

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO

Involving Certain Employees of

MENOMINEE COUNTY (SHERIFF'S
DEPARTMENT)

Case IV
No. 16324 ME-867
Decision No. 11905

Appearances:

Mr. James W. Miller, District Representative, for the Petitioner.
Mr. Earl W. Schmidt, District Attorney, Shawano-Menominee County,
for the County.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain law enforcement personnel employed by Menominee County in its Sheriff's Department; and hearing on said petition having been conducted on January 4 and April 12, 1973 in the Menominee County Courthouse, Keshena, Wisconsin, by Hearing Officer Robert M. McCormick, of the Commission's staff; and the Commission being satisfied that a question of representation has arisen concerning certain employees of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED


That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all full-time and regular part-time law enforcement personnel of Menominee County employed in the Sheriff's Department, excluding the Sheriff, Chief Deputy, casual employees, and all other employees, who were employed by Menominee County on April 12, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Menominee County on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 1st
day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

No. 11905

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In its Sheriff's Department the County employs, in addition to the Sheriff, a chief deputy, full-time deputies, a full-time juvenile officer, part-time deputies on a casual basis, four full-time radio dispatchers, a casual radio dispatcher and a chief conservation warden. During the course of the hearing the parties agreed to exclude the chief deputy as a supervisory employe and to further exclude the casual employes, as well as the chief conservation warden.

The record discloses that the radio dispatchers are deputized and function as matrons, and as such are called upon to subdue or aid in the restraint of female prisoners. Since they are sworn deputies, the full-time radio dispatchers are included in the instant law enforcement unit.

The petition initiating the instant proceeding was filed on December 18, 1972, prior to the assumption of the sheriff's position by a newly elected Sheriff, who took office on January 1, 1973. Prior to January 3, 1973 the new Sheriff terminated the employment of the four full-time radio dispatchers and between January 1 and 6, 1973, filled said four positions by hiring Shirley Teller, Verna Miller, Patricia Tourtillott and Victoria Kinney. During the course of the hearing the Petitioner claimed that the newly hired radio dispatchers should not be eligible to vote since those dispatchers terminated by the Sheriff were improperly terminated in accordance with the terms of a 1962 ordinance.

The Municipal Employer contends that there is no existing civil service ordinance, therefore the newly elected Sheriff, as in the case with previous Sheriffs, has the sole authority to hire and fire all personnel employed in the Sheriff's Department, pursuant to the provisions of Sections 59.07(20) and 59.21(4), Wisconsin Statutes, the latter specifically providing that persons appointed by the Sheriff serve at the Sheriff's pleasure.

The record indicates that the previous four full-time dispatchers, namely Ramona Wheelock, Catherine Oshkosh, Emily Tourtillott, and Janice Weso, were employed in the Sheriff's Department from four to eleven years. The evidence indicates that said employes were hired by previous Sheriffs, and that at least since 1962, the Sheriffs have had sole authority to hire new personnel, hire replacements and terminate employes at their pleasure, including radio dispatchers. The record further indicates that at least with the two proceeding incumbent Sheriffs no employes were terminated, but that said previous incumbent did hire replacements, including the filling of full-time dispatcher from the roster of part-time radio dispatchers.

The Municipal Employer passed on ordinance in 1962, which reads as follows:

"MENOMINEE COUNTY ORDINANCE NO. 5

RULES FOR COUNTY EMPLOYEES

Among other matters, violation of any of the following shall form the basis for suspension at the discretion of the County Board.

1. Failure to report for work as required.
2. Leaving work or quitting work before scheduled quitting time.
3. Non-conformance to fire or safety requirements.
4. Bringing intoxicants to work and drinking during working hours.
5. Reporting for duty while under the influence of intoxicants.
6. Deliberate or contained misuse or destruction of County Property or Products.
7. Removal of county property or products from the place of employment without permission.
8. Garnishment, is basis for suspension at the discretion of the County Board
9. Sleeping while on duty.
10. Intimidation or molestation of any individual, while on the job.
11. Neglect of duty or loafing on the job.
12. Failure or refusal to work in accordance with instructions.

Passed May 17, 1962

(Verification of County Board's adoption of ordinance reflected in handwritten notes.)

Motion Sup. Grignon

Second Sup. Fossum

Adopted May 17, 1962"

The record also discloses that said rules in the aforementioned Ordinance No. 5 ostensibly applied to all County employes, but that none of the recent incumbent Sheriffs have had occasion to apply same to law enforcement personnel, or other employes employed in the Sheriff's Department.

The record further indicates that the County Administrator, Mr. Hilary Waukau, Sr., on behalf of the County Board, requested an opinion from the District Attorney with respect to the authority of the Sheriff, as opposed to the responsibility of the County Board in hiring and terminating employes employed in the Sheriff's Department. The substance of the opinion of the District Attorney indicated that the protection of tenure could only be afforded to the employes of the Sheriff's Department if the County should adopt a civil service ordinance under the civil service statutes, Section 59.07(20) of the Wisconsin Statutes. The aforementioned opinion further stated that personnel of the Sheriff's Department served at the pleasure of the incumbent Sheriff under the terms of Section 59.21(4), Wisconsin Statutes, to wit:

"a person appointed undersheriff or deputy for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the sheriff."

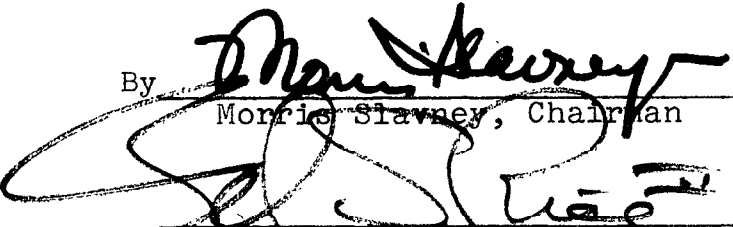
The record also discloses that both the incumbent and previous Sheriffs prepared voucher-lists of employes, which they may have hired or retained, for purposes of securing initial and subsequent authorization for their periodic salaries, and that same were submitted to the Law Enforcement Committee and ultimately the full County Board for approval. The evidence further indicates that the only control exercised by the County Board over the Sheriffs in their selection and retention of a compliment in the Department is the Department's annual budgets which have been adopted by the County Board. The Commission concludes that the Petitioner's argument that County Ordinance No. 5 in essence establishes a just-cause or statutory-tenure standard so as to preserve the eligibility of the four previous full-time radio dispatchers, must be rejected.

The statutes alluded to in the District Attorney's opinion submitted to the County on January 11, 1973, are very clear and that absent a County adoption of a civil service ordinance, the Sheriff's replacement of the four older dispatchers with the newly-hired radio dispatchers is an act consistent with Section 59.21(4), Wisconsin Statutes, and therefore the newly hired radio dispatchers are employes and eligible to vote in the election.


Dated at Madison, Wisconsin, this 1st day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Morris Slavney, Chairman


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