

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
GREEN COUNTY DEPUTY SHERIFFS	:	
ASSOCIATION	:	Case XXXVI
Involving Certain Employes of	:	No. 22176 ME-1484
GREEN COUNTY (SHERIFF'S DEPARTMENT)	:	Decision No. 16270
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Appearances:

- Mr. John C. Winkler, appearing on behalf of the Green County Deputy Sheriffs Association.
- Mr. Thomas G. Kissack, Corporation Counsel, appearing on behalf of Green County.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Green County Deputy Sheriffs Association having, on October 26, 1977, 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 sworn deputies in the employ of the Green County Sheriff's Department to determine whether said employes desire to be represented by the Association for purposes of collective bargaining; and a hearing on said petition having been held at Monroe, Wisconsin, on November 14, 1977, before Ellen J. Henningsen, a member of the Commission's staff; that during the course of said hearing issues arose as to the "employee" status of individuals occupying the position of Sergeant and Investigator; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That Green County Deputy Sheriffs Association, hereinafter referred to as the Association, is a labor organization and has its offices at Monroe, Wisconsin.
2. That Green County, hereinafter referred to as the Municipal Employer, having its offices at Monroe, Wisconsin, operates a Sheriff's Department, wherein individuals all occupying the following classifications are employed:

Sheriff	Dispatcher
Undersheriff	Jailer
Chief Deputy	Clerk
Sergeant	Cook
Investigator	Matron
Road Officer	

3. That all the individuals occupying the above classifications have the power of arrest and are sworn deputies of the Sheriff's Department.

4. That the Sheriff, Undersheriff and the Chief Deputy perform managerial functions, supervise other employes in the Sheriff's Department, and are in a position to be privy to policies of the Municipal Employer relating to labor relations.

5. That the Municipal Employer employs three Sergeants, namely, Russell Matzke, Fred Bernstein and Robert Rufer, who serve as liaison officers between the Sheriff and the remaining department personnel; that Matzke, the Jail Sergeant and principal Dispatcher, works the 7:00 a.m. to 3:00 p.m. shift, and a majority of his time is spent in performing duties performed by individuals occupying the Jailer and Dispatcher positions; that Bernstein and Rufer, Road Sergeants, work the 3:00 p.m. to 11:00 p.m. and the 11:00 p.m. to 7:00 a.m. shifts, respectively; that none of the Sergeants participate in the formulation, determination or implementation of management policies; that they have no authority to commit the Municipal Employer's resources; that they do not have access to, knowledge of, or participate in, on behalf of the Municipal Employer, with respect to matters affecting labor relations, and further, said Sergeants do not exercise any significant supervision of any employes of the Municipal Employer.

6. That the Municipal Employer employs two Investigators, namely, John Lewis and Randy Roderick; that said Investigators share the same supervision as the other employes in the Sheriff's Department; that, while the Investigators may be called upon to perform investigative duties for other departments of the Municipal Employer, they spend the vast majority of their time performing their duties for the Sheriff's Department; and that neither of the Investigators have access to, knowledge of, or participate in, on behalf of the Municipal Employer, with respect to matters affecting labor relations, and, further, said Investigators did not supervise any employes of the Municipal Employer.

Upon the basis of the above and foregoing Findings of Fact the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time sworn deputies in the employ of Green County in its Sheriff's Department, excluding managerial, supervisory and confidential employes constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That since the individuals occupying the positions of Sheriff, Undersheriff and Chief Deputy perform managerial functions, supervise other employes, and are in a position to be privy to policies of Green County relating to labor relations, the individuals occupying said positions are not "municipal employes" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and, therefore, said individuals are properly excluded from the bargaining unit described above.

3. That since the Sergeants and Investigators in the employ of Green County in its Sheriff's Department are neither managerial, supervisory nor confidential employes, they are "municipal employes" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and, therefore, the individuals occupying such positions are appropriately included in the bargaining unit described above.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Commission makes and issues the following

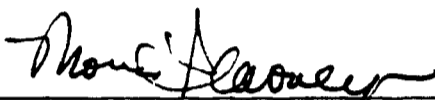
DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this Directive in the appropriate collective bargaining unit consisting of all regular full-time and regular part-time sworn deputies in the employ of Green County in its Sheriff's Department, excluding managerial, supervisory and confidential employees, who were employed by the Municipal Employer on March 28, 1978, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Green County Deputy Sheriffs Association for the purposes of collective bargaining with Green County with respect to wages, hours and conditions of employment.

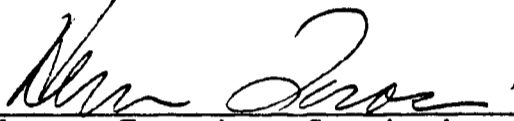
Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

The Association and the Municipal Employer agree that the appropriate collective bargaining unit should consist of all regular sworn deputies employed in the Sheriff's Department, with the exception of managerial, supervisory and confidential employes. One of the cooks is the wife of the Sheriff. Because of her relationship to the Sheriff, the Commission determines that she should not be included in the bargaining unit and thus is ineligible to vote in the representation election. ^{1/} Some of the positions included in the unit are combined; for instance, one person may regularly work as a jailer, dispatcher and clerical. The Association and the Municipal Employer agreed to exclude the Sheriff, Undersheriff and Chief Deputy from the bargaining unit on the basis of their managerial, supervisory and confidential duties. In addition, the parties agree to exclude the two bailiffs from the bargaining unit because they are casual employes.

The matters in dispute involve the three Sergeants and two Investigators. The Municipal Employer, contrary to the Association, alleges that the Sergeants are managerial, supervisory and confidential employes and thus should be excluded from the bargaining unit. In addition, the Municipal Employer, contrary to the Association, alleges that the Investigators lack a community of interest with the deputies, and that they are confidential employes, and thus should be excluded from the bargaining unit.

1. Sergeants

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. ^{2/} The Sergeants participate in meetings with the Sheriff, Undersheriff and Chief Deputy Sheriff concerning the operation of the Department and the formulation of department policy. However, other employes also have an opportunity to provide input into policy formulation and, according to the Sheriff, their participation and that of the Sergeants does not differ significantly. Thus, the Sergeants' participation in these meetings does not render them managerial employes. The record further indicates that none of the Sergeants has the authority to commit the Municipal Employer's resources. They participate to a rather limited extent in the preparation of the departmental budget by suggesting to the Sheriff for possible inclusion in the budget the kind and amount of supplies that are needed. Sergeant Matzke does purchase supplies, but the amount of expenditure involved is small and apparently previously included in the budget. Expensive items must be ordered by the Sheriff. Although the Sergeants, in the absence of the Sheriff, Undersheriff and Chief Deputy, have the authority, in an emergency, to initiate law enforcement operations which result in increased costs to the Municipal Employer, the Road Officers, Jailers and Dispatchers have this authority as well. Based on the above, the Commission concludes that the Sergeants are not managerial employes.

^{1/} City of South Milwaukee, (7202), 7/65.

^{2/} Door County (Sheriff's Department), (14810), 7/76.

In order for an employe to be considered a confidential employe and thereby excluded from the bargaining unit, such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 3/ The Municipal Employer contends that the Sergeants are confidential employes because they have access to files which contain matters relating to labor relations. The Sheriff testified, however, that no such files exist at this time. Therefore, there is no basis for concluding that the Sergeants are confidential employes.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act contains the following definition of the term "supervisor":

"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 employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment."

The record indicates that the Sergeants' primary duties are similar to those of the other employes in the department, and that Sergeants do not participate in the hiring process involving departmental employes. Nor do the Sergeants authorize leave time or assign or schedule employes. The authority to discipline employes rests with the Sheriff, Undersheriff and Chief Deputy. According to the Sheriff the Sergeants have the authority to suspend an employe from work for alleged misconduct. However, this alleged authority is limited in that a Sergeant's action is subject to the approval of the Sheriff who can overrule the Sergeant's decision completely or modify the duration of the suspension. No Sergeant has ever exercised this alleged authority. Road Sergeants do have the authority to authorize overtime work for other employes when required at the end of a shift subject to review by the Sheriff and Undersheriff. On occasion, the Road Sergeants are assigned to investigate citizen complaints of alleged misconduct of a minor nature by Road Officers. Upon completion of the investigation, the Sheriff, Undersheriff and Chief Deputy Sheriff determine what action, if any, should be taken. The participation of the Sergeants in the evaluation of the job performances of other employes is uncertain. At the time of the hearing, the Sheriff was in the process of setting up a formal evaluation procedure involving monthly, written evaluations. Under the proposed procedure, the Sergeants would be responsible for evaluating employes' performances. Since the procedure has not gone into effect, the exact nature of the Sergeants' future participation is not known.

We conclude that the Sergeants do not perform substantial duties of a supervisory nature sufficient to conclude that they are "supervisors" within the meaning of Section 111.70(1)(o)1 of the Act. Although evaluative duties might render an employe a supervisor, the Sergeants' possible future duties in that regard do not provide a basis at this time for the Commission to conclude that they are supervisors.

The Commission concludes that the Sergeants are not managerial, confidential or supervisory employes. Therefore, they are appropriately included in the collective bargaining unit involved herein.

Gateway Technical Institute, (14993), 110/76

2. Investigators

The Commission's conclusion that the Investigators share a community of interest with bargaining unit employes is based on the facts presented in Paragraph 6 of the Findings of Fact. The Investigators are supervised by the Sheriff, and their entire salary is paid from the budget of the Sheriff's Department. The Investigators investigate traffic accidents, criminal matters and juvenile matters. Road Officers also investigate traffic accidents and criminal matters. On occasion, Investigators have assisted in investigations conducted by the Corporation Counsel, District Attorney, Social Services Department, and municipal police departments within the County. However, the vast majority of the Investigators' time is spent working for the Sheriff's Department. In addition, since the Investigators are law enforcement personnel, it would create undue fragmentation to exclude them from the instant unit. 4/

The Municipal Employer alleges that the Investigators are confidential employes. Nothing in the record indicates that the Investigators are confidential employes. Although during their investigations they may have access to files which the Municipal Employer considers confidential in that the files are unavailable to the public, such files do not relate to labor relations. Although Investigators also may have access to personnel files, the Commission has previously held that access to personnel records is not sufficient to exclude employes as confidential. 5/

The Investigators are called upon on occasion to investigate citizen allegations of misconduct by Road Officers; two such occasions occurred in 1977. Since the Investigators serve as fact gatherers, who do not participate in the decision-making process following such investigations, said occasional duty is insufficient reason for concluding that they are supervisors.

Since the Investigators share a community of interest with the bargaining unit and since they are neither supervisory nor confidential employes, they are included in the bargaining unit.

Dated at Madison, Wisconsin, this 28th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

4/ Section 111.70(4)(d)2a of the Municipal Employment Relations Act provides that the Commission "shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force."

5/ City of Menasha, (14523), 4/76.