded from the bargaining unit on the grounds of managerial, supervisory and confidential status.

In support of its position that the position is that of a municipal

employee, and that the petition should be dismissed, the Union states as follows:

It is inappropriate to exclude the subject position because it is not a newly established classification and historically has been included in the unit; the duties have not undergone substantial changes, and the position has performed, and will continue to perform, bargaining unit work. Further, the petition should be denied because the position shares a community of interest with bargaining unit members, as elaborated on under federal case law.

Further, the subject position is neither supervisory, managerial nor confidential under the National Labor Relations Act, and thus should not be excluded from the bargaining unit. Because the incumbent does not exercise independent judgment, nor make any supervisory decisions, she fails to satisfy the NLRA's statutory test for supervisor.

Numerous federal cases are cited in support of the proposition that the subject position fails to meet the standard for confidential employee, as enforced by the National Labor Relations Board in the context of the NLRA and the Wagner and Taft-Hartley Acts.

Federal cases are also cited to oppose the proposition that the position is managerial.

DISCUSSION

Pursuant to Wisconsin law, a supervisor is an individual with the authority, in the interest of the municipal employer, to hire, transfer, suspend or lay off, recall, promote, discharge, assign, reward or discipline, or to effectively recommend such action. Sec. 111.70(1)(o)1, Stats. In determining whether a position is supervisory, it is well-established that the Commission considers the following:

1. The authority to recommend effectively 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 employes;

5. Whether the supervisor is primarily supervising an activity or primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;
7. The amount of independent judgment and discretion exercised in the supervision of employes. 2/

The incumbent has effectively recommended the hiring of two of the three clerical positions in the office, and the use of a limited-term employe. While the clerical work-force is small, Drobot has authority to direct and assign it.

She has the authority to approve or deny vacation and other leaves. She has made suggestions to the Sheriff on how changes in the collective bargaining agreement could lead to reduced costs and higher productivity. While the extent of her authority to effectively recommend discipline is less under the incumbent Sheriff than it may have been previously, the Sheriff testified he would extend that authority upon the position's removal from the unit. The testimony established the extent of Drobot's independent judgment, and the extent to which the Sheriff relies on such judgment. In the aggregate, we find that Drobot satisfies the test for a supervisory employe, and we have so held.

Accordingly, it is unnecessary for us to address the issues of confidential and managerial status.

Dated at Madison, Wisconsin this 6th day of December, 1994.

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

2/ City of Milwaukee, Dec. No. 6960-J (WERC, 5/89).

