

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
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 WILLIAM G. CHRISTENSEN, MELVIN G. :  
 PETERSON, ROBERT L. ROHNER, KNUD O. :  
 HESTHAVEN, CHARLES A. BULLIS, GORDON :  
 A. MAUSING, RALPH E. MAINLAND :  
 :  
 Involving Certain Employes of :  
 :  
 RACINE COUNTY (SHERIFF'S DEPARTMENT) :  
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Case XVI  
 No. 15799 ME-811  
 Decision No. 11257-A

Appearances:

Mr. Grant Fuhrman, Mr. Knud O. Hesthaven, Mr. James Litwin,  
Mr. Gordon A. Mausing, Mr. Earl Zemke, for the Petitioners.  
Schwartz, Schwartz & Roberts, Attorneys at Law, by Mr. Jay Schwartz,  
 for Racine County Deputy Sheriffs Association.

ORDER CLARIFYING BARGAINING UNIT

Sergeants William Christensen, Melvin Peterson, Robert Rohner, Knud Hesthaven, Charles Bullis, Gordon Mausing and Ralph Mainland employed by Racine County Sheriff's Department having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing recognized collective bargaining unit consisting of certain employes of Racine County Sheriff's Department, Racine, Wisconsin; and hearing in the matter having been conducted at Racine, Wisconsin, on August 15, 1972, Herman Torosian, Hearing Officer, being present; and the Commission having on August 30, 1972, issued an order holding petition for clarification for bargaining unit in abeyance until such time as Racine County completed staffing its newly created Captain and Lieutenant positions; and the Commission on March 5, 1973, having received a request to have the matter set for hearing inasmuch as said newly created positions had been filled since September, 1972; and the Commission, pursuant to said request, having conducted a hearing in the matter at Racine, Wisconsin, on April 16, 1973, Herman Torosian, Hearing Officer being present; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

ORDER

That the classification of Desk Sergeant shall be, and hereby is, included in the collective bargaining unit consisting of "all regular Deputy Sheriffs, in the Sheriff's Department, Racine County, Wisconsin, excluding the Sheriff, Chief Deputy, Lieutenants, Sergeant of Detectives, and all other employes"; and that the classifications of Sergeant Jailer and Planning and Training Sergeant shall be, and hereby are, excluded from the collective bargaining unit consisting of "all regular Deputy Sheriffs, in the Sheriff's Department, Racine County, Wisconsin, excluding the Sheriff, Chief Deputy, Lieutenants, Sergeant of Detectives and all other employes."

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
 Morris Slavney, Chairman

Zel P. Rice II, Commissioner

Bob B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

The instant petition requesting a clarification of collective bargaining unit was filed with the Commission by Sergeants William G. Christensen, Melvin G. Peterson, Robert L. Rohner, Knud O. Hesthaven, Charles A. Bullis, Gordon A. Mausing, and Ralph E. Mainland on June 30, 1972.

The matter was initially set for hearing for July 31, 1972, but subsequently postponed and heard on August 15, 1972. The evidence adduced at the hearing established that the County was in the initial stages of changing its organizational structure by creating and hiring employees to fill newly created Captain and Lieutenant positions. Inasmuch as said action could affect the job duties of the Sergeants and the overall structure of the Sheriff's Department, the determination of the supervisory status of Sergeants was held in abeyance.<sup>1/</sup>

On March 5, 1973, the Commission received a letter from Sergeant James Litwin requesting that the matter held in abeyance be scheduled for hearing inasmuch as the newly created Captain and Lieutenants positions had been filled and that the Captain and Lieutenants had been performing in said capacity since September 1, 1972. Pursuant to said request, the matter was scheduled and a hearing conducted thereon on April 16, 1973.

Of the initial seven petitioners, only Sergeants Hesthaven and Mausing appeared at the hearing. During the course of the hearing, the Association claimed that Sergeants Bullis and Christensen would not be appearing because they no longer desired to be considered petitioners. The Commission, in fact, received such a petition signed by Bullis and Christensen stating same on April 24, 1973. The remaining original petitioners, i.e., Sergeants Mainland, Peterson and Rohner, since the time of the last hearing conducted on August 15, 1972, have been promoted to the rank of Lieutenant except for Mainland who was promoted to Captain. Their replacements, however, Sergeants James Litwin, Earl Zemke and Grant Fuhrman appeared at the hearing and moved to be included on the petition initially filed by their predecessors.

It is the Association's position that the Sergeant positions, occupied by Sergeants Christensen and Bullis, should not be considered by the Commission inasmuch as said Sergeants have withdrawn their names from the petition requesting a clarification. The Association further argues that the positions occupied by Fuhrman, Litwin and Zemke should not be considered by the Commission in that they are not petitioners in the instant matter. To allow them to become petitioners by motion, the Association argues, would be a denial of due process in that the Association had no notice that the position of said Sergeants would be considered. The hearing officer reserved ruling on said motion and proceeded to take evidence concerning their positions.

There are two threshold issues in the instant case. First, whether the Commission should refrain from determining the supervisory status of the two positions occupied by Sergeants Bullis and Christensen who, subsequent to the hearing, requested to have their names stricken from the petition for a clarification of the unit. Secondly, the Commission must rule on the motion of Sergeants Fuhrman, Litwin and Zemke to be included on the petition in the instant matter.

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<sup>1/</sup> Racine County (Sheriff's Department), Decision No. 11257, 8/72.

In regard to the first question, the Commission concludes that inasmuch as all of the Sergeants employed by Racine County initially petitioned the Commission for an order clarifying the bargaining unit, the Commission should make such a determination even though two of the original petitioners, i.e., Bullis and Peterson, have now requested to have their names withdrawn. In the opinion of the Commission, to determine only five of the seven Sergeant positions, would only lead to confusion and uncertainty within the department, the organizational structure and the authority of Sergeants within the department, and would not effectuate the policies of the Wisconsin Employment Peace Act.

As to the second determination, referred to above, the Association claims the motion of Sergeants Fuhrman, Litwin and Zemke to have their position included in the petition as originally petitioned by their predecessor, should be denied. In this regard, the Commission is not persuaded by the Association's argument that by granting said motion, the Commission would be denying the Association due process. It must be noted that what must be determined in a clarification of bargaining unit is not the status of individuals but instead the position occupied by said individuals. In the instant case, even though Sergeants Fuhrman, Litwin and Zemke were not original petitioners, their positions, however, were petitioned by their predecessor for the purpose of determining whether said positions were supervisory. Therefore, the Association, regardless of who now occupies the position, had notice that said positions were in issue, and that the hearing scheduled on April 16, 1973, was for the purpose of adducing evidence concerning said positions.

In issue, then, is the supervisory status of seven Sergeant positions. Five of the Sergeants are Desk Sergeants working the first, second and third shifts. On the day shift there is a Sheriff, Chief Deputy, Captain, two Sergeants, a complaint clerk, an auto maintenance man and nine Patrol Deputies. Of the two Sergeants, one is a Desk Sergeant and the other a Patrol Sergeant. On the second shift there is a Lieutenant, Desk Sergeant and 12 Patrol Deputies on duty. On the third shift there is a Lieutenant, Desk Sergeant and 17 Patrol Deputies on duty. In addition, there is a Relief Sergeant who works the second and third shifts.

The primary daily duties of the Desk Sergeant consist of manning the radio and dispatching Patrolmen, going to the scene of an accident or homicide and supervising the activities of Patrolmen at the scene; answering complaints registered by the general public and making adjustments in the work schedule of Patrolmen whenever needed. The Patrol Sergeant is the highest ranking deputy in the field but he performs most of the same duties as a Patrolman. In performing the above such Sergeants are authorized to issue orders.

In regard to discipline, Desk Sergeants have the authority to file "incident reports." In regard to Patrolmen under their command, said report is a formal report filed with the Lieutenant in writing, stating the problem and recommendation for action by the Sergeant. The Lieutenant conducts a meeting with the Patrolman in question and the Sergeant, at which time he also files a report. This report is then processed through the chain of command, i.e., Captain, Chief Deputy, the Sheriff. In all such matters the Sheriff takes the final action.

Sergeants may also be called upon to conduct investigations concerning complaints or problems involving Patrolmen. In fact, one of the Desk Sergeants, Gordon Mausing, recently conducted such an investigation concerning a Patrolman and at the conclusion of said investigation was asked for his opinion as to what action should be taken.

Another recent example of disciplinary action taken by a Sergeant involved a Patrolman who was issued a blue slip (warning slip) for not being dressed in a proper uniform. A meeting was held with the Lieutenant, Sergeant and Patrolman present at which time the Patrolman was warned any further violation would result in time off.

In considering the above it is apparent to the Commission that much of the Desk Sergeant's daily duties are not supervisory. When said Sergeants do supervise, it is primarily supervising work activities, rather than primarily supervising employes. Also, while the Desk Sergeants can initiate disciplinary action with recommendations, it is the Commission's conclusion from the record that said recommendations are not effective recommendations for action. This is apparent to the Commission from the fact that incident reports are filed by a Desk Sergeant with the Lieutenant, who then conducts an independent investigation of the incident or problem involved before making a recommendation of his own. This process is continued through the chain of command before finally reaching the Sheriff who is the only officer who has authority to take action. Since no one in the chain of command relies solely on the recommendation of the Sergeant in disposing of the matter in issue, the Commission can only conclude that said recommendations are not effective recommendations as anticipated by Section 111.70(1)(o). In this regard it is noted by the Commission that the investigation conducted by Gordon Mausing and referred to above, did not contain as a part of the report a recommendation of what action should be taken. While he was requested to state an opinion after said report was filed, the Commission cannot conclude that said opinion amounts to an effective recommendation for action.

Based on the above it is the Commission's conclusion that the five Desk Sergeants, Charles Bullis, William Christensen, Knud Hesthaven, Gordon Mausing and Earl Zemke, are not supervisors within the meaning of Section 111.70(1)(o).

Racine County also employs a Jail Sergeant, Grant Fuhrman, who is responsible for the complete operation of the County Jail. He reports directly to the Sheriff and in his absence to the Chief Deputy. His duties consist of recommending which Deputies should work in the Jail; scheduling daily assignments to Deputies on the first, second and third shifts; and complete responsibility for the work performance of all Deputies working in the County Jail including recommendations to the Sheriff to take disciplinary action when needed. In this regard, Fuhrman, in April, 1973, upon a complaint filed by an inmate was responsible for conducting an investigation concerning one of the Deputies. Fuhrman, in fact, investigated the matter and upon his recommendation said Deputy was suspended.

Based on the above, it is clear to the Commission that the Jail Sergeant exercises sufficient authority to exclude him from the collective bargaining unit as a supervisor.

The last position in question is the Planning and Training Sergeant. Said position is currently occupied by James Litwin who replaced Ralph Mainland, one of the original petitioners. The Planning and Training Sergeant is responsible for establishing operation procedures for the department. Said procedures are either established upon request by someone in the Sheriff's Department or upon his initiative if, in his opinion, changes or revisions are needed for more efficient operation of the department. Said Sergeant also is responsible for conducting

training programs or seminars for the Deputies. Said seminars are usually conducted once a month, and the entire program and presentation are the responsibility of the Planning and Training Sergeant. Said Sergeant also is responsible for conducting safety programs. One such program is the pistol range program, which meets twice a month, wherein he instructs Deputies on the safe use of the firearms.

While the above position is clearly not supervisory, the Commission concludes that said position is so closely aligned with management as to make it a managerial position. The responsibilities of the position requiring planning and establishing procedures for a more efficient operation of the department lead the Commission to conclude that said position is more clearly aligned with the interest of the Employer than with the employes of the bargaining unit and the position should therefore be excluded.

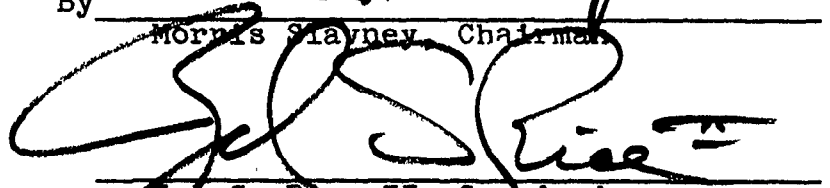
Dated at Madison, Wisconsin, this 15th day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

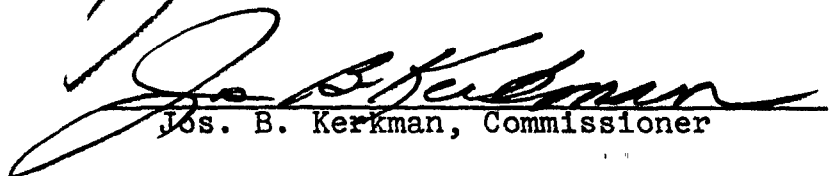
By



Morris Slaney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner