

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of a Petition for
Declaratory Ruling between

DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS LOCAL NO. 695

and

COLUMBIA COUNTY, WISCONSIN

Case VI
No. 13576 DR-9
Decision No. 9764

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Gerry M.
Miller and Mr. A. E. Mueller appearing on behalf of the
Petitioning Union.

Murphy, Huiskamp, Stolper, Brewster & Desmond, Attorneys at Law,
by Mr. Howard Goldberg, appearing on behalf of the Municipal
Employer.

DECLARATORY RULING

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy
Employees and Helpers Local No. 695, Madison, Wisconsin, having filed
a petition with the Wisconsin Employment Relations Commission requesting
a Declaratory Ruling with respect to its relationship with Columbia
County, Wisconsin, as the representative of law enforcement officers in
the employ of the Sheriff's Department of said County; and a pre-hearing
conference on said petition having been held on March 18, 1970, before
Robert M. McCormick, Hearing Officer, wherein the parties jointly
requested that the following issues be resolved by the Commission in a
Declaratory Ruling:

- "1. Is the representative designated by a majority in an
appropriate unit of law enforcement personnel under
Section 111.70(4)(j) of the Wisconsin Statutes the
exclusive representative of all said employees for
the purposes of collective bargaining?"
- "2. Does Section 111.70 of the Wisconsin Statutes permit
the petitioner to be a party to a contract setting
forth the terms and conditions of employment of
Sheriffs Deputies?"
- "3. Does Section 111.70 of the Statutes permit the
Petitioner to be a party for all purposes to the
administration of the labor agreement including
the filing of grievances with or without employee
authorization on the specific grievance?"

and the Commission being fully advised in the premises, having considered the evidence, motions and arguments of Counsel, and being fully advised in the premises makes and issues the following

FINDINGS OF FACT

1. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local No. 695, hereinafter referred to as the Petitioner, is a labor organization having its offices at Madison, Wisconsin; that the membership of the Petitioner consists of employees who are employed in private employment in the State of Wisconsin and as such the Petitioner represents employees of various non-public employers for the purposes of collective bargaining and further that in said relationship the Petitioner and said employers and their employees are regulated by the National Labor Relations Act, and in some instances by the Wisconsin Employment Peace Act; and that, in addition, the Petitioner represents some 230 law enforcement personnel employed by various municipal employers in the Central Wisconsin area, for the purposes of collective bargaining, pursuant to Section 111.70 of the Wisconsin Statutes, however, that said law enforcement personnel are not members of the Petitioner.

2. That a card check conducted by a staff member of the Wisconsin Employment Relations Commission on November 11, 1969, indicated that 25 of 28 non-supervisory sheriff deputies employed in the Sheriff's Department of the Municipal Employer designated the Petitioner to represent them pursuant to Section 111.70(4)(j), Wisconsin Statutes; and that, however, none of said 25 deputy sheriffs are members of the Petitioner.

3. That the Municipal Employer has recognized the Petitioner as the collective bargaining representative for the 25 deputy sheriffs noted above, and has in that relationship, been engaged in negotiations with the Petitioner with respect to wages, hours and working conditions; that included among the matters which are in issue in the negotiations are the claims of the Petitioner that it has the right to become a party to any agreement arrived at with respect to the wages, hours and working conditions of said deputy sheriffs, and, further, that the Petitioner has the right to administer such an agreement, including the filing of grievances, with or without the authorization of the particular deputy sheriff or deputy sheriffs involved.

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

CONCLUSION OF LAW

1. That, pursuant to, and within the meaning of, Section 111.70(4) a representative designated by a majority of members of a police, sheriff or county traffic department becomes the exclusive collective bargaining representative of all of the non-supervisory police, sheriff or county traffic officers employed in such department, and as such, should an agreement be reached between such representative and the Municipal Employer involved, such representative is permitted to enter into a collective bargaining agreement with the Municipal Employer involved covering the wages, hours and working conditions of said law enforcement officers; and further, that as a party to such an agreement has a right to administer said agreement, including the filing of grievances with or without the authorization of the law enforcement officer involved.

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

DECLARATORY RULING

1. That the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local No. 695, having been designated by a majority of the sheriff's deputies in the employ of the Sheriff's Department of Columbia County, is the exclusive representative for all non-supervisory deputy sheriffs employed in said department.

2. That the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local No. 695, as the exclusive bargaining representative of all the non-supervisory deputy sheriffs in the employ of the Sheriff's Department of Columbia County may properly be a party to a written collective bargaining agreement with the Municipal Employer should an agreement be reached between the Petitioner and the Municipal Employer with respect to the wages, hours and working conditions of said deputy sheriffs; and should the parties enter into such a written agreement, the Petitioner may administer the provisions of said agreement as the exclusive collective bargaining representative of all the non-supervisory deputy sheriffs in the employ of the Municipal Employer, including the processing of grievances, with or without specific authorization of the employees involved in said grievances.

Given under our hands and seal at the
day of June, 1960.

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(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the commission to post a cash bond in an amount determined by the commission to guarantee payment of one-half of the costs of fact finding."

Issue as to Exclusive Representative Status

The Petitioner contends that having once been designated by a majority of the deputy sheriffs it becomes the exclusive representative for collective bargaining purposes. In reply the Municipal Employer contends:

"It appears that there is no real difference of position between the County and the Petitioner as to ISSUE #1. The sole problem, as we see it, is one of definition. The Petitioner quite correctly states that in the case of Board of School Directors of Milwaukee v. WERC (1969) 42 Wis. 2d 637, the Wisconsin Supreme Court held that in construing Section 111.70 of the Wisconsin Statutes the meaning of the words 'majority representative' means that the representative of the employees is the 'exclusive' representative. By this, the court said that if a majority of the employees in the unit wish to have a representative, then said representative shall act on behalf of all of the employees in the unit.

To make the County's position very clear we again refer to page 3 of the County's Brief wherein the first paragraph on said page it is stated:

'Lastly, the County submits that the representative appointed by the majority of the employees in the bargaining unit does represent all of the employees in the bargaining unit until such time as an agreement is reached or said representative is dismissed by the employees. If an agreement is reached it shall be binding on all of the members in the unit.'

The difficulty which the County has had with this issue is due to the fact that the phrase 'exclusive representative' as used in the private sector implies much more than as it is used in the School Directors of Milwaukee case.

If the WERC, in deciding this controversy, defines the word 'exclusive', as applicable here, to mean nothing more than:

1. The representative appointed by the majority of the employees does represent all of the employees in the bargaining unit;
2. Any agreement subsequently reached is binding on all of the employees in the unit.
3. That such representative acts in such capacity solely for the purpose of negotiating or initiating fact finding; and
4. That such representative can be dismissed by a majority of the employees in the unit, summarily, without the necessity of an election;

then the County has no quarrel with the use of the word 'exclusive' as it is applicable to this case."

From the above it appears that there is an agreement with respect to the first issue as to whether the Petitioner becomes the exclusive bargaining representative of all the deputy sheriffs employed by the Municipal Employer. The condition which the Municipal Employer would attach to such status in para. 3, cited above, does not affect the initial issue, but rather affects issues No. 2 and 3. Therefore, we conclude that the Petitioner, pursuant to Section 111.70(4)(j), having been designated by a majority of the non-supervisory deputy sheriffs in the employ of the Municipal Employer, is the exclusive bargaining representative for all of the non-supervisory deputy sheriffs in said employ.

Issue as to Whether the Petitioner May
be a Party to a Collective Bargaining Agreement

The Municipal Employer contends that once the Petitioner has negotiated an agreement on behalf of the law officers involved "there is no further statutory basis for their (its) continued existence in the matter and that they are therefore no longer authorized to act pursuant to Section 111.70(4)(j)." The Petitioner argues otherwise, and in support thereof cites the Commission's decision in the City of Medford.^{2/} In the latter case Medford had entered into a collective bargaining agreement covering non-supervisory police officers in its employ with a local Teamsters Union, and said Union attempted to commence negotiations with said City on alleged violations thereof and also on a succeeding agreement. Medford refused to enter negotiations as requested by the Teamsters Union, and thereafter said Labor Organization filed a petition for fact finding with the Commission, contending that Medford had refused to meet and confer in good faith

^{2/} Decision No. 8396, 2/68.

with respect to the matter. Medford argued that the Union involved had no standing as the representative of the police officers except to represent them in a fact finding proceeding. We determined otherwise, and concluded that the Union had a right to engage in conferences and negotiations with said Municipal Employer with respect to changes and improvements in wages, hours and working conditions of said officers and also with respect to the processing of said grievances arising from the valid existing collective bargaining agreement. The Medford case ultimately found its way into the Wisconsin Supreme Court and said Court sustained the Commission's Order.^{3/}

The Municipal Employer contends that, should the Commission conclude that the Petitioner may become a party to a collective bargaining agreement and be permitted to administer said agreement, "this is nothing more than a move on the Union's part to create 'self-perpetuation and entrenchment' of their situation." We do not accept this argument. For what the employees can do, they can undo. In other words, should a majority of the deputy sheriffs involved choose to revoke their previous designation indicating the Petitioner as their representative, they would be entitled to do so. Likewise, they, if they so choose, would be permitted to designate a new representative in accordance with the pertinent statutory provision. Of course, there may be issues arising as to the timeliness of such action, e.g., depending upon the term of the existing collective bargaining agreement, if one is reached, or on other matters involved.

Issue as to the Administration of the
Contract and the Process of Grievances Thereunder

As the representative of the employees and as a party to the collective bargaining agreement, the Petitioner has the standing to process grievances arising from the interpretation and application of that agreement in accordance with the grievance procedure established therein. If the Petitioner is a party to such an agreement, it has the right to initiate grievances thereunder for the simple reason that the agreement would not be with the individual employees but with the Petitioner as their representative, and it has a duty to represent all employees covered by said agreement.

We see nothing in Section 111.70(4)(j) which would preclude an individual employee or his own representative, other than the Petitioner, from meeting and conferring with the Municipal Employer with respect to a grievance involving said employee. However, we conclude that neither

^{3/} 42 Wis 2d 581.

said employe nor his own representative are entitled to process said grievance in accordance with the grievance provisions in the agreement, unless, of course, a provision to that effect is included in the collective bargaining agreement. To permit otherwise might result in an administration of the collective bargaining agreement contrary to the terms and conditions thereof, and, thus, constitute an erosion of the right of the Petitioner to represent the employes involved.

Dated at Madison, Wisconsin, this 26th day of June, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

John S. Rice II
John S. Rice II, Commissioner