

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WINNEBAGO COUNTY (SHERIFF'S DEPARTMENT)

**Appearances :**

Mr. Gerald Engeldinger, Corporation Counsel, Winnebago County,  
appearing on behalf of the Municipal Employer.

Winnebago County Sheriff's Professional Police Association, having, on September 22, 1978, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to clarify an existing collective bargaining unit consisting of certain employes of the Sheriff's Department of Winnebago County; and a hearing having been held in the matter at Oshkosh, Wisconsin on October 25, 1978, Timothy E. Hawks, Examiner, being present; and the Commission having considered the evidence, arguments of the parties, and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

4. In the fall of 1977, the County's Board of Supervisors created the position of Drug Enforcement Coordinator. On January 3, 1978, the County's Director of Personnel, Gerald E. Lang, issued a position description for said position which attributed substantial supervisory duties and responsibilities to the position. On April 24, 1978, the position was offered to the present incumbent thereof, Lawrence B. Lathrop, at a starting salary of \$1225/month. That salary level is \$9.45/month more than the comparable rate paid Sergeants in the unit represented by the Association, and was so established to reflect the degree of supervisory responsibility which the County expected the Drug Enforcement Coordinator to undertake.

5. Since beginning work in the position in question shortly after April 24, 1978, Lathrop has not performed some of the supervisory duties and responsibilities outlined in the aforesaid position description and wrote to Lang on August 22, 1978 a letter revealing that he does not consider himself to be functioning as a supervisor. As of the date of the hearing herein (October 4, 1978), Lathrop has not hired nor disciplined, terminated, transferred, promoted, nor adjusted the grievances of any employees, nor had he effectively recommended same. He has directed the work of only one employee, an undercover agent, with whom he works closely, though he may be called upon in the future as the Sergeants also are on occasion, to coordinate the work of other law enforcement employees in the event of a large scale operation in his area of specialization. Lathrop shares such responsibilities with respect to the undercover employee with the Lieutenant of Detectives and with the Sheriff.

6. Lathrop is primarily in charge of the drug enforcement activity rather than being primarily responsible for the exercise of supervisors authority of the employee now working with him on that activity (or of the employees who may work with him on a large scale drug arrest operation in the future). Hence, Lathrop exercises an insufficient combination of supervisory duties and responsibilities to warrant the conclusion that he is a supervisor.

On the basis of the foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSION OF LAW

Lawrence Lathrop, the incumbent Drug Enforcement Coordinator, is not a supervisor within the meaning of Section 111.70(1)(o)1, Stats., but rather is a municipal employee within the meaning of Section 111.70(1)(b), Stats.

On the basis of the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

#### ORDER CLARIFYING BARGAINING UNIT

The position of Drug Enforcement Coordinator, occupied by Lawrence B. Lathrop, shall be, and the same hereby is, included in the collective bargaining unit presently represented by the Winnebago County Sheriff's Professional Police Association and consisting of all regular full-time employees employed by Winnebago County in its Sheriff's Department, including investigators, Sergeants, juvenile officers, police officers, head jailer, deputy jailers and jail matrons, but, excluding from the unit of representation the Chief deputy, the assistant chief deputy, Captain, Lieutenants, clerical employees, and any part-time employees in the department.

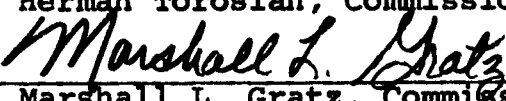
Given under our hands and seal at the  
City of Madison, Wisconsin this 29th  
day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavner, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

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

The Association seeks to clarify an existing bargaining unit presently represented by it to include the position of Drug Enforcement Coordinator, occupied by Lawrence B. Lathrop. It is the position of the Association that the Drug Enforcement Coordinator is not supervisory as that term is defined by Section 111.70(1)(o)1 of the Municipal Employment Relations Act. The Employer asserts, on the other hand, that the Drug Enforcement Coordinator position is clothed in sufficient indicia of supervisory authority to justify the exclusion of that position from the unit.

The term supervisor is defined in the Wisconsin Statutes at Section 111.70(1)(o)1 as follows:

. . . 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 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 of a merely routine or clerical nature, but requires the use of independent judgment."

The Commission has isolated the following criteria for the purpose of determining whether a questioned position is in fact supervisory:

1. The authority to effectively recommend 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 less authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is 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. 1/

As may be adduced from the Findings of Fact, the position of Drug Enforcement Coordinator for Winnebago County has been recently

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1/ St. Croix County (Health Care Center) (14518) 4/76. Fond du Lac County (14669) 5/76. City of Merrill (14707) 6/76.

created and consequently, the supervisory indicia is largely conjectural. As this Commission has held before mere potential supervisory authority will not be relied upon to determine supervisory status. 2/ Therefore, the focus of the instant inquiry is narrowly limited to the evidence relevant to the position and indicative of supervisory status as of the time of the hearing.

#### DISCUSSION:

The position of Drug Enforcement Coordinator for Winnebago County lacks sufficient indicia of supervisory authority to justify excluding Lathrop from the collective bargaining unit. Lathrop has supervised only one employe 3/ on a daily basis, which employe may not be transferred or promoted within the unit. At the time of the hearing Lathrop had not utilized his alleged authority to hire, discipline or terminate that one employe. Moreover, the apparent grant of supervisory authority given to Lathrop by the job description had not at the time of the hearing been exercised.

The Employer was unable to substantiate the amount of time Lathrop spent "supervising" the undercover agent. When Lang was asked if Lathrop spent a "substantial majority" of his time supervising, he did not respond affirmatively but instead testified that Lathrop spent a "substantial" amount of his time supervising. However, when Lang was later asked about claimed daily meetings between Lathrop and the undercover agent he was unable to specify how long these meetings lasted or whether they were primarily supervisory in nature. It is also to be noted, that even with regard to this one employe, Lathrop has shared the supervisor's responsibility with Lieutenant Fuller and others.

Furthermore, a substantial aspect of the relationship between Lathrop and the undercover agent involves the gathering and exchange of information - a function much more akin to nonsupervisory cooperation of the two men and typical of the "working supervisor." Besides finding that there is insufficient supervisory indicia to justify exclusion of the Drug Enforcement Coordinator position, it is clear that Lathrop supervises an activity and not people. Specifically, Lathrop coordinates the enforcement of various narcotics laws. Consequently, a substantial portion of his time is spent with others than the single undercover agent. Plus, Lang testified that Lathrop has a working relationship with every department in Winnebago County, and specifically has a particular officer who he will contact in every Police Department in the County. The purpose of maintaining such contacts was to exchange information regarding drug activities. Lathrop, like the Sergeants within the County's Sheriff's Department, will on occasion enforce and coordinate the arrest operations of a number of other Officers. Such responsibilities are indicative of one who supervises an activity, not employes and as such the position is not to be excluded from the bargaining unit as a supervisor.

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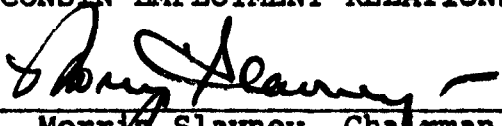
2/ Wood County (13760) 6/75. Oneida County (12247) 11/73.

3/ For the purposes of this decision we assume, but do not find, that the undercover agent is a full-time employe of the County.

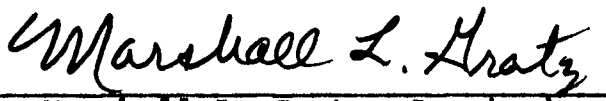
Based on all the foregoing, the Commission has included the position in dispute in the aforementioned bargaining unit.

Dated at Madison, Wisconsin this 29th day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner