

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WASHINGTON COUNTY

ORDER CLARIFYING BARGAINING UNIT

ORDER CLARIFYING BARGAINING UNIT

Given under our hands and seal at the
City of Madison, Wisconsin, this 25th
day of November, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Howard S. Bellman, Commissioner

Herman Torosian, Commissioner

1/ The hearing was tape recorded. The parties waived the provision of Section 227.12 of the Wisconsin Statutes, thereby permitting the Commission to issue its Order without resort to the transcribed record, or submission of the Hearing Officer's recommendations to the parties.

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

Washington County has voluntarily recognized the Washington County Sheriff's Association as the exclusive bargaining agent for all permanent status civil service employees in the classified service of the Washington County Sheriff's Department hereinafter called "Deputies", excluding the Chief Deputy Sheriff and other supervisory, professional, confidential and managerial employees.

The County desires 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 Sec. 111.70(1)(o) of the Municipal Employment Relations Act, and should, therefore, be excluded from the unit. In the alternative the County argues that Backhaus is a managerial employee, and on the basis, should also be excluded from the bargaining unit.

The Washington County Deputy Sheriff's Association maintains that Lieutenant Backhaus is neither a supervisor nor a managerial employee, and, therefore, should remain in the aforementioned bargaining unit.

The Commission had previously determined that the position of Lieutenant of Police Patrol in the employ of Washington County Sheriff's Department is not supervisory position, and therefore, said position was included in the above bargaining unit. ^{2/} The County argues that the facts have materially and substantially changed since that decision.

As it did in the 1972 case, the County again urges the Commission to take notice of Sec. 59.21(8) Wis. Stats., 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.

With respect to the latter argument, as we stated in our previous decision, "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)." ^{3/}

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. There is one

^{2/} Washington County, Decision No. 10845 (4/72).

^{3/} Id. at page 2.

additional Sergeant, who reports directly to the Chief Deputy Sheriff, and who sometimes works with the 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 completed in same; drafting a work schedule for the Patrolmen; and checking patrol cars and being responsible that they are repaired if needed.

Backhaus also investigates and (or) refers to the proper department citizen complaints; responds to requests for special attention (security for an art fair, for example); is responsible for the Special Deputies (Citizen volunteers); maintains the department equipment inventory, recommends special training for deputies; authorizes overtime; and may call out additional manpower. Backhaus plays a limited role in the hiring and promoting of employees.

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 the Sheriff thereafter makes the final appointment. In so doing, the Sheriff may consult with Lieutenant Backhaus or any other officer who may be acquainted with the applicants or have knowledge of their backgrounds. However, Backhaus is not directly involved in the hiring process other than as indicated above, and the Sheriff makes the final selection.

The promotion process under the Civil Service System is much the same as the hiring process, with the Sheriff making the ultimate appointment. The Sheriff in so doing may first consult with the Deputy Sheriff and Lieutenant concerning his choice. However, the present Sheriff has not involved Lieutenant Backhaus in the promotion process.

In the area of discipline the Commission found in its previous decision that the Sheriff and Deputy Sheriff were the only two individuals in the department who could impose discipline. 4/ At present the Lieutenant is also authorized to issue verbal and written reprimands, as well as suspensions up to three days. Backhaus has issued verbal warnings and effectively recommended a written warning. Lieutenant Backhaus reports to the Sheriff on any disciplinary action he takes. Also, he sometimes consults with the Sheriff or Deputy Sheriff before taking disciplinary action.

In processing a grievance, the Commission found in its previous decision that, although Backhaus might investigate the matter in question, file a report and state an opinion, he was not relied upon to make effective recommendations. 5/ At the present, Lieutenant Backhaus has the authority and has adjusted grievances in accordance with the contractual grievance procedure.

4/ Id., at page 3.

5/ Ibid.

There are several other differences from the previous case. Since that decision Lieutenant Backhaus has effectively recommended that a Deputy who resigned not be rehired. Backhaus had also recommended the termination of an employee, who, when faced with that alternative, instead chose to resign.

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 employees, 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 a supervisor within the meaning of said provision, and he, therefore, is excluded from the collective bargaining unit.

Dated at Madison, Wisconsin, this 25th day of November, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner