

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
DISTRICT COUNCIL #40

Case XL
No. 20272 HE-1300
Decision No. 14669

Involving Certain Employees of

FOND DU LAC COUNTY (SHERIFF'S DEPT.)

Appearances:

Mr. James L. Koch, Business Representative, WCCME, AFSCME, AFL-CIO,
appearing on behalf of the Petitioner.

Mr. Robert J. Mueller, Attorney at Law, appearing on behalf of
the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, District Council #40, hereinafter referred to as the Petitioner, having, on March 11, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the Fond du Lac County Sheriff's Department to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing 1/ on such petition having been held at Fond du Lac, Wisconsin, on May 13, 1976, Stephen H. Schoenfeld, Hearing Officer, being present; and the Commission having considered the evidence and being fully advised in the premises, and being satisfied that a question has arisen concerning representation of certain employees of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

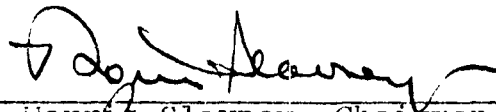
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 60 days from the date of this directive in the collective bargaining unit consisting of all employees of the Fond du Lac County Sheriff's Department who have the power of arrest but excluding the sheriff, who were employed by Fond du Lac County on May 28, 1976, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employees desire to be represented by Wisconsin Council of County and Municipal Employees,

1/ The parties waived, in writing, the preparation of a transcript of the proceeding and the provisions of Section 227.12 of the Wisconsin Statutes.

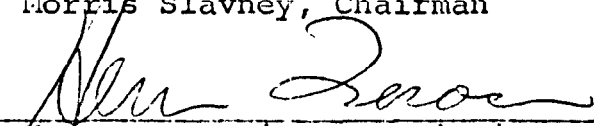
AFSCME, AFL-CIO, District Council 40, for the purposes of collective bargaining with Fond du Lac County.

Given under our hands and seal at the
City of Madison, Wisconsin this *28th*
day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Morris Slavney, Chairman



German Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Pursuant to Section 111.70(4)(d) Wisconsin Statutes, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO petitioned the Wisconsin Employment Relations Commission to conduct a representation election in a unit consisting of all deputized employees of the Fond du Lac County Sheriff's Department, excluding the Sheriff.

During the course of the hearing, issues arose concerning whether the Chief Deputy, the Night Shift Lieutenant, the Chief Jailer, and the Sheriff's secretary, should be included or excluded from the unit. The municipal Employer maintains, contrary to the Petitioner, that the Chief Deputy, Night Shift Lieutenant and Chief Jailer are supervisory positions and that the Sheriff's secretary is a confidential employee and, consequently, they should be excluded from the collective bargaining unit.

THE ISSUE AS TO SUPERVISORS

Section 111.70(o)1 of 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 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 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:

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

Chief Deputy Sheriff

The Employer contends that the Chief Deputy Sheriff position presently occupied by Mr. Eugene Boevers, should be excluded from the collective bargaining unit because it is a supervisory position. Boevers has occupied the position since November 15, 1973. In his capacity as Chief Deputy Sheriff, he serves as Chief Administrative personnel officer within the department and assists in its operation and coordination; assumes responsibilities of the department in the absence of the Sheriff; directs investigations and oversees the operation of the Jail Division and Service Division; assigns and reviews the work of officers and employees; advises personnel concerning departmental policies and procedures; keeps the Sheriff informed of departmental operations; assists in establishing training programs; serves papers; attends court and performs clerical responsibilities.

There are approximately 16 employees under Boever's control, however, he spends about 50 percent of his time investigating complaints along with the other deputy sheriffs. The Sheriff testified that the Chief Deputy does not have the authority to interpret his instruction and basically must effectuate what he is told to do. The evidence indicates that Boevers does not effectively participate in the hiring, firing, discipline, promotion, layoff or transfer of any employees.

The Chief Deputy's salary is greater than the other deputies and the evidence revealed that this is primarily attributable to the fact that the Chief Deputy is required to assume the responsibilities over the department in the absence of the Sheriff; however, the Sheriff indicated that there are only two weeks during the year that the Chief Deputy is exclusively responsible for the operation of the department. The Chief Deputy is also entitled to overtime pay and cannot authorize overtime for the other employees.

The evidence adduced at the hearing revealed that the Chief Deputy's review of the investigative work of the other deputies relates more to the supervision of the activity (i.e. developing and following up leads) than to supervising employees. He does not evaluate employees.

Although the Chief Deputy has appeared before the County Protection of Personnel and Property Committee concerning a few matters, Boevers indicated that he was appearing on behalf of the Sheriff. Boevers spends about 10% of his time with the Sheriff concerning staff meetings and operational matters.

Based on the aforesaid, we conclude that the Chief Deputy Sheriff is not a supervisor within the meaning of 111.70(1)(o)1. Consequently, said position is included in the bargaining unit and Boevers is eligible to participate in the election.

Night Shift Lieutenant

The Night Shift Lieutenant, who is presently Mr. Thomas Snyder, is responsible for the operation of the Service Division of the department in the absence of the Sheriff and Chief Deputy, however, the testimony indicated that the Sheriff and the Chief Deputy have never been simultaneously absent whereby it has been necessary for Snyder to assume command of the department. He also assigns and reviews the work of deputy sheriffs on the night shift; checks reports and communicates inefficiencies to the Sheriff and Chief Deputy; attends court; and assists the Sheriff and Chief Deputy in evaluating departmental procedure and operation.

Snyder testified that about 35 per cent of the time he is the only officer assigned to the night shift and during the remaining time there

are usually two to five employees also assigned to this particular shift. He spends approximately 85 - 90 percent of his time investigating complaints like the other deputies.

His salary is greater than the other deputies which, is primarily attributable to the fact that he is responsible for the operation of the department during his shift. When emergencies arise, he has always been able to contact either the Sheriff or the Chief Deputy. He is also entitled to receive overtime pay but cannot authorize overtime pay for other employees.

Snyder receives his directions from the Sheriff or Chief Deputy. The evidence indicates that Snyder does not effectively participate in the hiring, firing, discipline, promotion, layoff or transfer of any employees.

When complaints are received during his shift, he does assign them to other deputies and his review of their work is primarily concerned with the supervision of the activity rather than the supervision of other employees. He does not have the responsibility of keeping time records of other employees.

The Commission finds that Thomas Snyder does not perform supervisory functions requiring exclusion of his position from the bargaining unit, and he is found to be eligible to vote in the election.

Chief Jailer

The Chief Jailer position is a newly created job and is presently vacant. It is anticipated that the occupant of the position will be responsible for the following: booking, searching and release of prisoners and for the transport of prisoners to and from jail; maintenance and updating of all records related to the operation of the Jail; in-service training for new jailers; jail maintenance; supervision of the work of cook - matrons, clerk matrons, on-call matrons and jailers; maintenance of proper security in the jail; and feeding and care of prisoners.

Although the Chief Jailer will prepare schedules for the other jailers, cooks and matrons, the Sheriff indicated that the occupant of this position will spend at least 50% of the time performing the identical tasks as the other jailers. The Chief Jailer will only supervise jail personnel and will not be responsible for the operation of the department. The Chief Jailer has no authority to schedule overtime work in that this is the exclusive prerogative of the Sheriff.

The Chief Jailer's salary is greater than that of other jailers and this is primarily attributable to the responsibilities relative to the operation of the jail. The occupant of this position will not have the authority to effectively participate in the hiring, discipline, transfer, layoff, or promotion of employees. This employee will not be allowed to exercise any privileges that are not accorded to the other jailers.

Based on the foregoing, the Commission cannot conclude that the occupant of the Chief Jailer position will perform supervisory functions requiring exclusion of this position from the unit. Therefore, this position is included in the unit and if filled by the date of this Direction of Election, the occupant is eligible to vote.

Sheriff's Secretary

The Employer contends that the present occupant of the position, Ms. Ora Brignone, should be excluded from the unit on the basis that she is a confidential employee. Ms. Brignone's responsibilities include the following: answering letters in accordance with instructions; preparing legal forms, and the performance of a variety of other clerical and bookkeeping tasks for other employees in the department.

Ms. Brignone has access to confidential information such as juvenile records, however, it was revealed that other employees in the department can also gain access to such records. She schedules deputies for off-duty assignments.

The Sheriff testified that he contemplates that if the Petitioner is certified as the collective bargaining representative, Ms. Brignone will spend a minimum amount of time working on labor relations matters and that the aforesaid will continue to constitute a substantial portion of her responsibilities. The Commission has held that "... where the amount of time spent by an employee pertaining to confidential labor relations is clearly de minimus, . . . it does not establish said employee is a confidential employee." 3/

Ms. Brignone's position is not, therefore, of a confidential nature. Her position is included in the bargaining unit and, consequently, Ms. Brignone is eligible to participate in the election.

Dated at Madison, Wisconsin this 28th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner