

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
WASHINGTON COUNTY	:	Case XXV
Involving Certain Employes of	:	No. 19647 ME-1244
WASHINGTON COUNTY	:	Decision No. 14137-A
	:	
	:	

Appearances:

Mr. Aldwin H. Seefeldt, Attorney at Law, for Petitioner.
Carter & Finn, S.C., Attorneys at Law, by Mr. John J. Carter,
for the Association.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Washington County, herein referred to as Petitioner, having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify a voluntarily recognized collective bargaining unit of its law enforcement personnel represented by Washington County Deputy Sheriffs Association, herein referred to as the Association, and hearing having been held on April 10, and June 26, 1978 before Stanley H. Michelstetter II, Examiner, and the Commission having reviewed all of the evidence and arguments of the parties and being fully advised in the premises makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Petitioner is a municipal employer operating a sheriff's department.
2. That the Association is a voluntary labor organization.
3. That at all relevent time Petitioner has voluntarily recognized the Association as the exclusive collective bargaining representative of employes employed in a collective bargaining unit consisting of all permanent status civil service employes in the classified service of Washington County Sheriff's Department ("Deputies"), excluding the Chief Deputy Sheriff, and other supervisory, professional, confidential and managerial employes.
4. That on February 16, 1978, Petitioner filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission clarify the existing unit of sheriff's department employes to exclude four patrol sergeants, one jail sergeant and one training sergeant from said unit.
5. That all of the foregoing sergeants use their independent judgment in the interest of Petitioner in recommending the hire and promotion of its employes.
6. That patrol sergeants are the sole personnel of Petitioner who use independent judgment in the interest of Petitioner to assign

and direct the day to day activities of its patrol officers; and that the patrol sergeants spend a substantial portion of their time in such activity and that they evaluate said employees.

7. That the jail sergeant is the primary person employed by the Petitioner who uses independent judgment in the interest of Petitioner to assign and direct its jailer-dispatchers, matrons and cooks; and that the jail sergeant spends the vast majority of his time in such activity.

8. That the training sergeant uses his independent judgment to effectively recommend the hire and discipline of Petitioner's part-time deputy sheriffs and special deputies and evaluates the need for training regular full-time dispatchers.

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

CONCLUSION OF LAW

That the sergeants employed by Petitioner are supervisors within the meaning of Section 111.70(1)(o)1, Wis. Stats., and are not appropriately included in the collective bargaining unit currently represented by the Association.

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

ORDER CLARIFYING BARGAINING UNIT

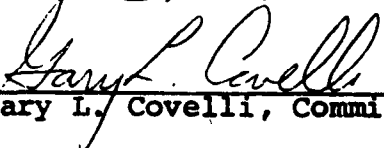
That the collective bargaining unit set out in Findings of Fact No. 3 above be, and the same hereby is, clarified to exclude sergeants.

Given under our hands and seal at the
City of Madison, Wisconsin this 2nd
day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER CLARIFYING BARGAINING UNIT

Petitioner, Washington County, seeks to exclude all of its sergeants, (four patrol sergeants, the training sergeant and the jail sergeant) from the bargaining unit of police personnel (which includes jailer-dispatchers) currently represented by the Association. The sergeants have been included in this unit since the Association was voluntarily recognized as its representative in 1965. At the outset of the hearing, the parties stipulated that the only issue for consideration was whether or not the six sergeants are supervisory. 1/

Section 111.70(1)(o)1 of the MERA defines the term "supervisor" as follows:

As to other than municipal and county firefighters, 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 concluding whether an individual is a supervisor, the Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes; whether the supervisor is primarily supervising an activity or is primarily supervising employes; the level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes; whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; the number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes; the amount of independent judgment and discretion exercised in the supervision of employes; and the authority to direct and assign the work force. 2/

In applying the aforesaid criteria, the Commission has stated that:

It is not necessary that all those factors be present in order to find an employe to be a supervisor, but

1/ It appears there has been a substantial increase in Sergeant's supervisory responsibility over the years. While there are detectives and juvenile officers who are paid at the sergeant pay rate, they do not exercise any of the supervisory authority of sergeants.

2/ Fond du Lac County (10579-A), 1/72.

rather it is necessary that those factors should appear in sufficient combination to clearly establish that the employe is a supervisor. 3/

The department operates on a three shift, twenty-four hour basis. It consists of the sheriff, chief deputy, an administrative lieutenant, a patrol lieutenant, six sergeants and seven detectives (including juvenile officers), 29 full-time patrolmen, 15 full-time jailer-dispatchers, six clerical employes and other part-time employes. The chief deputy is responsible for the criminal division and supervises the detectives. Except when he fills in for the sheriff, the chief deputy does not exercise authority over patrol officers or any other employes. The patrol lieutenant is responsible for the operation of the patrol division which includes full-time patrol officers and patrol sergeants. He does not directly supervise anyone other than the patrol sergeants. The administrative lieutenant is responsible for the supportive groups, jail, radio, clerical, maintenance and the training sergeant and jail sergeant. He directly supervises only the clerical employes. Both lieutenants work Monday through Friday, 8:00 a.m. to 5:00 p.m. Both spend 100 percent of their time in the office, although the patrol lieutenant spends about five percent of his time familiarizing himself with locations generating specific problems.

Once a month, the sheriff holds a meeting which is ordinarily attended by the chief deputy, the two lieutenants, the four patrol sergeants, the jail sergeant, and the training sergeant. At this meeting, all present participate in discussions of department policy and procedure, disciplinary problems, programs and other matters concerning the employes. Each of the participants has an equal vote in referenda the sheriff ordinarily conducts with respect to matters discussed. These referenda are advisory only.

The same group, en masse, conducts interviews of all prospective regular employes. Prior to the meeting, all members of the group are supplied with information about applicants including the results of a pre-hire investigation of each applicants done by the detectives. All sergeants fully participate in interviewing applicants. The group then conducts an advisory referendum with respect to each applicant. Except in one instance where he made a minor variance, the sheriff has always followed these recommendations for all hiring situations. Promotions of unit employes are considered in the same way.

All sergeants are paid approximately \$1.00 per hour more than patrol officers with comparable experience. Detectives receive the sergeant rate.

PATROL SERGEANTS

One patrol sergeant is assigned to each shift and the fourth acts as relief sergeant. Even when the patrol lieutenant is on duty, patrol sergeants act as shift commanders. On each shift the patrol sergeant is responsible for nine to eleven patrol officers, although ordinarily only four to eight are actually on duty. When the day shift jail

duty, the patrol sergeants supervise the clerical employes on duty. Ordinarily, one is on duty on each of the other two shifts.

Patrol sergeants are responsible for insuring adequate staffing. Using their own independent judgment, patrol sergeants regularly require employes to hold over past the normal end of their shift. Further, patrol sergeants exercise the authority to call-in additional off-duty officers to insure adequate staffing or to meet demands for service arising during the course of a shift. On at least two occasions, during the year prior to hearing, patrol sergeants called in additional personnel to deal with increased activity during their shift. Patrol sergeants also approve vacation requests which are ordinarily made by seniority, and other applications for time off. They refuse those requests which, in their view, would deprive the shift of adequate staffing.

Each patrol sergeant is responsible for allocating his time between office work and road work depending on the demand for his services on the road. On the average, patrol sergeants spend approximately 25 percent of their total time reviewing patrol officers' daily reports, criminal complaints, citations, accident reports and other paperwork. Incorrect reports are returned to the officer with instructions for correction. About 15 percent of their total time is spent insuring a compliment of employes, conducting morning roll call, preparing the monthly work schedule for employes and keeping abreast of developments. At morning roll call patrol sergeants assign patrol officers to their patrol sectors.

On the average, patrol sergeants spend approximately 60 percent of their total time on the road. Unlike patrol officers, patrol sergeants do not remain in a specific patrol sector, but instead travel the entire county, evaluating potential trouble spots, occasionally meeting with patrol officers, and checking on part-time personnel at picnics, etc. Throughout the shift, including periods when they are in the office, they monitor radio dispatches, overriding those they deem incorrect. While "on the road", patrol sergeants often report to the scene of important occurrences to insure proper handling and staffing. Patrol sergeants respond to accidents and complaints in the same manner as patrol officers only when they are the closest, available squad. When they do respond they ordinarily complete the investigation; however, they do on occasion assign completion of the investigation to a patrol officer. Patrol sergeants make arrests whenever a violation occurs in their presence. Even though patrol sergeants spend approximately 60 percent of their total time "on the road", they each investigate only approximately one-quarter of the number of complaints and accidents a patrol officer investigates.

We conclude on the basis of the entire record that the patrol sergeants are supervisors within the meaning of Section 111.70(1)(o)1. We are particularly drawn to that conclusion because of the ratio of supervisors to non-supervisors, the fact that patrol sergeants are the only persons to exercise direct authority over patrol officers and because patrol sergeants exercise substantial independent judgment in the assignment and direction of the work force and because of their involvement in the hiring and promotional process. 4/

4/ Compare City of West Allis, (12020), 7/73. City of Greenfield (14393) 3/76.

JAIL SERGEANT

The jail sergeant is responsible for the operation of the jail and the operation of the radio room. He reports to the administrative lieutenant. In this regard the jail sergeant schedules the 15 full-time, bargaining unit jailer-dispatchers, three part-time cooks and five on-call matrons to insure adequate staffing on all three shifts. He authorizes vacation and other time off. Only the vacation scheduling is reviewed by the administrative lieutenant.

In the past the jail sergeant spent no more than fifteen percent of his total time doing unit work which consisted of filling in for jailer-dispatchers. Since the municipal employer has recently hired three more jailer-dispatchers, it is likely this time will be substantially reduced. Forty percent of his total time is spent in direct supervision, including training new employes. The remainder of his total time is spent making out reports, doing correspondence purchasing for the jail, and developing policy and procedure for the jail.

We are persuaded by the jail sergeant's use of independent judgment in assigning and directing employes, the minimal amount of other direct supervision of the same employes, the ratio of supervisors to employes supervised, the jail sergeant's performance of a minimal amount of unit work and the record as a whole that the jail sergeant is a supervisor within the meaning of Section 111.70(1)(o)1.

TRAINING SERGEANT

The training sergeant, who was formerly a patrol sergeant, is responsible for the department's training program, is responsible for the administration of its part-time deputy sheriff and special deputy program, and is responsible for the public relations of the department. He does not function as shift commander or patrol.

The training sergeant is responsible to see that each full-time or part-time new hire receives the 240 hours of instruction required by state law which instruction is apparently given by other than the municipal employer. The sheriff requires that all other experienced officers receive 40 hours of in-service training a year. It is the training officer's function to assist the sheriff in evaluating the need for training in specific areas, to develop the training program, find instructors, submit a tentative schedule for attendance by employes to the administrative lieutenant, supervise the giving of instruction, keep records of employe attendance at training sessions and prepare a budget for training.

The training sergeant is also responsible for the hiring, training and administration of Petitioner's 47 paid part-time deputy sheriffs and special deputies. These employes are mostly on-call for supervising picnics and the like. The training sergeant recruits, investigates and interviews and effectively recommends the hire of approximately 90 percent of all special deputies. He insures that they obtain the necessary training and meets with them on a fairly regular basis. The training sergeant has recommended the discharge of at least two special deputies. He spends approximately 30 percent of his time in the administration of the special deputy program.

The training sergeant also performs the public relations functions of the department. He sets up programs for the schools, social groups and others. He finds an appropriate speaker or does the program himself.

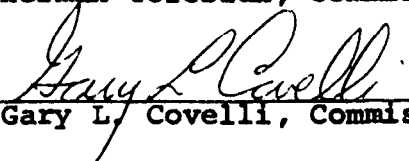
Based on his responsibilities with regard to part-time and special deputy sheriffs, his evaluative role in the training of regular full-time deputies, and his role in the hiring process, we conclude that the training sergeant is a supervisory employe.

Dated at Madison, Wisconsin this 2nd day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner