



STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES and  
MARGARET RABUCK,

Complainants,

vs.

OZAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Respondent.  
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Case V  
No. 23116 MP-805  
Decision No. 16416-C

Appearances:

Lawton and Cates, Attornyes at Law, By Mr. Richard V. Graylow,  
appearing on behalf of the Complainants.  
Lindner, Honzik, Marsack, Hayman and Walsh, S.C., Attorneys at Law,  
by Mr. Roger E. Walsh, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Wisconsin Council of County and Municipal Employees and Margaret Rabuck 1/having filed a complaint on June 7, 1978, with the Wisconsin Employment Relations Commission, alleging that Ozaukee County (Sheriff's Department) had committed certain prohibited practices within the meaning of Sections 111.70(3)(a) 1, 2, 3 and 5 of the Municipal Employment Relations Act (MERA) and the Commission having appointed Stephen Schoenfeld, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Wis. Stats.; and hearing on said complaint having been held at Port Washington, Wisconsin on August 8, 1978 and March 16, 1979 before the Examiner, and briefs having been filed by both parties with the Examiner; and the Examiner having considered the arguments, evidence and briefs and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Wisconsin Council of County and Municipal Employees, hereinafter referred to as the Complainant, is a labor organization which represents for collective bargaining purposes certain law enforcement personnel employed by Ozaukee County; and the Complainant Margaret Rabuck, hereinafter referred to as Rabuck, at all times material herein was employed as a clerk by the Ozaukee County Sheriff's Department.

2. That Ozaukee County, also referred to as the Respondent, is a Municipal Employer.

3. That on or about April 18, 1977, Complainant petitioned the Wisconsin Employment Relations Commission for an election among certain employes of the Ozaukee County (Sheriff's Department) who were, at that time, represented by the Ozaukee County Law Enforcement Association; that on or about August 1, 1977, an election stipulation and eligibility list was agreed upon by the interested parties and said agreement provided for the exclusion of sheriff department office clerical employes from the bargaining unit; that the election was conducted during the latter part of August, 1977, and because the eligibility list excluded the names of

1/ During the course of the second day of hearing, the Complaint was amended and the Ozaukee County Law Enforcement Association was deleted as a Complainant and Ms. Margaret Rabuck was added as a Complainant.

Rabuck and the other office clerical employees, said employees did not vote in the representation election; that neither the Complainant, nor any other party, challenged any ballots or filed objections to the conduct of the election.

4. That on August 1, 1977, the deputy status of Rabuck and the other office clerical employees of the sheriff's department were withdrawn by Arthur E. Helm, Ozaukee County Sheriff; that Helm issued the following memorandum:

Effective immediately I hereby withdraw the office clerical deputy status. This decision was made much earlier and was never implemented. I did this because this authority was not effectively used and I am implementing this now, to avoid any confusion regarding this status.

that although Rabuck had possessed deputy status and arrest powers for several years prior to the withdrawal of her deputy status, and although Rabuck and the other clerical employees did wear uniforms similar to the uniforms worn by employees in the sheriff's department who exercised arrest authority, Rabuck and the other clerical employees were not issued a badge, did not carry a weapon, as a practical matter did not effectuate arrests, did not read Miranda warnings to suspects, and they did not receive the 240 hours of training in order to qualify as a law enforcement officer.

5. That prior to August 1, 1977, Helms had been contemplating the withdrawal of the deputy status from the clerical employees; that Helms withdrew the deputy status from the clerical employees because: said employees were not engaging in law enforcement tasks; he was concerned about the threat of potential lawsuits against the County and himself based upon the conduct of deputized personnel and was therefore also revoking special deputy cards from other persons; and he was concerned that if the clerical employees continued to possess deputy status, they would be required to complete the 240 hour basic training course in law enforcement.

6. That prior to August 1, 1977, the Deputy Sheriffs of Ozaukee County were part of a collective bargaining unit and represented by the Ozaukee County Law Enforcement Association; that during the collective bargaining relationship between the County and Association, the clerical employees in the sheriff's department were not part of the collective bargaining unit nor were they represented by the Association; and that during the time period material herein, Helms was unaware of any type of union activity on the part of the clericals or of any desire on their behalf to be represented by a union.

7. That at the time Mr. Michael Wilson, a business representative for the Complainant, executed the election stipulation on August 1, 1977, he was cognizant that Sheriff Helms had withdrawn the deputy status of the office clerical employees.

8. That the withdrawal of the deputy status of Rabuck and the other clerical employees, by Sheriff Helms, was predicted upon legitimate business concerns and was not motivated by any anti-union animus or for reasons related to the exercise of Rabuck's or other clerical employee's rights under Section 111.70(2) of the Municipal Employment Relations Act; that because the withdrawal of the deputy status of said clerical employees was predicted upon legitimate business reasons, and inasmuch as the clerical employees involved herein had never been in the unit with sworn law enforcement officers and had never been represented by the Association, and since the Sheriff did not have any knowledge of the clerical's interest to be represented by the Complainant, the Sheriff's conduct in removing the deputy

status of the clericals, did not interfere with the MERA right of the employees involved; and that the Respondent, through the conduct of its agent, Helms, has not violated secs. 111.70(3)(a)1, 2, or 3 of the MERA.

9. That the Complainant and the Ozaukee County Law Enforcement Association both appeared on the ballot with respect to the election involving certain law enforcement personnel of the Ozaukee County Sheriff's Department; that although the Ozaukee County Law Enforcement Association, by its representatives, had on April 14, 1977, indicated in writing that it did not want its name placed upon the election ballot, both Complainant and the Ozaukee County Law Enforcement Association appeared on said ballot, pursuant to a stipulation for election executed on August 1, 1977, by Michael Wilson, District Representative for Complainant, Allan L. Woda, President of the Ozaukee County Law Enforcement Association, and Mr. Thomas Krukowski, legal representative for the Respondent.

10. That inasmuch as the Ozaukee County Law Enforcement Association and the Complainant voluntarily executed the stipulation for election and voluntarily agreed to have said Association on the ballot, the Respondent, by also executing said stipulation and thereby taking the position that the Ozaukee County Law Enforcement Association should appear on the ballot, has not violated secs. 111.70(3)(a)1, 2 or 3 of MERA.

11. That during 1976-77 the Respondent and the Ozaukee County Law Enforcement Association were parties to a collective bargaining agreement; that said labor contract provided a salary range with graduated step increases leading to a maximum entitlement; that the aforesaid provision was set forth at Article 3 and provided as follows:

ARTICLE 3

Salaries

Section 1. Pay grades shall be assigned to positions as follows:

Radio Operator/Jailor I	Grade 19
Radio Operator/Jailor II	Grade 20
Deputy I	Grade 20
Deputy II	Grade 21
Process Server	Grade 22
Jail Sergeant	Grade 22
Youth Officer	Grade 22
Jail Services Coordinator	Grade 23
Investigators	Grade 23
Other Sergeants	Grade 23

Section 2. The rates of pay for the classifications of work covered by this Agreement shall be as follows during the term of this contract:

<u>1976</u>	<u>STEPS</u>					
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
PAY GRADE						
19	835	877	920	967	1014	1066
20	877	920	967	1014	1066	1118
21	920	967	1014	1066	1118	1175
22	967	1014	1066	1118	1175	1234
23	1014	1066	1118	1175	1234	1295

<u>1977*</u>	<u>STEPS</u>					
<u>PAY GRADE</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
19	864	907	951	999	1047	1100
20	907	951	999	1047	1100	1153
21	951	999	1047	1100	1153	1211
22	999	1047	1100	1153	1211	1271
23	1047	1100	1153	1211	1271	1333

\* If other employees under the jurisdiction of the Personnel Committee are granted a greater increase, these ranges will be increased accordingly.

12. That in October 1977, the employees at the Lasata Nursing Home (said employees are employed by Respondent and are under the jurisdiction of the Personnel Committee) were awarded certain economic increases; that the Lasata increases occurred because certain positions were placed in different pay ranges and certain employees were reclassified; that the increase to the Lasata employees did not occur because of any increase to the Respondent's general salary resolution which went into effect on January 1, 1977; that Article 3, Section 2 of the 1976-77 labor contract obligates Respondent to grant increases to employees in the sheriff's department only if the salary ranges of other employees under the jurisdiction of the Personnel Committee are, pursuant to the Respondent's pay range ordinance, increased more than the salary ranges of the sheriff's department employees; and that because an increase to the salary range structure pursuant to the pay range ordinance was not involved with respect to the economic increases awarded the Lasata employees, the Respondent did not violate Sec. 111.70(3)(a)1 or 5 of the MERA when it refused to grant a wage increase to sheriff's department employees after it granted certain increases to some Lasata employees.

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

#### CONCLUSIONS OF LAW

1. That Respondent, by the action of its agent in withdrawing the deputy status of Rabuck and the other office clerical employees in the Sheriff's Department, has not committed a prohibited practice within the meaning of Secs. 111.70(3)(d)1, 2 or 3 of MERA.
2. That Respondent, by jointly executing with the Complainant and Ozaukee County Law Enforcement Association a stipulation to the election involving certain law enforcement personnel of the Ozaukee County Sheriff's Department in which all interested parties voluntarily agreed that the Ozaukee County Law Enforcement Association's name would appear on the ballot, did not unlawfully insist on the inclusion of said Association on the ballot and has not committed a prohibited practice within the meaning of Secs. 111.70(3)(a)1, 2 or 3 of MERA.
3. That Respondent, by granting economic increases to certain Lasata employees as a result of reallocation of positions and reclassification of employees, and by failing to make a corresponding economic adjustment to employees in the Ozaukee County Sheriff's Department, has not committed a prohibited practice within the meaning of Secs. 111.70(3)(a)1 or 5 of MERA.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and renders the following

ORDER

IT IS ORDERED that the complaint of prohibited practices filed herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 18th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Examiner

MEMORANDUM ACCOMPANYING FINDINGS  
OF FACT, CONCLUSIONS  
OF LAW AND ORDER

BACKGROUND:

The Wisconsin Council of County and Municipal Employees and the Ozaukee County Law Enforcement Association filed a complaint with the Wisconsin Employment Relations Commission alleging that Ozaukee County (Sheriff's Department) has committed a number of violations of the MERA. The complaint set forth three (3) counts. The first count alleged that Respondent granted pay increases to employees working at the Ozaukee County Home (also known as Lasata) and that by refusing to grant corresponding wage increases to employees represented by Complainant, Respondent had breached the parties' collective bargaining agreement. Count number two, which alleged that Respondent unlawfully stopped deducting fair-share and other dues deductions, was withdrawn during the course of the hearing. Count number three alleged that Respondent unlawfully removed the law enforcement credentials of certain clericals during the pendency of an election petition filed by Complainant with the Commission and that the Respondent also unlawfully insisted on the inclusion of the Association on the election ballot. 2/

2/ The allegations in count no. 3 of the complaint set forth that Respondent, through its officers and agents, by insisting on the inclusion of the Association on the ballot and in removing the law enforcement credentials of certain of its employees, was in violation of Section 111.70(3)(a)1, 2 and 3 of the MERA. However, Complainant did attempt to amend its complaint by alleging that, during the course of the election campaign, Respondent prepared and distributed pro-Association and anti-Union literature; that the Respondent's representatives appeared at an Association meeting while reading pro-Association and anti-Union literature; and that the Respondent's agent made public statements opposing the Union in favor of the Association. The Examiner denied Complainant's motion to amend its complaint and, inasmuch as the memorandum to the Examiner's disposition of said motion sets forth the reasons for denying same, the Examiner need not set forth his rationale again. Consequently, the issues before the Examiner with respect to Count No. 3 are whether the Respondent unlawfully insisted upon the inclusion of the Association on the ballot and/or unlawfully removed the law enforcement credentials of certain clerical employees, thereby denying said employees the right to vote in the election. Therefore, any evidence relating to the alleged misconduct on the part of Respondent which occurred after the Association's name appeared on the ballot or after the revocation of the clericals' deputy status was a fait accompli is relevant only to illuminate the possible motives of Respondent's agents with respect to the charges set forth in the original complaint. The record doesn't indicate that the Sheriff acted in concert with any other agent of the Respondent when withdrawing the clericals' law enforcement credentials. Rather, he acted independently when he withdrew the deputy status of the clericals, and inasmuch as the actions of Respondent's agents alleged to constitute the pre-election campaign misconduct do not involve the Sheriff, the evidence relating to the conduct of Respondent's agents with respect to the pre-election campaign has been given no weight in resolving the issue concerning the withdrawal of the clerical employees' law enforcement credentials. Since the sheriff is not involved in said alleged conduct, said conduct doesn't reflect on the sheriff's motives in revoking the deputy status of the clericals. Furthermore, since the record indicates that the representatives of Complainant, the Respondent and the Association voluntarily agreed to include the Association's name on the election ballot, the Examiner has also attached no weight to the evidence relating to the purported pre-election conduct of Respondent's agents that occurred after the election stipulation was voluntarily executed by the parties.

During the course of the second day of the hearing, the Association was deleted as a complainant and the complaint was further amended so as to include Ms. Margaret Rabuck as a complainant.

#### POSITION OF THE PARTIES:

The Complainant takes the position that the law enforcement credentials of Ms. Rabuck, who had been issued said credentials upon her entry into the Ozaukee County Sheriff's Department in 1973, were revoked by the Sheriff in order to deprive Rabuck of the opportunity to vote in the representation matter, and that the Sheriff's conduct in this regard interfered with Complainant's rights under the MERA. Complainant contends that Rabuck, as well as the other clericals who had their law enforcement credentials withdrawn, should have been included in the unit of sworn law enforcement officers. The Complainants aver that Respondent unlawfully favored the Association and argue that even though the Association disclaimed any interest in the election proceedings, the Respondent insisted that the Association appear on the ballot. According to the Complainants, said conduct interfered with the rights of the employees to freely vote their conscience. The Complainant also maintains that Respondent was obligated to grant a wage increase to the employees of the bargaining unit represented by Complainant because Respondent had granted a wage increase to certain employees in the Lasata Nursing Home, in October 1977, and that by failing to give the employees in the Ozaukee County Sheriff's Department a corresponding wage increase, according to Complainant, Respondent breached the collective bargaining agreement then in effect. Finally, Complainant argues that Respondent, during the pre-election campaign, engaged in unlawful conduct by preparing and distributing pro-Association and anti-Union literature, by appearing at an Association meeting while reading pro-Association and anti-Union literature, and by making public statements opposing the Union in favor of the Association. 3/

According to Respondent, when the representation petition was filed, the clerical employees in the Sheriff's Department were not and had not exercised arrest authority. The Sheriff was already contemplating withdrawing the clericals' deputy status for legitimate business reasons, and said clericals had neither been part of the collective bargaining unit along with the sworn officers of the Sheriff's Department, nor had they ever been represented by the Association. The Respondent maintains, therefore, that it did not commit any prohibited practice by withdrawing the deputy status of the clerical employees on August 1, 1977. Furthermore, Respondent maintains that the Complainant waived any objections concerning the withdrawal of the deputy status of the clerical employees by executing a voluntary stipulation agreeing to exclude said employees from the unit. 4/

- 3/ As indicated earlier, inasmuch as the original complaint did not contain any allegation related to such pre-election conduct of Respondent or its agents, and based upon the reasons indicated in the Examiner's Memorandum attached to the Order Denying Complainant's motion to amend the Complaint, the Examiner has refused to invoke the jurisdiction of the Commission over said allegations and has consequently refused to make any findings with respect to said matters.
- 4/ Complainant counters this argument by positing that it did not waive said objections because of a letter of understanding executed between itself and Respondent which provides that "it is agreed by the parties that by stipulating to the bargaining unit description neither party has waived any right to litigate the inclusion or exclusion of employees or any other position."



With respect to the allegation relating to Respondent's unlawful insistence that the Association appear on the ballot, the Respondent contends that this allegation is "absolutely preposterous" inasmuch as representatives of the Complainant and the Association jointly executed a stipulation along with the Respondent agreeing that the Association would appear on the ballot. Finally, Respondent defends its conduct with respect to its refusal to pay certain wage increases requested by Complainant on the basis that Article 3, Sec. 2 of the apposite labor agreement only obligates the Respondent to make such payments when there has been an increase granted to the entire salary range structure of other employees under the jurisdiction of the Personnel Committee pursuant to its pay range ordinance. According to Respondent, since the pay increases of the Lasata employees weren't the result of increases to the pay ranges due to any modification to the general pay range ordinance, but were rather the result of certain positions being placed in different pay ranges or because particular employees were reclassified, the Respondent is not contractually obligated to make a corresponding pay increase to the employees of the sheriff's department.

#### DISCUSSION:

##### Revocation of Law Enforcement Credentials of the Ozaukee County Sheriff's Department Clerical Employees

While the record evidence indicates that Rabuck and the other office clerical employees were uniformed, as were other commissioned personnel, the evidence also clearly demonstrates that said employees did not carry a weapon, were not issued a badge, did not read Miranda warnings to suspects, did not receive the 240-hour basic law enforcement training course required of law enforcement officers, and did not make any arrests. Given the fact that the clerical employees did not exercise any arrest authority, it is understandable why the Sheriff removed their deputy status. The uncontradicted testimony of the Sheriff indicates that the Sheriff's withdrawal of the clericals' deputy status was predicted upon legitimate business concerns (See Finding of Fact No. 5).

The gravamen of the Union's complaint with respect to this count is that the unlawful removal of the deputy status of the clerical employees denied said employees the right to vote in the representation election. It is difficult to understand how the Complainant can seriously contend that Respondent interfered with Rabuck's rights under the MERA when the Complainant itself stipulated that Rabuck and the other office clerical employees were not eligible to vote in the representation election because they should be excluded from the unit of sworn law enforcement personnel. Even assuming arguendo that the parties did agree that by entering the letter of understanding, (see footnote 4), Complainant could subsequently litigate the question of inclusion or exclusion of the clerical employees in the unit, that doesn't alter the fact that Complainant voluntarily recognized and agreed that the clericals should not vote in the representation election. It is understandable why the parties stipulated to the exclusion of the clericals from the unit, inasmuch as they had previously not been included in the same collective bargaining unit with the deputized law enforcement personnel.

The record doesn't support a finding that the Sheriff harbored any Union animus against the clerical employees or that his conduct with respect to the revocation of the deputy status of said clericals was predicted, at least in part, upon any anti-Union animus because of the clerical employees' protected activities. Consequently, the charge of discrimination is dismissed. Furthermore, Complainant failed to meet its burden of proof that Respondent interfered with the rights of the clerical employees to vote in the representation election by withdrawing their deputy status. Although the timing of the revocation is somewhat suspicious, without additional evidence reflecting on the Sheriff's conduct, and because of the aforesaid reasons, the Examiner has concluded that the Sheriff's action in this regard was not unlawful.

Ozaukee County Law Enforcement  
Association Appearance on the Ballot

The Examiner has taken official notice of the transcript prepared from the May 24, 1977, election hearing before Mr. Peter Davis, a staff mediator with the Wisconsin Employment Relations Commission. The crux of the issue before Mr. Davis concerned whether the Ozaukee County Law Enforcement Association was defunct and whether said Association and its members wanted to disclaim interest in the representation matter. There is nothing in either the record arising out of the election petition or the record in the case at bar which indicates that the Respondent coerced the Complainant or the Association to agree that the Association's name appear on the ballot. Although the Complainant and/or the Association could have insisted that the Association not be on the ballot, all parties voluntarily agreed, in the Stipulation for Election, to have the Association's name appear on the ballot. The issue of defunctness was raised before Mr. Davis and, had the parties not stipulated to the election, a decision concerning whether the Association should appear on the ballot would have had to be made by the Commission. A finding of prohibited practices cannot be made under the circumstances involved herein. The Respondent executed a stipulation along with the Union and Association in which all the parties agreed to have the Association appear on the ballot. 5/ The Examiner has found that the parties, on August 1, 1977, voluntarily agreed to include the Association's name on the ballot. 6/

The Complainants also allege, under this count, that Respondent's conduct violated Sec. 111.70(3)(a)2, Wis. Stats. Since the record does not support any finding that the Respondent had in any way taken control over the Association or the Union as entities when all the parties entered into the stipulation to the election, in which it was agreed that the Association's name would appear on the ballot, said count has been dismissed. Furthermore, for the reasons set forth above, and because the record does not support a finding of discrimination pursuant to this count, the Examiner has found that Respondent's conduct also did not violate 111.70(3)(a)1 or 3 of the MERA.

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5/ The letter of understanding (see footnote 4) has nothing whatsoever to do with the inclusion or exclusion of the Association on the ballot.

6/ As indicated earlier, the Examiner is making no finding whether the conduct complained of in Paragraphs 18(a), (b) or (c) of Complainant's motion to amend the complaint constitutes a separate and distinct prohibited practice.

Respondent's Refusal to Pay Certain Wage  
Increases Requested by Complainant

The labor agreement in question provided a salary range with graduated step increases that were applicable for certain classifications of work (see Finding of Fact No. 11 for the full text of the provision). During the later part of October 1977, the employees at the Lasata Nursing Home were granted certain wage increases. A grievance was filed in which it was demanded that the Sheriff's Department employees were entitled to a corresponding pay grade increase. The grievance maintained that the Respondent was obligated to make an identical increase to the salaries of the Sheriff's Department employees on the basis of the contractual language that provided, "If other employees under the jurisdiction of the Personnel Committee are granted a greater increase, these ranges will be increased accordingly." The grievance was denied by Respondent and the issue involved in said grievance constitutes the gravamen of this count in the complaint. 7/

In construing the language in question, the Examiner opines that the contractual language in dispute is unclear and ambiguous and that there is a need to look beyond the language itself in resolving this matter. It is not clear from the contractual language in dispute whether the pay adjustment of the Lasata employees, based upon their reclassification and reallocation, activates the language in question and thereby obligates the Respondent to make identical pay adjustments to the employees in the Sheriff's Department. Because the Examiner has concluded that the language is unclear in this respect, it is appropriate to examine the record evidence with respect to what has been the previous practice of the parties in construing and applying said clause. 8/

A provision, similar to that found at Article 3, Section 2 of the 1976-77 collective bargaining agreement, was utilized in the parties' 1973-74 labor contract. 9/ The wage rates set forth in the 1973-74 contract for 1973 were also set forth in the County's General Salary Resolution for 1973. When Respondent adopted its Salary Resolution for 1974, 10/ it provided generally for a six (6) percent wage increase; however, because the 6% adjustment to all ranges for 1974 was in excess of the 4-1/2 percent increase as provided for in the 1973-74 labor contract between the Association and Respondent, Respondent increased the Sheriff's Department employees' salary by 1-1/2 percent so that said employees would also receive a 6%, rather than 4-1/2%, salary increase.

In the negotiations for the 1976-77 contract, Respondent initially proposed a three-year contract "with a guaranteed minimum increase for 1977 and 1978, and with the same provision as contained in the 1973-74

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7/ The issue involved in this count involves a matter of contract interpretation. The 1976-77 collective bargaining agreement between Ozaukee County and the Ozaukee County Law Enforcement Association did not provide for final and binding arbitration of contractual disputes. Consequently, the Examiner has asserted the jurisdiction of the Commission to resolve the allegation that Respondent violated the bargaining agreement, and thus, Sec. 111.70(3)(a)1 and 5 of the MERA.

8/ During the course of the hearing, Complainant's attorney objected to the introduction of parole evidence. The Examiner, because of the unclear meaning of the contract provision in question, has overruled said objection and considered such evidence.

9/ Said provision provided: "These ranges are based on an increase of 4-1/2%. If other employees under the jurisdiction of the Personnel Committee are granted a greater increase, these ranges will be increased accordingly."

10/ Said resolution took effect on January 1, 1974.

contract regarding increases being granted to employees of other departments." The Respondent subsequently recanted on its demand for a three-year contract and offered to settle with a two-year agreement. The parties agreed to the language in dispute. Mr. Harold Dobberpuhl, the Ozaukee County Clerk, testified that he was privy to the negotiations leading to both the 1973-74 and 1976-77 labor contracts, and that it was the Respondent's understanding that the language in dispute would be activated only if Respondent had, as was the case in 1974, increased the general salary ranges for other employees under the jurisdiction of the Personnel Committee, pursuant to the pay range ordinance of 1977, more than it had done for the sheriff's department employees in the 1976-77 contract. Mr. Joseph Mortl, a witness for Complainant, agreed that when the disputed contract provision was proposed to be included in the 1976-77 contract, Respondent indicated it would operate the same way it did in the 1973-74 contract. Mr. Gary Langlais, another witness for Complainant, who was active on the Association's bargaining team during the negotiations leading to the 1973-74 contract, indicated that the purpose of the "guarantee" provision found in the 1973-74 contract was to enable the Association membership to "buy" a two-year contract. According to Langlais, because a two-year contract was involved, the provision was needed in the event other employees under the jurisdiction of the Personnel Committee received an increase greater than 4-1/2% on January 1, 1974, since the Respondent's practice was to grant general wage increases on January 1st. Langlais indicated that it was the January 1st general wage increase, made pursuant to the County's pay range ordinance, that the Association was concerned about.

There is no claim advanced by Complainant that the general wage increase effective on January 1, 1977, for any employees under the jurisdiction of the Personnel Committee was greater than that established for the sheriff's department in the parties' 1976-77 contract. Rather, the question is whether the increases to the Lasata employees in October 1977, increases occurring because of particular employees being reclassified or certain positions being placed in different pay ranges, contractually obligated Respondent to make corresponding pay increases to the employees in the sheriff's department.

Based upon the aforesaid discussion, the Examiner has dismissed this count of the complaint. The increase to Lasata employees did not materialize as a result of an increase to the employees' pay ranges as a result of Respondent's general salary resolution. Reallocation and reclassification had been made earlier and no demand was made by Complainant that the sheriff's department employees were entitled to corresponding pay increases. The record convinces the Examiner that a reclassification or reallocation of employees at Lasata was not the type of event that the parties understood would obligate the Respondent to increase the pay ranges of the sheriff's department employees. Rather, the parties contemplated that the disputed contractual provision is activated only in the event that Respondent had increased pay ranges to other employees under the jurisdiction of the Personnel Committee, pursuant to the pay range ordinance of 1977, at a higher level than it agreed to do for the sheriff's department employees for 1977. Since such an event did not occur, the Respondent wasn't obligated to make any adjustment to the pay ranges of the sheriff's department employees, and by failing to do so, Respondent did not violate the parties' 1976-77 labor agreement. Consequently, the Examiner has dismissed this count of the complaint.

Dated at Madison, Wisconsin this 18th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Examiner

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