

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
WASHINGTON COUNTY DEPUTY SHERIFF'S	:	Case X
ASSOCIATION AND WASHINGTON COUNTY	:	No. 15386 ME-764
	:	Decision No. 10845-A
For Unit Clarification	:	

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ORDER CLARIFYING BARGAINING UNIT


Washington County Deputy Sheriff's Association and Washington County having requested the Wisconsin Employment Relations Commission to issue an order clarifying the existing collective bargaining unit to determine whether Lieutenants are to be included in or excluded from a bargaining unit of law enforcement personnel, for the purpose of the exercise of rights under Section 111.70(2); and hearing in the matter having been held at West Bend, Wisconsin, on March 23, 1972, Herman Torosian, Hearing Officer, being present; and the Commission having considered the evidence and being fully advised in the premises makes and issues the following

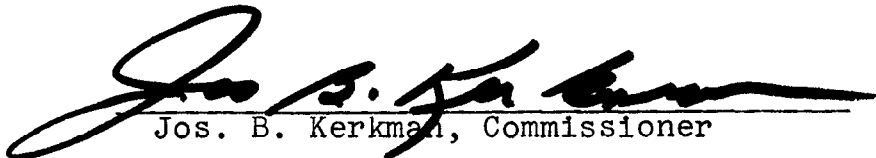
ORDER CLARIFYING BARGAINING UNIT

That the Lieutenant of Police Patrol in the employ of Washington County Sheriff's Department is not a supervisory position, and, therefore, said position is included in the bargaining unit consisting of all permanent status employes in the classified service of the Washington County Sheriff's Department excluding the Chief Deputy Sheriff, supervisors and confidential employes.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of April, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
 Morris Slavney, Chairman

  
 Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

Washington County has voluntarily recognized the Washington County Deputy Sheriff's Association as the exclusive bargaining agent for all permanent status employes in the classified service of the Washington County Sheriff's Department, excluding the Chief Deputy Sheriff, supervisors and confidential employes.

The parties desire a declaratory ruling as to whether the position of Lieutenant of Police Patrol, which is occupied by David Backhaus, is or is not a supervisory position, and, therefore, whether such position is to be included or excluded from the recognized collective bargaining unit. The County contends Backhaus is a supervisor within the meaning of Section 111.70 and should, therefore, be excluded from the unit.

The County urges the Commission to take notice of Wisconsin Statutes Section 59.21(8) which permits counties to adopt a civil service system for sheriff's departments. The effect of adopting such an ordinance, it is argued, is to significantly limit the authority of the sheriff, deputy sheriff, and other supervisory personnel of the department, at least with respect to matters of hiring, disciplining, suspending, demoting or dismissing deputies. Therefore, the County contends that the Lieutenant's supervisory status must be determined within the context of the civil service system.

In this regard, the Commission concludes that, while Section 59.21(8) may limit the supervisory authority of Lieutenant Backhaus with respect to hiring, firing and disciplining, Backhaus, nevertheless, in order to be excluded from the collective bargaining unit, must perform supervisory duties within the meaning of Section 111.70(1)(o).

Backhaus, since October 15, 1971, has been classified as Lieutenant of Police Patrol in the Police Patrol Division of the Sheriff's Department. There are three other divisions in the Sheriff's Department. Lieutenant Backhaus reports directly to the Deputy Sheriff, who in turn reports directly to the Sheriff. There are 4 sergeants and 27 patrolmen ranked below Lieutenant Backhaus in the Police Patrol Division.

Lieutenant Backhaus' daily work routine consists of the following: checking teletype messages; assigning complaints, which have been filed with the Sheriff's Department, to the patrolmen; reviewing and evaluating complaint and accident reports to determine whether all work required has been completed on same; working with the sergeants and drafting a work schedule for the patrolmen; and checking patrol cars and having them repaired if needed.

In addition to the above Backhaus plays a limited role in the hiring, discharging and promoting of employes.

The process for hiring deputies is as follows: The County Civil Service Commission, after conducting written and oral examinations, if there is only one vacancy, certifies and submits the names of the top three candidates to the Sheriff's Department. Said candidates after passing physical and mental examinations are interviewed by the sheriff and deputy sheriff, and the sheriff thereafter makes the final appointment and in so doing may consult with Lieutenant Backhaus or any other officer who may be acquainted with the applicants or have knowledge of their backgrounds.

The promotion process under the Civil Service System is much the same as the hiring process with the sheriff making the ultimate appointment. However, the sheriff in so doing may first consult with the deputy sheriff and lieutenant concerning his choice.

In the area of discipline the sheriff and deputy sheriff are the only two individuals in the department who can impose discipline. There is no set procedure in filing and processing complaints, but rather, depending on the situation, complaints, by patrolmen, are either filed with the sergeants, lieutenant, deputy sheriff or sheriff. Once disciplinary action is taken, notice is given to the Association. The grievant can then appeal said action to the grievance committee, comprised of County Board supervisors, who, after conducting a hearing will either sustain or overrule the sheriff's action. In processing a grievance as outlined above, Lieutenant Backhaus may investigate the matter in question and file a report with the sheriff.

Section 111.70(1)(o) defines supervisors as follows:

"1. As to other than municipal and county fire-fighters, 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 employes, 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."

In reviewing all of the above it is the Commission's opinion that Lieutenant Backhaus is not a supervisor within the meaning of said provision.

It is obvious from Backhaus' daily work routine that he is not primarily supervising employes, but is primarily supervising work activities and performing administrative duties. Also in the areas of hiring, discharging, promotion and adjusting grievances Lieutenant Backhaus may be asked to state an opinion concerning a matter and that said opinion may be considered by the sheriff before taking action, but the Commission cannot conclude that Backhaus is relied upon to make effective recommendations.

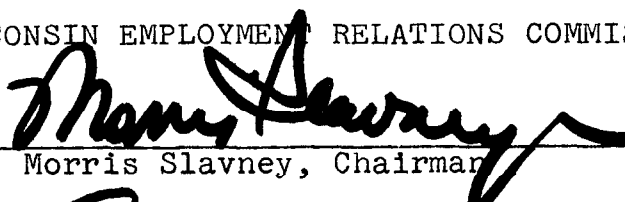
In grievance adjustments the evidence clearly indicates that Backhaus is active primarily in investigating a grievance once action has been taken rather than he being responsible for actually adjusting grievances.

In view of these facts we find that David Backhaus, Lieutenant of Police Patrol, is not a supervisor, and he, therefore, is included in the collective bargaining unit.

Dated at Madison, Wisconsin, this 18th day of April, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner