

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

OUTAGAMIE COUNTY

Involving Certain Employees of

OUTAGAMIE COUNTY (SHERIFF'S DEPARTMENT)

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OUTAGAMIE COUNTY PROFESSIONAL  
POLICE ASSOCIATION,

Complainant,

vs.

OUTAGAMIE COUNTY (SHERIFF'S DEPARTMENT),

Respondent.  
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Case LII

No. 21922 ME-1459

Decision No. 15785-A

Case LIII

No. 21947 MP-774

Decision No. 15786-A

ORDER DENYING APPLICATION  
FOR DISCOVERY DEPOSITIONS

Outagamie County having on August 1, 1977, petitioned to clarify the Sheriff's Department bargaining unit; and, thereafter, on August 12, 1977 the Outagamie County Professional Police Association having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission; and the Commission having on August 29, 1977, appointed Thomas L. Yaeger to act as Examiner in the matter of the complaint of prohibited practices and consolidated said matters for hearing; and on August 29, 1977, the Outagamie County Professional Police Association having applied to the Examiner for authorization to take discovery depositions in said matters; and the Examiner having considered said application, and being fully advised in the premises is satisfied said motion should be denied;

NOW, THEREFORE, it is


ORDERED

That Outagamie County Professional Police Association's application to take discovery depositions in the above entitled matters be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 30th day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Thomas L. Yaeger, Examiner

No. 15785-A

No. 15786-A

MEMORANDUM ACCOMPANYING ORDER DENYING  
APPLICATION FOR DISCOVERY DEPOSITIONS

Both the petition for unit clarification and complaint arise out of the County's alleged decision to create the position of confidential secretary in the Sheriff's Department. The Association's application for discovery depositions seeks authorization to depose the Outagamie County Sheriff and Personnel Director. The application alleges that without said discovery the Association is unable to determine the manner in which said position was created, the duties of the individual filling said position and the facts and circumstances surrounding the County's alleged refusal to bargain with the Association regarding said position. Further, the Association contends the hearing of both cases would be simplified were the Examiner to grant the instant application.

Section 227.08(7), Wis. Stats. provides:

"(7) In any class 2 proceeding, each party shall have the right, prior to the date set for hearing, to take and preserve evidence as provided in ch. 887. In any class 1 or class 3 proceeding, an agency may by rule permit the taking and preservation of evidence, but in every such proceeding the taking and preservation of evidence shall be permitted with respect to a witness:

- (a) Who is beyond reach of the subpoena of the agency;
- (b) Who is about to go out of the state, not intending to return in time for the hearing;
- (c) Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
- (d) Who is a member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives his or her privilege."

The instant unit clarification petition is a class 1 proceeding while the complaint is a class 3 proceeding. The aforementioned provision of Section 227 mandates that parties be allowed to take and preserve evidence with respect to a witness upon request if any of the statutorily established criteria are met in a class 1 or 3 proceeding. However, none of the reasons advanced by the Association in support of its application for discovery meets any of criteria set out in the statute. Furthermore the material evidence the Association wishes to obtain through discovery can be obtained by an adverse examination of the County Sheriff and Personnel Director at the time of hearing. 1/ Therefore, the Association's application has been denied.

Dated at Madison, Wisconsin this 30th day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner