

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

COUNTY OF WAUKESHA

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 : Case XXXI
 : No. 20118 ME-1287
 : Decision No. 14830
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Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by Mr. David Leo Uelmen, appearing on behalf of the Union.
Michael, Best & Friedrich, Attorneys at Law, by Mr. Marshall R. Berkoff, appearing on behalf of the County.
Ms. L. Mandy Stellman, Attorney at Law, appearing on behalf of Matrons Lois Weed, Barbara Wisner and Lucille Peters.

Waukesha County having filed a petition with the Wisconsin Employment Relations Commission on February 2, 1976 requesting that the Commission exclude Matrons from a voluntarily recognized unit of its employees consisting of "all personnel who have the power to make arrests, including Matrons, but excluding the Sheriff, Captain, Lieutenants, and the Administrative Assistant of the Sheriff's Department"; and hearing having been held in the matter on March 19, 1976 at Waukesha, Wisconsin, Marshall L. Gratz, Hearing Officer; and Teamsters Union Local No. 695 (Union) and Ms. L. Mandy Stellmen having been permitted to intervene in the matter; and the Commission having considered the evidence, arguments and briefs of the parties and being fully advised in the premises, makes and issues the following:

That, since the Matrons in the employ of the Waukesha County Sheriff's Department do not possess the power of arrest, the Matron classification shall be, and hereby is, expressly excluded from the above noted voluntarily recognized unit.

Given under our hands and seal at the
City of Madison, Wisconsin this 11th
day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The Union and its predecessor representative have been expressly recognized by the County for many years as the representative of a bargaining unit consisting of "all law enforcement personnel who have the power to make arrests, including matrons, the Sheriff, Captains, Lieutenants and the Administrative Assistant to the Sheriff." (emphasis added). The Union was so recognized in the parties' most recent collective bargaining agreement covering the calendar years 1974 and 1975.

On January 13, 1976, the Union petitioned for final and binding interest arbitration, (MIA) pursuant to Section 111.77 of the Municipal Employment Relations Act with respect to an alleged impasse in negotiations involving employees in said unit. 1/ The County then filed the instant petition on January 29, 1976 requesting that the Commission issue an Order clarifying said unit so as to expressly exclude the matrons.

At the March 19 hearing herein, appearances were made by representatives of the County and the Union, as well as by Attorney L. Mandy Stellman on behalf of three named matrons. There was no objection to Attorney Stellman's appearance, and she was permitted to participate in the hearing to the extent of her expressed desires to do so. Attorney Stellman took positions essentially consistent with those of the Union noted below.

Investigation meetings have been held pursuant to the Union's MIA petition, both immediately following the hearing on March 19, and thereafter on April 7. That investigation is presently held in abeyance pending the outcome of the instant proceeding.

POSITIONS OF THE PARTIES:

The County argues that the matrons do not have, and never have had the power to arrest; that, in any event, their duties, responsibilities, training and equipment differs materially from those of deputy sheriffs; that the inclusion of matrons in the unit occurred by historical accident, not by WERC determination; and that, if excluded, the matrons could be added to the existing unit of civilian correctional officers and civilian dispatchers in the Sheriff's department presently represented by the Union.

The Union argues that the Matrons should remain in the "law enforcement" unit for the following reasons:

1. The County's request herein is merely a part of its deliberate effort to unilaterally downgrade and destroy the deputy classification, presently enjoyed by the females now a part of the deputy unit. These "female deputies" are unquestionably employees, they are part of a long established bargaining unit, they continue to be represented by the same labor organization, the contracts covering their unit have recognized their unit inclusion and their classification, there is a continuing need for the staffing of the jail and the processing of female prisoners

1/ Waukesha County (Sheriff's Department), Case XXX, No. 20025, MIA-212.

which they have been performing, and their job duties and functions are similar to those of male deputies assigned to the jail and have undergone no significant changes. Under those circumstances, there is no statutory authority and no properly adopted rule of the Commission permitting an order that would exclude the matrons against their will, from the units involved.

2. Section 111.77 of the Municipal Employment Relations Act neither requires, nor warrants, exclusion of the matrons from the deputy unit. Properly interpreted, the term "law enforcement personnel" in Section 111.77 is not limited to persons possessing the power of arrest. Rather, it includes all employes of a sheriff's department, or at least those, like the instant matrons, who perform interrogation, restraint, personal searches and related duties.

3. The instant matrons have exercised arrest powers in the past.

4. The County failed to seek the instant determination of two appropriate previous occasions, one in a fact finding proceeding in 1969 involving the instant unit, and the second in the 1975 election proceeding regarding the civilian unit in the Sheriff's Department.

DISCUSSION:

Generally, in a unit clarification proceeding, the Commission will not change the complement of the bargaining unit which was voluntarily agreed upon as being appropriate, 2/ except where the complement of the unit contravenes the provisions of the Municipal Employment Relations Act. 3/ The issue herein is whether the Commission must remove matrons, who do not have the power of arrest, from a unit consisting of "law enforcement personnel."

The evidence reveals that the instant matrons have been neither appointed as deputies generally, nor specially deputized to make arrests, nor informally were asked, expected or authorized to do so. The method of their selection and appointment differed materially from the method followed for deputies in that: 1) the civil service list from which they were selected was not that compiled of eligibles for the deputy classification; 2) they have not been certified by the Wisconsin Law Enforcement Standards Board; 3) the oath taken by them involved only swearing to uphold the constitutions and to perform their assigned duties as matrons, whereas deputies are sworn to perform their assigned duties as deputies; the duties of the matrons herein involve the processing, care and supervision of female prisoners in the County jail, and the maintenance of the jail environment. 4/ Only one alleged matron arrest was cited in the record, and there is at least some doubt whether that incident involved a true arrest since the arrestee involved was in jail custody when informed by a matron that she was under arrest for carrying a concealed weapon found by the matron during a body search.

2/ City of Cudahy (12997) 9/74.

3/ City of Greenfield (13590) 4/75.

4/ Sec. 53.41 WIS. STATS. (1971) provides as follows: "Jail matrons Whenever there is a female prisoner in any jail there shall be a matron on duty who is wholly responsible to the sheriff or keeper for the custody, cleanliness, food and care of such prisoner."

Matrons wear uniforms and possess badges and identification cards similar to those worn and possessed by deputies. Their badges state "Sheriff - Waukesha County, Matron [#]," Whereas badges issued to deputies state "Deputy" rather than "Matron". Although matrons are issued cards signed by the Sheriff, certifying in print that they are a "duly authorized deputy sheriff", such cards are also issued to mechanics and clerical employees in the department, each card has a "rank" designation typed in, to-wit, "mechanic", "matron", "deputy" etc., and to date, the cards have only been used for personal check cashing by the matrons, not for identification purposes connected with their assigned duties.

Section 165.85, Wis. Stats., establishes a state law enforcement standards board to establish standards for the training, education and standards of professional character for those who seek to become law enforcement officers or those who are already serving as such. Section 168.85(2)(c) defines "law enforcement officer" as follows:

"'Law enforcement officer' means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he is employed to enforce."

The term "law enforcement officer" is further defined in the following sections of the Wisconsin Statutes. Section 101.81(a) 5/ states as follows:

"'Law enforcement officer' means any person employed by the state or any political subdivision for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances."

Chapter 967, the Criminal Procedure Code, in Section 967.02(5) defines "law enforcement officer" as follows:

"'Law enforcement officer' means any person who by virtue of his office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes while acting within the scope of his authority."

The Commission has consistently included in law enforcement units only those employees with the power to make arrests and has included other employees of police and sheriff departments in units other than units consisting of those of employees who have the power to make arrests. 6/

5/ For the purpose of death benefits.

6/ City of Madison (12111) 8/73.

It should be noted that many police and sheriff departments employ clerical personnel. If we were to adopt the Union's argument herein, clerical personnel would be included in a law enforcement unit and, therefore, said clerical personnel would, like the employees who have the power to make arrests, have the right to proceed to final and binding arbitration if an impasse is reached in negotiations, pursuant to Section 111.77. The Legislature provided final and binding arbitration for employees in law enforcement and firefighter units in order to deter strikes by such employees and primarily to resolve impasses by final and binding arbitration.

We have interpreted the latter section to apply to only those individuals who have the power to make arrests, since a strike by employees who have the power to make arrests require training and have a greater responsibility to maintain peace and order in the community, whereas clerical personnel need not require any police type training and can be readily replaced should they engage in a work stoppage. The Commission's exclusion of employees who do not have the power of arrest from law enforcement units is consistent not only with the final and binding arbitration provisions of the Municipal Employment Relations Act (Section 111.77), but also consistent with those sections of the statutes previously recited herein, and has also been consistent with our previous determinations with respect to the determination of units involving employees employed in police and sheriff departments.

Therefore, we conclude that since the instant matrons have not been vested with, or do not possess, the power to make arrests, they are appropriately excluded from the unit consisting of those employees who do have the power to make arrests.

There has been no request that the Commission consider the appropriateness of including the matrons in any other unit, and, therefore, we make no determination as to their placement in any other unit.

Dated at Madison, Wisconsin this 11th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
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Charles D. Hoornstra
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