

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAUK COUNTY
(SHERIFF'S DEPARTMENT)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, 788 North Jefferson, Room 600, P.O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of the Union.

Sauk County (Sheriff's Department) having on July 21, 1986 filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit, represented by the Teamsters Union, Local No. 695, IBT, to exclude the positions of Detective Sergeant, Patrol Sergeant, Communications Sergeant, Jail Sergeant, and Administrative Assistant/Support Staff Supervisor from said unit; and a hearing having been held on October 6, 1986 in Baraboo, Wisconsin before Hearing Examiner Andrew M. Roberts; and a stenographic transcript having been made of the hearing and mailed to the parties on October 23, 1986; and the parties having submitted briefs by January 23, 1987, and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

4. That according to the departmental chain of command the Patrol Sergeants and the Communication Sergeant report to Lieutenant No. 1; that the Security (Jail) Sergeant and the Detective Sergeant report to Lieutenant No. 2; that the Lieutenants report to the Captain; that the Captain reports to the Chief Deputy who in turn reports to the Sheriff; that there are three Patrol Sergeants, one Security (Jail) Sergeant, one Communications Sergeant, one Detective Sergeant; that there are 13 patrol officers (including 3 floating officers) working under the direct supervision of the three Patrol Sergeants; that there are 6 Detectives and 3 Clerk-Matrons working under the direct supervision of the Detective

Sergeant; that there are 4 Hazardous Duty Dispatchers and 3 Communications Assistants working under the direct supervision of the Communication Sergeant; that there are 2 Bailiffs, 6 Clerk-Matrons and 7 Jailers (including two rotating jailers) working under the direct supervision of the Security (Jail) Sergeant; that all employees in the bargaining unit (currently 53, including the Sergeants) are paid pursuant to the negotiated wage schedule in the collective bargaining agreement, and all such employees are hourly paid employees, as follows:

SAUK COUNTY SHERIFF'S
DEPARTMENT
1986 RATES

Classification	Hiring	6 Months	18 Months
Sergeant	9.38	9.60	9.82
Detective	9.38	9.60	9.82
Patrolman	9.07	9.28	9.49
Dispatcher, Deputy Sheriff-Security	8.78	8.97	9.17
Administrative Assistant	7.66	7.81	7.98
Clerk-Matron	7.26	7.40	7.54
Clerk-Receptionist	7.26	7.40	7.54
Communications Assistant	7.26	7.40	7.54

and that all unit employees including Sergeants, who work "in excess of eighty-six (86) hours per fourteen-day work period shall be paid at time and one-half (1 1/2) of the regular hourly rate in effect at time of work. . . ", according to Article V. Section 2 of the parties' collective bargaining agreement.

5. That the normal hours of work for the Sheriff, Chief Deputy, Captain and Lieutenants are 8:00 a.m. to 4:30 p.m.; that there are three Patrol Sergeants; that in the Patrol division of the Department there are three shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. with a Patrol Sergeant heading each shift; that each Patrol Sergeant works a 4 day on-2 days off-work schedule; that on the 7:00 a.m. to 3:00 p.m. and 11:00 p.m. to 7:00 a.m. shifts there are generally four employees on duty at all times--usually one Patrol Sergeant and three Patrol officers or occasionally four Patrol officers; that when there are four Patrol officers on duty without a Patrol Sergeant on duty, one of the Patrol officer acts as the shift leader supervising the shift operation but with no other supervisory responsibilities; that when a Patrol Sergeant is present on a shift, he acts as a "roving" patrolman on 2 of the 4 days of his work cycle; that on the other 2 days of their 4-day cycle, Patrol Sergeants generally perform administrative duties, do paper work, handle sick reports of officers, make work assignments, check and analyze statistics and new legislation; that on the 3:00 p.m. to 11:00 p.m. shift, either three Patrol officers and a Patrol Sergeant are on duty or three Patrol officers are on duty; that generally the Patrol officers' work schedules are pre-established through a bidding procedure; that a Patrol Sergeant is generally assigned to a particular shift, although he or she has the flexibility to change his/her own work hours if needed; that Patrol Sergeants have routinely granted sick leave and vacation requests; that Patrol Sergeants evaluate employees twice annually; that Patrol Sergeant Deakin--who is assigned to the 3-11 p.m. shift--has disciplined employees under him without prior authorization on seven occasions in the last two years and these disciplinary actions ranged from oral warnings to written warnings that on one occasion Deakin recommended a letter of reprimand be issued to an employee and the employee was suspended without pay for

two days; that all of the Patrol Sergeants have issued verbal and written warnings; that Patrol Sergeants have the authority to suspend employees with pay; that Patrol Sergeants have the authority to recommend suspension without pay and discharge; that Patrol Sergeants have the authority to order employees to work overtime; that Patrol Sergeants have the authority to call in employees if the shift is shorthanded however, such call ins are contractually based on employees' seniority; that Patrol Sergeant Deakin recalls having attended 3 supervisory training courses since he made Sergeant; that if there is a vacancy on the Patrol Sergeant's shift, the Patrol Sergeant would sit in on the interview and give his opinion as to whether the applicant would be acceptable; that Patrol Sergeants can recommend whether an employee should pass probation; and that the Patrol Sergeants possess supervisory authority in sufficient combination and degree to be supervisory employees.

6. That Timothy Stieve is the Communications Sergeant and has held that position since June, 1984; that Stieve directs seven employees including four Hazardous Duty Dispatchers and three Communication Assistants; that Stieve formulates the Communications Division schedule on a monthly basis; that Stieve works four days on-two days off with two days of his work week as a Dispatcher and two days of his work week in an administrative capacity; that Stieve's workday is typically 9:00 a.m. to 5:30 p.m.; that he has the authority to adjust his own starting and ending times of work if he feels the need; that when Stieve works as a Dispatcher, there is one other Dispatcher who works from 7:00 a.m. to 3:30 p.m.; that on the other two days when Stieve does not act as a Dispatcher, there is a Hazardous Duty Dispatcher and Communications Assistant on duty at approximately the same time as Stieve works; that Stieve grants employees sick leave and vacation requests; that Stieve evaluates Communications Division employees two times per year; that Stieve has issued verbal warnings to employees on approximately 20 occasions in the last 2 years and on 3 or 4 occasions he has issued written warnings to employees, copies of which are maintained by the Department in employees' personnel files; that Stieve has the authority to suspend an employee with pay, though he has not had occasion to do so; that he may recommend whether an employee will receive a suspension without pay; that on one occasion Stieve recommended that an employee receive a suspension without pay and such recommendation was followed; that two Communication Assistants were hired since Stieve has been the Communications Sergeant; that Stieve, along with the Lieutenant, Captain, Chief Deputy, and Sheriff, sat in on two interviews and Stieve gave his input as to who to hire, although the Sheriff made the ultimate hiring decision; that on both of those occasions the Sheriff chose applicants that Stieve recommended; that Stieve has ordered employees to work overtime; that Stieve has called in employees if the Division was shorthanded; that Stieve recommends whether a new employee will pass probation and believes that this decision is his alone; that Stieve is solely responsible for developing the policy and procedure manual for the Communications Division, although he has not yet started to develop it; that Stieve has issued directives to his employees to inform them of amended work procedures; that Stieve does not know whether he has the authority to settle grievances; that Stieve has attended three supervisory training courses since he made Sergeant; and that Stieve possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

7. That Manny Bolz is the Detective Sergeant and has held that position since August, 1985; that Bolz directs the work of six Detectives and three Clerk Matrons; that prior to his being made Detective Sergeant, Bolz was a Detective normally handling 100 cases; that since becoming Detective Sergeant, he handles 4 cases per year; that Bolz spends approximately 10 hours each week working with the Detectives and the remaining 30 hours of the week performing various administrative tasks; that Bolz is responsible for the Clerk Matrons performing their administrative tasks in the Detective division; that generally Bolz works from 8:00 a.m. to 4:30 p.m., although he works as long as he feels necessary to perform his responsibilities; that generally Detectives work independently; that Bolz has the authority to issue verbal and written warnings and to suspend employees with pay but he has not had occasion to do so; that he has the authority to recommend to Lieutenant No. 2 whether an employee should receive a suspension without pay or be terminated; that he has not had occasion to discipline any employees; that Bolz assigns cases to the Detectives; that Bolz gives input as to whether an employee under his direction should pass probation; that since Bolz has become the Detective Sergeant, no Detectives have been hired from outside the bargaining unit; that one individual from this bargaining unit applied for and was made a Detective and Bolz did not have any input into the decision to make that person a Detective; that the contract provides for this upward movement (to

Detective) from within the unit and the aforementioned unit applicant was the only applicant for that Detective position; that Bolz has ordered Detectives to work overtime; that if the Detective Division is shorthanded, Bolz can call-in an employe or change employe schedules to cover a shift; that the Detectives' schedules are normally pre-established; that Bolz has not had occasion to adjust any employe grievances; and that Bolz possesses supervisory authority in sufficient combination and degree to be a supervisory employe.

8. That Bernard Statz is and has been the Security (Jail) Sergeant since 1984; that he generally works the day shift although he may vary his own hours when he feels it necessary; that there are 15 employes who work under his direction, including 7 Jailers, 6 Clerk-Matrons and 2 Bailiffs; that Bailiffs generally work during the day shift; that generally there is one Clerk Matron who works each shift; that there are generally two Jailers per shift; that Statz also acts as a Jailer when he is on duty; that when Statz is not on duty no one is assigned to fill-in for him; that Statz arranges the Jail Division employes' schedules, though they are generally pre-established; that Statz evaluates the employes who work under his direction in the Jail Division semiannually and he recalls evaluating 13 to 14 Jail Division employes during his tenure as Sergeant; that when an applicant for a vacancy in the Jail Division is interviewed, Statz sits in on the interview and makes a recommendation as to who to hire; that Statz also recommends whether an employe will pass probation; that Statz has issued verbal warnings, and on one occasion he issued a written warning; that Statz has the authority to suspend an employe with pay, though he has not had occasion to do so; that he can recommend that an employe without pay; that on one occasion Statz did not believe a Limited Term Employe was well-suited for his job, and he recommended to Lieutenant No. 2 that the employe be terminated before his term was completed and that recommendation was followed; that on another occasion Statz recommended to Lieutenant No. 2 that an employe be terminated while on probation and that recommendation was followed; that Statz has granted employe sick leave and vacation requests, although he has never questioned such requests; that Statz assigns employes tasks; that Statz has ordered employes to work overtime; that Statz assists in training employes in the Jail Division, and he makes a determination as to whether the employe has received adequate training; that Statz recalls attending 4 or 5 supervisory training courses since he made Sergeant; that Statz possesses supervisory authority in sufficient combination and degree to be a supervisory employe.

9. That Donna Burgess has worked for the Sheriff's Department for 30 years; that she began her joint responsibilities as Administrative Assistant/Support Staff Supervisor in March, 1983; that Burgess' hours are 8:00 a.m. to 4:30 p.m.; that the job description of the Administrative Assistant (effective 4-17-87) is as follows:

1. Will work a minimum of 40 hours per week during the hours established by the Sheriff.
2. Will wear the required Department uniform.
3. Will supervise the overall clerical duties as assigned to the Clerk-Matrons and Clerk-Receptionist.
4. Will perform related secretarial duties as requested by the Sheriff and the Chief Deputy, including but not limited to typing administrative reports and letters, dictation, maintaining all expense records, personnel records, and the collection and maintenance of any other administrative records as required.
5. Will assist in evaluating the work performance of the Clerk-Matrons and Clerk-Receptionist assigned to the Support Staff Division.
6. Will attend related training sessions as directed.
7. Shall keep the office in a clean and orderly fashion.
8. Will perform any other administrative duty as required by the Sheriff.

The above job description is a brief summary but not limited to the above and is subject to change by order of the Sheriff.

that the Support Staff Division is comprised of the following: six Clerk-Matrons work in the Jail Division, three Clerk-Matrons work in the Detective Division, and three Communications Assistants work in the Dispatch Center; that these Clerk-Matrons and Communications Assistants are directly supervised by their Division Sergeants, not by Burgess; that Clerk-Matrons spend approximately 70 percent of their time performing clerical duties and 30 percent of their time performing Matron duties; that Burgess consults with the immediate supervisor of the Clerk Matrons and Communications Assistants three or four times each year to decide which duties they will perform; that on two occasions, Burgess noticed a problem with a Support Staff employee and she brought it to the attention of that employee's Sergeant and that the Sergeant then verbally disciplined that employee; that on another occasion, Burgess learned of a problem with a Support Staff employee and Burgess then informed that employee's Sergeant who then verbally disciplined the employee; that since 1983, on three occasions, Burgess has sat in on interviews of Support Staff applicants along with the Sheriff, Chief Deputy the Division Lieutenant and/or Sergeant and she has recommended the hire of 2 of the 3 applicants ultimately selected by the Sheriff; that Burgess does not have the authority to issue a written warning or to suspend or terminate an employee and she is unsure whether she has the authority to issue oral warnings although she has issued one oral warning during her tenure, which she describes as "minor"; that the Sheriff consulted Burgess when a grievance was filed with him regarding the uniform code for Support Staff employees (a code Burgess had drafted), but that Burgess had no input into the processing of that grievance; that when a new Support Staff employee is to pass probation, Burgess believes she would be consulted by the employee's immediate supervisor if there was a problem, although this situation has never arisen; that if a Support Staff employee desires a transfer, Burgess could consult with the immediate supervisor and the Sheriff and that on one occasion, Burgess was consulted by the Sheriff regarding a transfer, although the Sheriff made the final decision to allow the transfer; that Burgess is not involved with scheduling or directing the work of any of the Support Staff employees; that Burgess receives \$7.98 per hour while the Support Staff employees receive between approximately \$7.26 and \$7.54 per hour; that Burgess does not handle sick leave or vacation requests of the Support Staff - this is handled by their immediate supervisors (the Sergeants); that in the absence of a Sergeant or Lieutenant with authority over Support Staff employees, Burgess has granted overtime to Support Staff employees on five or six occasions during the past year and on three or four occasions over the past year, she has called a Support Staff employee in to work; that Burgess assists the Support Staff employee's immediate supervisor when the support staff employee is evaluated but does not traditionally sign these evaluations; and that Burgess does not possess supervisory authority in sufficient combination or degree to be deemed a supervisory employee.

10. That over the last few years Burgess has not typed any memoranda dealing with labor relations which have not also been copied to the Union or to the employee involved; that Burgess is not involved in preparing the County's proposals for negotiations -- that these labor relations duties are performed by either the secretary for the County's Personnel Director or the secretary for the Corporation Counsel, both of whom have been excluded as confidential employees; that Burgess does not attend any private meetings of the County where labor relations matters are discussed; that Burgess has access to personnel files which are stored in her office; that Burgess is made aware of occasions when the public has complained to the Sheriff about employees of the Sheriff's Department; that when the Sheriff Department offices were being relocated, Burgess was involved in planning and carrying out the relocation and Burgess did not inform employees of "sensitive issues" with respect to the relocation; and that Burgess does not have sufficient access to, knowledge of, or participation in confidential matters relating to labor relations matters to be deemed a confidential employee.

CONCLUSIONS OF LAW

1. That the position of Patrol Sergeant, currently occupied by three incumbents is a supervisory position within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, the occupants are not municipal employees.

2. That the position of Communications Sergeant, currently occupied by Timothy Stieve is a supervisory position within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore, Stieve is not a municipal employee.

3. That the position of Detective Sergeant, currently occupied by Manny Bolz is a supervisory position within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore, Bolz is not a municipal employee.

4. That the position of Security (Jail) Sergeant, currently occupied by Bernard Statz is a supervisory position within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore, Statz is not a municipal employee.

5. That the position of Administrative Assistant/Support Staff Supervisor, currently occupied by Donna Burgess is neither supervisory nor confidential within the meaning of Secs. 111.70(1)(i) and (o)(1), Stats., and therefore, Burgess is a municipal employee.

ORDER CLARIFYING BARGAINING UNIT 1/

1. That the positions of Patrol Sergeant, Communication Sergeant, Detective Sergeant and Jail Sergeant are excluded from the bargaining unit, described above in Finding of Fact 2.

2. That the position of Administrative Assistant/Support Staff Supervisor shall remain included in the bargaining unit, described above in Finding of Fact 2.

Given under our hands and seal at the City of
Madison, Wisconsin this 18th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held.

(Footnote 1 continued on Page 7)

(Footnote 1 continued)

Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

SAUK COUNTY (SHERIFF'S DEPARTMENT)

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

BACKGROUND

On July 21, 1986 the County filed a unit clarification petition seeking to exclude from the bargaining unit described in Finding of Fact 2 the positions of Patrol Sergeant, Detective Sergeant, Communications Sergeant and Security (Jail) Sergeant on the grounds that the occupants of these positions are supervisory employees within the meaning of MERA. The County also sought to exclude from said bargaining unit the position of Administrative Assistant/Support Staff Supervisor, on the grounds that that position and its incumbent is either supervisory and/or confidential within the meaning of MERA. The Union opposed the exclusion of these employees/positions from its bargaining unit on the grounds that the positions were neither supervisory, nor (in the case of the Administrative/Assistant Support Staff Supervisor), confidential and they should properly remain included in the unit.

POSITIONS OF THE PARTIES

In regard to the Sergeant positions, the County contends that the duties, authority and training of the Sergeants has greatly evolved and expanded since 1978 so that Sergeants now can authorize overtime, grant or deny all requests for vacation, sick leave and compensatory leave; they evaluate all employees under them; they effectively recommend that employees pass or do not pass their probationary periods; they have authority to issue oral and written warnings and suspension with pay without seeking approval from their supervisors; they have flexibility in scheduling their own work hours; they assign work to their employees; they act as Officer-in-Charge of their shifts when no higher ranking officers are present on the shift; all Sergeants except Patrol Sergeants (due to contractual necessity of "promoting" from within the unit) are involved in the interviewing and selection of applicants for employment; Sergeants make approximately \$50 per month more than other unit employees (except Detectives). The County also contends that since approximately 1978, the Sheriff's Department has added 12 new employees so that the total employee complement is now 53; also since about 1978, the County has also made a decision to give systematic supervisory training to Sergeants at County expense. The County asserts that, therefore, the Sergeants now possess supervisory duties and responsibilities in sufficient combination and degree to require them to be excluded from the Union's bargaining unit.

In regard to the Administrative Assistant/Support Staff Supervisor, the County argues that the duties, responsibilities and authority of that position and its incumbent indicate that she either should be excluded from the unit as a supervisor or as a confidential employee. The County points to the following duties and responsibilities as indicative of the Administrative Assistant's Supervisory status: she assists the Sergeant or Lieutenant in the semi-annual evaluation of their Support Staff employees; she has recommended the discipline of two Support Staff employees who were then disciplined by their Sergeant or Lieutenant; she was consulted about the transfer of one Support Staff employee who was then transferred by the Sheriff; she annually consults with the Sergeants and/or Lieutenants regarding overall work assignments for employees; she has, in the absence of the Sergeant or Lieutenant authorized overtime five or six times during last year and she has called in employees, when their Sergeant or Lieutenant is absent; she has issued one oral warning to a Support Staff employee; and she sat on the interviewing board for three Support Staff applicants. Even if the Administrative Assistant is found not to be a supervisor, the County contends that she is a confidential employee and properly excluded on that basis. In this regard, the County points to the following facts to demonstrate the confidential status of the Administrative Assistant: she has access to Departmental personnel files; she types disciplinary actions against employees that are sent to the Union; she has been privy to information regarding the planning and relocation of Department offices; and she has knowledge of complaints made by the public against officers because of her typing work for the Sheriff.

The Union argues that the Sergeants are not supervisors and that the Administrative Assistant/Support Staff supervisor is neither a supervisor nor a confidential employee.

In regard to the Sergeants, the Union points to the following facts as indicative of their non-supervisory status: If all Sergeants were found to be supervisors, the ratio of supervisors to employees would be 1 to 3.36 whereas it had been 1 to 10 since prior to 1978; all non-supervisory employees, including the Sergeants, work on a 4 days on and 2 days off cycle; on 2 of the 4 days Sergeants are working, they perform bargaining unit work at least 50% of the time and Sergeants often fill-in for absent employees even on the 2 days when they should perform "administrative" duties; their "administrative" duties are of a routine non-discretionary nature, not requiring the exercise of independent judgment; even though Sergeants can alter their hours of work, they do not do so frequently; even though Sergeants have issued oral and written warnings, the Union contends these warnings are routine under the agreement; only the Communications Sergeant specifically recalled sending copies of warnings to the Union Steward, as required by the agreement; Sergeants' recommendations for disciplining employees have not always been followed; Sergeants receive the same rate of pay as Detectives; and the real supervisors are the four classifications above the Sergeants -- Lieutenant, Captain, Chief Deputy and Sheriff, as evidenced by the Sergeants' lack of authority to promote, discharge and to suspend without pay.

Regarding the Administrative Assistant/Support Staff Supervisor, the Union asserts that the County has failed to produce any evidence to show that Burgess or her position possess indicia of supervisory or confidential status. The Union argues that the Administrative Assistant's access to personnel files, her typing of personnel documents which are routinely given to the Union, her consultation with supervisors over employees over which she has no real authority, her total lack of supervisory powers, all show that she is neither a supervisory nor a confidential employee.

DISCUSSION

The Sergeant Positions

We are faced, initially, with an issue of whether the occupants of various Sergeant positions perform supervisory duties in sufficient combination and degree, to exclude them from the bargaining unit. Section 111.70(1)(o) of the Municipal Employment Relations Act (MERA) defines the terms "supervisor" as follows:

1. 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 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 considers the following factors in determining whether employees should be excluded from employee units as supervisors: 2/

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 a greater, similar or lesser authority over the same employees.

2/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64); City of Manitowoc, Dec. No. 18590 (WERC, 4/81).

4. The level of pay, including an evaluation of whether the supervisory is paid for his skill or 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.

In Dane County, Dec. No. 21406 (WERC, 2/84) we found inter alia that Dane County Sheriff's Department Sergeants were supervisors within the meaning of MERA. As we noted in Dane County, supra:

Decisions concerning the possession of supervisory authority especially for patrol sergeants are often very close questions. In this matter, the Sergeants possess, and many have exercised, the authority to impose on their own disciplinary actions not only in the form of oral reprimands but also written reprimands placed in the subordinate's file. They have also recommended more severe disciplinary actions, such as suspensions of more than one day, and some, though not all, of those recommendations have been followed by higher-ranking officers. The possession of such authority is a significant factor which distinguishes the instant case from others wherein sergeants lacking such extensive disciplinary authority were held to be non-supervisory. Said disciplinary authority, in conjunction with other factors, such as the involvement in performance evaluations, the attendance at supervisory training sessions, and the functioning as Officer-In-Charge, persuade the Commission that the positions of Field Sergeant, Court Sergeant and Security Sergeant possess sufficient responsibilities and authority to render their positions supervisory. (Footnote Omitted)

In the instant case, as in Dane County, supra, although the Sauk County Sheriff's Department Sergeants spend a substantial portion of their time performing bargaining unit work, the Sergeants have also issued oral and written warnings on their own authority; they have recommended more severe discipline and their recommendations most often have been implemented; they have regularly completed departmental evaluations of their employees; they have regularly authorized overtime and have called-in additional employees when needed; they have regularly acted as Officer-In-Charge of a shift in the absence of a higher-ranking officer; they have served on hiring boards with other higher-ranking officers. In addition to the above-listed authority, similar to that found in Dane County, supra, the Sauk County Sergeants have further authority: to schedule their own hours of work, to grant all sick leave, overtime, compensatory time and vacation time, to assign work and to train their employees, to effectively recommend whether employees pass their probationary period and to effectively recommend more severe discipline of employees as well as to effectively recommend the hire of new employees. Furthermore, the County has systematically provided the Sergeants with County-paid supervisory training since approximately 1982.

In our view, although a finding that the Sergeants are supervisors results in a rather high ratio of supervisory to non-supervisory personnel within the Sheriff's Department, given the measure of authority exercised by the Sergeants in the Sheriff's Department, the Sergeants are "supervisors" within the meaning of 111.70(1)(o)1, Stats., and, therefore, appropriately excluded from the bargaining unit. 3/

3/ La Crosse County (Sheriff's Department), Dec. No. 9539 (WERC, 4/82).

The Administrative Assistant/Support Staff Supervisor Position

We turn now to the issue of whether the occupant of the "Administrative Assistant/Support Staff Supervisor" position, Donna Burgess, is either a supervisory or confidential employee. For the following reasons, we conclude Burgess is neither a supervisory nor a confidential employee. The evidence reveals that Burgess does not actively schedule, assign or direct the work of any employees. Rather, from time to time, she is consulted by Support Staff employees' immediate supervisors (the Sergeants) who actually direct support staff employees. Burgess has no authority to issue written warnings or to otherwise discipline Support Staff employees. She has only issued one oral warning in her tenure, which Burgess testified was "minor." She has no authority to adjust grievances. While Burgess is consulted regarding evaluation of support staff employees, and has, on occasion signed the evaluations (along with the Sergeant, Lieutenant, Chief Deputy and Sheriff), it is the Sergeant involved who actually conducts the evaluation. Although she has recommended the hire of three new employees, she has served on these three hiring boards with the Sheriff, Chief Deputy, Captain, the Lieutenant and the Sergeant and only two of the three applicants she recommended were hired by the Sheriff (who made the final hiring decision). In addition, although Burgess was consulted regarding the transfer of a Support Staff employee to another division in the Department, the Sheriff made the final decision to transfer the employee after consulting with Burgess and other officers. It also should be noted that Burgess has only authorized overtime and called in support staff employees in the absence of the employees' immediate supervisors. Finally, although Burgess recommended to Sergeants that two employees receive oral warnings, the Sergeants involved made the ultimate decision whether to issue the warnings to the employees. In these circumstances, clearly the duties and responsibilities of the incumbent of the position in question are not spent in sufficient combination and degree to establish the Administrative Assistant/Support Staff Supervisor as supervisory. Rather, the record demonstrates that the Sergeants are the supervisors of support staff employees.

It appears from the record that the responsibilities that the current Administrative Assistant/Support Staff Supervisor enjoys may be attributable to her rapport with the Sheriff and his officers, developed over her long years of service to the Department and her familiarity with Departmental procedures rather than to any real supervisory authority granted her. In this regard, we note that the job description for the position does not list the array of supervisory powers possessed by the Sergeants. Her "supervisory" responsibilities involve either routine matters not requiring the exercise of independent judgment and discretion (such as, authorizing overtime and calling-in employees if the supervisor is absent), or the supervision of activities, not employees (such as consulting with Sergeants on evaluations and on the scheduling overall work tasks for employees). Thus, the evidence does not support a conclusion that Burgess or the Administrative/Support Staff Supervisor position is supervisory.

In regard to Burgess' alleged confidential status, the record also fails to support a conclusion that Burgess is a confidential employee. In order for an employee to be considered a confidential employee and thereby excluded from the bargaining unit, the Commission has held that such employee must have access, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be "confidential" for such purposes, it must be the type of information that: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer and (2) is not available to the bargaining representative of its agents. 4/

In this case the Employer argues that Burgess is a confidential employee because of (1) her access to personnel files, located in her office (2) her typing of employee disciplinary notices for the Sheriff, normally sent to the Union, (3) her past access to information kept secret from employees and the Union regarding relocation of the Department and complaints by the public against employees. In

4/ Laona School District, Dec. No. 22825 (WERC, 8/85); City of Ashland, Dec. No. 18808 (WERC, 7/81); Wisconsin Heights School District, Dec. No. 17192 (WERC, 8/79).

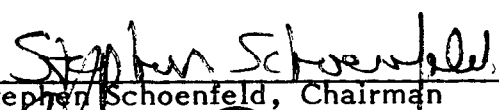
our view, these facts do not establish Burgess' confidential status in a labor relations sense. Burgess has never been involved in meetings involving the formulation of collective bargaining strategies, litigations, or departmental policies; and her involvement in labor relations (employee disciplinary actions) has been primarily typing documents, most of which are eventually shared with the Union. Again, it appears that it may be Burgess' long tenure in the Department and her direct working relationship with the Sheriff that prompted him to confide in her other types of confidential information, not related to labor relations.

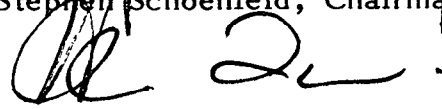
We also note that the County has two other confidential employees who perform confidential work involving labor relations on a regular basis. We therefore conclude Burgess' duties and responsibilities are not sufficient to render her position confidential and she shall remain included in the collective bargaining unit involved herein.

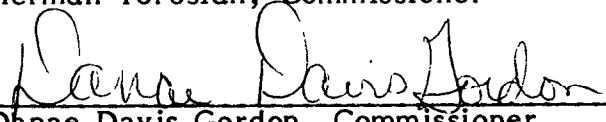
Dated at Madison, Wisconsin this 18th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Stephen Schoenfeld, Chairman


Herman Torosian, Commissioner


Danae Davis Gordon, Commissioner