

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BURNETT COUNTY (SHERIFF'S DEPARTMENT)

Case XVIII  
No. 22062 ME-1478  
Decision No. 15896-B

Mr. Jack S. Bernfeld, District Representative, Burnett County Law Enforcement Employees Union #279-B, WCCME, AFSCME, AFL-CIO; Route 1, Box 112-B; Superior, Wisconsin 54880, appearing on behalf of the Petitioner.

Burnett County Law Enforcement Employees Union No. 279-B, WCCME, AFSCME, AFL-CIO filed the instant petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, in which it requested that the Commission clarify an existing collective bargaining unit by the inclusion of the position of Investigator and of an individual holding the position of Deputy; the latter request was withdrawn at the hearing. The Commission appointed Christopher Honeyman as Examiner for purposes of conducting a hearing and issuing a proposed decision pursuant to Section 227.09(2), Wis. Stats. A hearing was held in Grantsburg, Wisconsin, on April 17, 1980; no transcript was made, 1/ and no briefs were filed. The Examiner has considered the evidence and arguments of the parties and hereby issues the following Findings of Fact, Conclusion of Law and Proposed Order Clarifying Bargaining Unit.

1. Burnett County Law Enforcement Employees Union, No. 279-B, WCCME, AFSCME, AFL-CIO, herein the Union, is a labor organization and is the certified representative of the following appropriate collective bargaining unit:

The Union has its offices c/o Jack S. Bernfeld, Route 1, Superior, Wisconsin.

No. 15896-B

2. Burnett County, herein the County, is a municipal employer and has its offices at Grantsburg, Wisconsin.

3. The Union was certified as representative of the unit of employees described in Finding of Fact No. 1, above, on November 29, 1977, at which time the position of Investigator had not been created.

4. The evidence contained in the record herein does not establish that the Investigator possesses substantial supervisory or managerial duties and responsibilities.

Based upon the above Findings of Fact, the Examiner makes the following

#### CONCLUSION OF LAW

That the position of Investigator is not a supervisory or managerial position within the meaning of Section 111.70, Stats.

Based upon the above Findings of Fact and Conclusion of Law, the Examiner makes the following

#### PROPOSED ORDER CLARIFYING BARGAINING UNIT

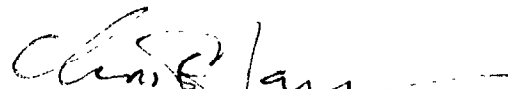
That the position of Investigator be included within the existing collective bargaining unit, and that said unit's description be amended to read:

All regular full-time and all regular part-time law enforcement personnel employed by Burnett County, including Investigator, deputies, dispatchers, dispatcher-jailers, matrons and juvenile officers, but excluding elected officials, undersheriff, reserve officers, and all other employees of the County.

Dated at Madison, Wisconsin this 19th day of May, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND PROPOSED ORDER CLARIFYING BARGAINING UNIT

In June, 1979, the County hired William Dingman, a police officer with nine years' experience elsewhere, as its second Investigator; his predecessor was also hired after the unit was established. The Investigator's primary function is to investigate criminal complaints, and Dingman testified that he spends 75% of his time doing this. The remainder of his functions include overseeing the criminal investigations of the department's six deputies, training the 20-person (unpaid) reserve officer corps, and substituting, on occasion, for the Sheriff when both the Sheriff and Undersheriff are absent. He has an office and a secretary, who handles the clerical work involved in criminal cases. The County argues that the Investigator's alleged control over deputies who are working on criminal cases and of his own secretary meet the statutory test of a supervisor.

Section 111.70(1)(o)1, Stats., 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, layoff, 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 merely of a routine or clerical nature, but requires the use of independent judgment.

The Examiner, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the position in question is supervisory, considers the following factors:

1. The authority to recommend effectively 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or 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/

---

2/ City of Milwaukee (6960) 12/64; City of Merrill (14707) 6/76.

With respect to his work with the deputies, it is apparent from all the testimony that Dingman examines the results of the work done by deputies when they start a criminal investigation, and that he reports on the results of his and their work to the Sheriff. On one occasion he complained to the Sheriff that a deputy was not doing reports properly; the Sheriff talked to the deputy involved, and no formal discipline resulted. Dingman has never hired, fired, promoted, transferred or disciplined anyone. He can request that a deputy work on overtime on a criminal complaint but must "clear this" with the sheriff or undersheriff if either is present. Normally the Investigator works the same hours as the undersheriff. In the absence of both, the Investigator is left in charge if he is present; the sheriff testified that this is infrequent, occurring about six times a month for varying periods of time. Prior to Dingman's hire, the sheriff appointed one of the deputies as in charge whenever he and the undersheriff would both be absent. Since there are employees working 24 hours a day, there are large parts of each day when neither the sheriff, undersheriff nor Investigator is present.

Sheriff Robert Kellberg testified that Dingman supervises his secretary in that he assigns her work and can evaluate, discipline or fire her (but not hire another). The same secretary has been employed in the Investigator's office since before Dingman was hired, and has never been given any formal discipline, however. Dingman does assign her work, which consists of typing and filing; but this appears to be routine assignment rather than anything involving substantial independent judgment. A juvenile officer, who is in the bargaining unit also has a secretary and assigns her work in, apparently, the same manner.

On one occasion Dingman called in extra deputies, on overtime, to help control a near-riot at a fair. That occasion was the sole instance in the record in which Dingman had occasion to take any notable labor relations-related action in the Sheriff's and Undersheriff's absence.

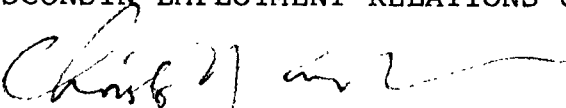
Dingman is paid \$13,867 per year, compared to \$14,561 for the Undersheriff and \$14,152.68 for a deputy with two years' experience. He receives eight holidays and twelve vacation days per year; deputies receive no holidays and twenty-four vacation days.

The Examiner concludes, based on all the evidence and the parties' arguments, that the Investigator's "stand-in" authority over the deputies is sporadic and involves little if any independent judgment; that his alleged authority over his secretary extends in practice only to routine matters of work assignment; and that his day-to-day work with the deputies involves the supervision of their activities in his specialized field rather than supervision of their wages, hours or working conditions. Neither his level of pay nor the ratio of supervisors to employees (there are ten full-time employees and five part-time presently in the unit) supports the proposition that this position is actually supervisory; and it is evident that Dingman spends a substantial majority of his time investigating criminal complaints rather than in any activity that could conceivably be called supervision of others. Accordingly, the Examiner finds that the position of Investigator is not a supervisory position within the meaning of Section 111.70(1)(o)(1), Wis. Stats.

Dated at Madison, Wisconsin this 19th day of May, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner