

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION

Involving Certain Employees of

JEFFERSON COUNTY (SHERIFF'S DEPARTMENT)

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: Case XXVII  
: No. 24825 ME-1698  
: Decision No. 17252-B  
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Appearances:

Mr. Philip C. Ristow, Corporation Counsel, Room 201, Jefferson County  
Courthouse, Jefferson, Wisconsin, 53549, appearing on behalf  
of the Employer.

Ms. Linda S. Vanden Heuvel, Gimbel, Gimbel & Reilly, Attorneys at Law,  
Suite 900, MGIC Plaza, 270 East Kilbourn Ave., Milwaukee,  
Wisconsin, 53202, appearing on behalf of the Petitioner.

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

Wisconsin Professional Police Association, having on June 3, 1980,  
filed a petition requesting the Wisconsin Employment Relations Commission  
to clarify a collective bargaining unit involving law enforcement per-  
sonnel in the employ of the Jefferson County Sheriff's Department, and  
hearing in the matter having been conducted on July 16, 1980 at  
Jefferson, Wisconsin before Examiner Timothy E. Hawks, a member of the  
Commission's staff; and post-hearing briefs having been received by  
September 2, 1980, 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.

FINDINGS OF FACT

1. That the Law Enforcement Employee Relations Division of the  
Wisconsin Professional Police Association, hereinafter referred to as  
LEER, is a labor organization, and has its offices at P. O. Box 151,  
Brookfield, Wisconsin 53005.

2. That Jefferson County, hereinafter referred to as the County,  
is a municipal employer and has its offices at 320 South Main Street,  
Jefferson, Wisconsin 53549.

3. That in the spring of 1972 Wisconsin Council of County and  
Municipal Employees, AFSCME, and Teamsters Local 695, hereinafter re-  
ferred to as Teamsters, filed separate petitions requesting the Wisconsin  
Employment Relations Commission, hereinafter referred to as the Commission,  
to conduct an election among the employees employed in the Sheriff's  
Department of the County to determine the bargaining representative  
of said employees; that during the course of the hearing in that matter  
the teamsters and the County contended, among other things, that the  
Sergeant II positions should be excluded from the collective bargaining  
unit; that on June 16, 1972 the Commission issued its Direction of Elec-  
tion in the matter, 1/wherein, among other determinations, concluded  
that individuals occupying the rank of Sergeant II were supervisors and

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1/ Jefferson County, Case XIII, (11082).

were, therefore, excluded from the bargaining unit; and that on July 11, 1972, following the election conducted in the matter, the Commission certified Teamsters as the collective bargaining representative in the unit described as

All employees of the Jefferson County Sheriff's Department, but excluding the Sheriff, the Chief Deputy Sheriff, the Deputy Lieutenant, the Sheriff's Sergeant II's, clerical employees, cooks and all other employees.

4. That following the issuance of such certification the County and Teamsters entered into successive collective bargaining agreements covering the wages, hours and working conditions of the employees in the above described unit; and that the last of such agreements expired on December 31, 1979.

5. That on June 26, 1979 LEER filed a petition requesting the Commission to conduct an election among all full time employees of the Sheriff's Department including clericals and cooks, but excluding the Sheriff, Chief Deputy Sheriff, Deputy Lieutenant and Sheriff's Sergeant II's, to determine whether the employees in said unit desired to be represented by LEER, or by Teamsters, or by no organization, for the purposes of collective bargaining; that prior to the conduct of the hearing on said petition, both labor organizations and the County, on August 27, 1979 filed a stipulation requesting the Commission to conduct said representation election; and that said stipulation, in addition to containing a list of employees agreed upon as being included in the bargaining unit, and thus eligible to vote, also described the agreed upon appropriate collective bargaining unit as:

All full time deputy sheriffs of the Jefferson County Sheriff's Department, but excluding the Sheriffs, the Chief Deputy Sheriff, the Deputy Lieutenant and Sheriff's Sergeant II's and all other employees.

6. That, pursuant to said stipulation, the Commission conducted an election on September 20, 1979, wherein of 43 employees eligible to vote, 35 cast ballots, 23 voted in favor of LEER, 12 voted in favor of Teamsters, and none of the employees voted in favor of "no" representation; that on September 28, 1979 the Commission certified the results of said election; that thereafter LEER and the County entered into a collective bargaining agreement covering the wages, hours and working conditions of the employees in said unit for the calendar year 1980; and that on June 3, 1980 LEER filed the petition initiating the instant proceeding, contending that individuals occupying the classification of Sheriff's Sergeant II should be included in the collective bargaining unit described in paragraph 5, supra.

7. That the Sheriff's Department consists of one Sheriff, one Chief Deputy, one Lieutenant, six Sergeant II's and fifty-four other employees; that the Chain of Command, in descending order of authority, is as follows: Sheriff, Chief Deputy, Lieutenant, Sergeant II's and Sergeant I's; that the department operates four shifts, namely: 1st - 7:00 a.m. - 3:00 p.m., 2nd - 3:00 p.m. - 11:00 p.m., 3rd - 11:00 p.m. - 7:00 p.m., and a swing shift; that the Sheriff, Deputy Sheriff and Lieutenant all work during the first, or day shift, and typically do not work after 4:30 to 5:00 p.m.; that five Sergeant II's are assigned to patrol divisions as shift commanders; that only one Sergeant II is regularly assigned to each shift; that

the Sergeant II reports one-half hour before the shift begins; that one Sergeant II is assigned as commander of the detectives and normally works during the first shift, at which time four detectives are normally assigned; and that two detectives are regularly scheduled during the second shift.

8. That during each shift one regularly assigned Sergeant II serves as officer in command; that the Sergeant II assigned during the first shift commands three or four patrolmen; that the Sergeant II assigned to the second shift would command between six and eight employees, which number would include besides patrolmen those personnel assigned to the jail and communications; and, that the Sergeant II assigned to the third shift would command a number of employees similar to the second shift.

9. That, while serving as shift commander, the Sergeant II's (a) schedule roll calls and deploy road patrols, (b) assign work to detectives when the Sergeant II of detectives is not on duty, (c) are in authority over jail personnel and communications personnel at headquarters, and (d) they are authorized to issue orders to the deputies on their shifts.

10. That discipline, demotion and discharge may be imposed upon an employee of the department only after the Sheriff files a charge with the Civil Service Commission, which thereupon holds a hearing prior to the imposition of discipline, and that a suspension of any length is also subject to the same procedure; that nevertheless, a Sergeant II may orally reprimand a deputy, may submit a written reprimand to the Lieutenant and Sheriff for the purpose of review and subsequent inclusion in the personnel files; that the Sergeant II's also are the supervisory personnel in immediate contact with the deputies and are consequently vested with the responsibility of submitting to the Sheriff a report summarizing events which might subject an employee to greater discipline; and that the Sheriff relies upon said report in order to form a decision regarding the need to file a complaint with the Civil Service Commission.

11. That the decision to hire or to promote, and the authority to effectively recommend either, is controlled by Civil Service Commission ordinance, and accordingly the Chief Deputy, Lieutenant and Sergeant II's have no discretionary authority in these matters.

12. That the Sergeant II's regularly perform a written evaluation of deputy's under the command at the time said deputies are to make a semi-annual wage progression; that in some cases said increase in wages is perfunctorily granted, however the record established at least one instance where a deputy was denied the increase as a consequence of the Sergeant II's written evaluation; and that the Sergeant's II are also entitled to authorize overtime.

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

#### CONCLUSION OF LAW

1. That the duties and responsibilities assigned to the Sergeant II's in the employ of the Jefferson County Sheriff's Department are in sufficient combination and degree to warrant the conclusion that the occupants of such positions are "supervisors" within the meaning of Section 111.70(1)(o) of the Municipal Employment Relations Act.

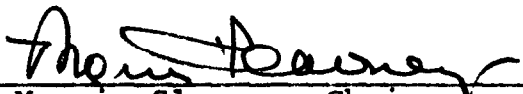
Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following


ORDER CLARIFYING BARGAINING UNIT

1. That the position of Sergeant II continues to be, and the same hereby is, excluded from the collective bargaining unit of law enforcement personnel in the employ of the Jefferson County Sheriff's Department.

Given under our hands and seal at the  
City of Madison, Wisconsin this 9th  
day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner

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

In this proceeding LEER seeks to include the Sergeant II positions in the employ of the County's Sheriff's Department in the collective bargaining unit represented by it. The County opposes the inclusion of such positions in the existing unit.

Today, as in 1972 when we first reviewed their "employee" status, and determined that these positions were supervisory, the Sergeant II's serve

. . . as shift commanders, schedule and deploy the road patrols on their shifts and also are in authority over detectives, jail personnel and communications personnel at headquarters. They are authorized to issue orders to the deputies on their shift as well as to impose minor discipline . . . They engage in regular evaluations of some of their shift members as well as regular meetings with their superiors regarding such evaluations.

While the Sergeant II's no longer "recommend more severe discipline" they are the department's sole representative, with respect to law enforcement personnel during a major part of the week day and their decision to report or not to report an infraction is likely to determine whether disciplinary action is taken at all.

Based upon the record, it is the Commission's conclusion that the position of Sergeant II continues to be supervisory, and therefore should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin this 9th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner