

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL	:	
WORKERS, LOCAL NO. 276, AFL-CIO	:	Case XXXI
Involving Certain Employes of	:	No. 15131 ME-731
DOUGLAS COUNTY (SHERIFF'S DEPARTMENT)	:	Decision No. 10993
Superior, Wisconsin	:	
	:	

ORDER DISMISSING PETITION

International Brotherhood of Electrical Workers, Local No. 276, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among all full-time and part-time matrons in the employ of the Sheriff's Department of Douglas County, to determine whether said employes desire to be represented for the purposes of collective bargaining by the Petitioner; and hearing on said petition having been conducted on December 7, 1971, at Superior, Wisconsin, by Robert M. McCormick, Hearing Officer; and the Commission, having considered the evidence and arguments of Counsel, being fully advised in the premises, and being satisfied that the full-time and part-time matrons do not constitute an appropriate unit within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act;

NOW, THEREFORE, it is

ORDERED

That the petition filed in the matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
 Morris Slavney, Chairman

Zel S. Rice II
 Zel S. Rice II, Commissioner

Jos. B. Kerkmar
 Jos. B. Kerkmar, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION

The Union, in initiating the instant proceeding, initially filed a petition with the Commission requesting an election in a claimed bargaining unit consisting of:

- "1. All employees of Douglas County and the City of Superior employed as dispatchers 1/
2. All full and part-time employees of Douglas County and City of Superior employed as matrons."

At the outset of the hearing General Drivers Local Union No. 346 was permitted to intervene on its claim that it represented certain dispatcher positions. During the course of the hearing, after learning that the matrons were employed only by Douglas County in its Sheriff's Department, the Petitioner amended its petition to request an election in a unit consisting of all matrons employed in the Sheriff's Department of Douglas County, excluding law enforcement personnel, as well as all other employees of the County. Upon such amendment General Drivers Local Union No. 346 indicated it had no interest in representing the matrons. During the course of the hearing evidence was adduced with respect to the matrons.

The County raised an issue as to whether matrons employed on a stand-by basis could ever be certified as regular part-time employees, it having contended that such matrons were casual employees having no regularly scheduled hours of employment, and, therefore could not be an appropriate unit within the meaning of Section 111.70(4)(d)(2)(a) of the Act. It further contends that part-time matrons were only called when the County held a female in jail custody beyond the daylight hours otherwise worked by the full-time matron, the sheriff's wife, Mrs. Christine Johnson. The County also contends that the position of Head Matron should be excluded from any bargaining unit because it is traditionally filled by the wife of the incumbent sheriff, and the Head Matron functions as a supervisor and is paid by the County for tasks other than her matron duties.

The County argues, in the alternative that, if the Commission were to direct a vote under the Act for matrons employed in the Sheriff's Department, it would mean, if the Petitioner were selected as representative, that the County would be burdened with bargaining over deputies and jailers with General Drivers Local Union No. 346, bargaining over clericals with the Communications Workers of America, and over the matrons with the Petitioner, three unions in one County department. Such a result would constitute "undue fragmentation of a bargaining unit," a condition which Section 111.70(4)(d)(2)(a) seeks to avoid.

The Petitioner contends that the part-time matrons work a substantial number of hours per month, must abide by pre-arranged schedules and make themselves available for telephonic contact from the sheriff for the shift hours which they are expected to cover. The Petitioner further contends that conceivably the sheriff's wife

1/ The question of representation, the identity of the Employer and/or the possible accretion of dispatchers to an existing appropriate unit covered by another collective agreement is presently pending in Douglas County (and City of Superior) Case XXX, No. 15085, ME-721.

cannot vote because of the statutory exclusion of a "spouse," but that otherwise the position of Head Matron may be occupied by another with no such marital ties, who would be working alongside of the other matrons.

The record discloses that the County employs six women on a part-time basis as matrons, each of whom make themselves available to work and/or do work the following schedule of hours when one or more females reside in the jail:

Mary Murray	Mon. to Fri.	4:00 p.m. to 12:00 p.m.
Ruth Hofacre	Mon. to Fri.	12:00 p.m. to 8:00 a.m.
Irene Berg	Sat. & Sun.	8:00 a.m. to 4:00 p.m.
Corrine Schultz	Sat. & Sun.	4:00 p.m. to 11:59 p.m.
Edith Hadloc	Saturday Only	12:00 p.m. to 8:00 a.m.
Jenny Anderson	Sunday Only	12:00 p.m. to 8:00 a.m.

Mrs. Christine Johnson, the wife of the sheriff, is employed full time Monday through Friday, and functions as Head Matron to provide coverage for the day light hours, 8:00 a.m. to 4:00 p.m. in the event a female prisoner is being detained. In addition, she spends a substantial portion of her work day ordering food and house-keeping supplies for the jail. The sheriff, upon installation to his office, appointed his wife the Head Matron. The record further discloses that it is common practice for the incumbent sheriff to appoint his wife as Head Matron. However, contrary to the contention of the County, the Head Matron plays no significant role in directing or evaluating the part-time matrons. The part-time matrons work out their own schedule changes, after first receiving their regular schedules from the sheriff. The jailer, at the sheriff's direction, contacts the matron who is to report for certain shift hours when a female prisoner is detained. The sheriff's wife is paid a flat salary of over \$4,000 per year, only a portion of which represents compensation for the approximately twenty (20) hours per week Mrs. Johnson spends performing matron's duties. The Commission concludes that Mrs. Johnson is not a supervisor, but primarily functions as a lead-woman, passing on instructions to the other matrons. She performs essentially the same duties as the other matrons when she functions as a matron. However, as the spouse of the sheriff, and having charge of the purchasing and housekeeping functions, and being paid a flat salary, we are convinced that so long as those functions are combined with her matron functions, she is a managerial employe. Section 111.70(1)(b) excludes managerial employes from the definition of the term "municipal employe," and, therefore, Mrs. Johnson would not be included in any unit of employes.

The sheriff requires that the matrons make themselves available for the shift hours that have been pre-arranged at their time of hire to cover the time periods that a female prisoner is to be detained. That availability includes the obligation of a matron to advise the jailer or sheriff of her whereabouts over the course of her designated shift, so that she may be called in, if a female takes up lodging in the jail. In addition, the matrons respond to call in to handle and transport females who are in custody to Parkland Hospital, a County institution (potential mental patients). Matrons, having automobile transportation, are called upon an average of 4 to 6 times per year, to convey female prisoners to Taycheedah, a state penal institution in Fond du Lac County. Mary Murray, wife of the undersheriff has largely performed said functions. The record discloses that in the last three (3) years, a female has been in jail custody eight (8) months out of

every twelve (12) month period; and from January to July 1971, a female was held in continuous custody, while the census for females in custody for July to December 1971 reflected 50 percent of said remaining period.

The record also discloses that in 1970, at the old jail, no part-time matrons were called to work shift hours, as now is the case in the new County jail complex except for Mary Murray and Edith Hadloc, who replaced the vacationing Head Matron and cook, respectively.

The provision of Section 59.23, Wisconsin Statutes, provide that the sheriff shall:

"(1) Take the charge and custody of the jail maintained by his county and the persons therein, and keep them himself or by his deputy or jailer.";

and with respect to the custodial presence of jail matrons at a jail, Section 53.41, Wisconsin Statutes, requires that:

"Whenever there is a female prisoner in any jail there shall be a matron on duty who is wholly responsible to the sheriff or keeper for the custody, cleanliness, food and care of such prisoner."

Though the record does not indicate an existing bilateral arrangement, potentially Douglas County can also be the recipient of female prisoners from neighboring counties, given a consent agreement with a sister-county under Section 53.44, which provides:

"Two or more counties may agree pursuant to sec. 66.30 for the co-operative use of the jail of any of them for the detention or imprisonment of females before, during, and after trial and for sharing the expenses thereof without reference to s. 53.34. The sheriffs of such counties shall lodge female prisoners in any jail authorized by such agreement and shall indorse the commitment, if any, as provided in s. 53.35 in case detention or imprisonment is in the jail of another county. Only jails approved by the department (State Department of Public Welfare) for the detention of female prisoners may be used pursuant to such agreement. . ."

The Commission is persuaded that the part-time matrons are not employed on a casual basis but are in fact obligated to respond to shift assignments when a female is incarcerated, according to regular schedules. That fact, together with the imposition of the statutes as to the required presence of female matrons when a woman is incarcerated, and the potential for the housing of female prisoners from other counties, persuades the Commission that said matrons are regular part-time employes.

The record discloses that the matrons are deputized and that in performing their duties relating to their "responsibility to the sheriff or keeper for custody . . . of (female) prisoners" under 53.41, they conduct the search of such prisoners, and together with the jailer, are responsible for their care and for security arrangements necessary to maintain their custody. The record further indicates that the matrons have the power of arrest and carry an identical sheriff's deputy card as that carried by male deputies. However, up to the time of the hearing, no matron has had occasion to make an arrest. There is evidence to indicate that occasionally a matron may perform clerical duties more often performed by police officers, such as the taking and recording of statements from prisoners.

In determining law enforcement personnel units, the determinative factor involving whether certain individuals are considered law enforcement personnel is whether said personnel have the "power of arrest." 2/


We are satisfied that in the instant matter the matrons do have the power of arrest and spend a majority of their working time performing duties akin to duties performed by law enforcement personnel. We would distinguish the Commission's recent determination in Rock County 3/ where the Commission found the positions of matrons not to be law enforcement personnel and said matrons were placed in a unit consisting of custodial and clerical employes, rather than in a unit of law enforcement personnel, for the reason that in that case the majority of the time spent by the matrons was spent as cooks.

The matrons properly should be included in the unit consisting of law enforcement personnel employed in the Sheriff's Department of the County. General Drivers Local Union No. 346 presently represents said law enforcement personnel, and should the County not recognize the latter labor organization as the representative of the matrons as part of the law enforcement personnel unit, said labor organization may, if it desires, initiate a proceeding with this Commission to clarify the existing law enforcement personnel unit.

Dated at Madison, Wisconsin, this 11th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

2/ City of Greenfield (7252), 8/65; City of Milwaukee (8605), 7/68; Village of Fox Point (9959-A), 2/71.

3/ (10895 - 10352-A), 3/72.