

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, NO. 40, AFSCME,
AFL-CIO

Involving Certain Employees of

DOOR COUNTY (SHERIFF'S DEPARTMENT)

Case XX

No. 20093 ME-1285

Decision No. 14810

Appearances:

Mr. James W. Miller, District Representative, WCCME, appearing on
behalf of the Petitioner.

Mulcahy & Wherry, Attorneys at Law, by Mr. Dennis W. Rader, appearing
on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, No. 40, AFSCME, AFL-CIO, having on January 28, 1976 filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct an election pursuant to Section 111.70(3)(d) of the Municipal Employment Relations Act, among certain supervisory law enforcement personnel employed by the Door 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 on said petition having been held at Sturgeon Bay, Wisconsin on February 20, 1976, Peter G. Davis, 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 thirty (30) days from the date of this directive in the supervisory law enforcement collective bargaining unit consisting of all Sergeants and the Chief Deputy in the employ of Door County Sheriff's Department, but excluding the Supervisor of the Ambulance Service, the Sheriff, and all other employees, who were employed by Door County on July 29, 1976, except such supervisory personnel as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such supervisory personnel desire to be represented by Wisconsin Council of County and Municipal Employees, No. 40, AFSCME, AFL-CIO, for the purposes of collective bargaining with Door County.

Given under our hands and seal at the
City of Madison, Wisconsin this 29th
day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
By Norm Slavney

Norm Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Pursuant to Section 111.70(3)(d) of the Municipal Employment Relations Act (MERA), Wisconsin Council of County and Municipal Employees, No. 49, AFSCME, AFL-CIO, petitioned the Wisconsin Employment Relations Commission to conduct a representation election in a unit consisting of all supervisory personnel employed by the Door County Sheriff's and Ambulance Department, excluding the Sheriff, non-supervisory employees, and all other employees of Door County.

During the course of the hearing, the parties stipulated that the position of Sergeant was to be included in the supervisory unit and that the position of Sheriff was to be excluded. However, the Municipal Employer disputed the Petitioner's desire that the positions of Chief Deputy and Supervisor of the Ambulance Service be included in the bargaining unit by asserting that said positions are managerial.

Section 111.70(3)(d) of MERA states that:

"(d) Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employees but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employee representative."

In ERB 17.01 the Commission set forth basic procedures pursuant to the directive of 111.70(3)(d) which provide that:

"The determination as to levels of law enforcement and firefighters supervisors to be included in bargaining units, as set forth in Section 111.70(3)(d), Wis. Stats., will be determined on a case-to-case basis, because of a variance of the duties and responsibilities assigned to supervisory officers in law enforcement and firefighting services in the various municipalities throughout the state. Since section 111.70(1)(b), Wis. Statutes, specifically excludes confidential, managerial and executive employees, as well as supervisors, from the term 'municipal employee', supervisors who perform confidential, managerial or executive duties shall be excluded from units of supervisory law enforcement or firefighter personnel. Supervisors employed in law enforcement departments, who have no power of arrest, and supervisors employed in fire departments, who are not actively engaged in firefighting, are not considered as law enforcement or firefighter supervisors."

Given the positions of the parties, the Commission must determine whether the two positions in question are managerial, and thus subject to exclusion from the collective bargaining unit.

CHIEF DEPUTY

The test utilized by the Commission when resolving the issue of managerial status is whether the individual in question participates in the formulation, determination and implementation of management policy or has the authority to commit the Employer's resources. The record indicates that the Chief Deputy, who also acts as the Court Officer, functions as the administrative and personnel officer for the

Sheriff's Department. He is responsible for developing the details of the personnel training program, preparing a tentative operating budget, informing personnel of departmental policy and procedure, keeping personnel records current, and acting as a liaison between Sergeants and the Sheriff. While these responsibilities, and the Chief Deputy's stature as second in command of the Department, indicate some input into policy decisions, the record emphatically demonstrates that virtually all policy decisions are made and implemented by the Sheriff, with certain ultimate involvement by the Municipal Employer's Protection of Personnel and Property Committee. The record also reveals that the input into policy decisions possessed by the Chief Deputy is shared, to a certain degree, by the Sergeants within the Sheriff's Department. In light of these factors, the Commission concludes that the position of Chief Deputy is not managerial and thus should be included in the bargaining unit of supervisory law enforcement personnel.

SUPERVISOR OF AMBULANCE SERVICE


The record reveals that the incumbent in this position is essentially responsible for the operation of the seven-person Door County Ambulance Service. Said service is organizationally and budgetarily separate from the Sheriff's Department with the Supervisor reporting only to the Municipal Employer's Protection of Personnel and Property Committee. The deputized incumbent in the position at issue establishes all departmental operating procedure, schedules and deploys personnel, performs all personnel and record keeping functions, prepares the departmental budget, effectively recommends the purchase of all equipment utilized by the Ambulance Service, and coordinates the training of departmental personnel. On the basis of these responsibilities, the Commission concludes that the position of Supervisor of Ambulance Service is managerial, and thus is excluded from the bargaining unit of supervisory law enforcement personnel.

Dated at Madison, Wisconsin this 29th day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner