

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL TEAMSTERS UNION LOCAL NO. 662,
affiliated with the INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Complainant,

vs.

CHIPPEWA COUNTY AND
WESLEY A. PEDERSON,

Respondents.

✓
Case LXXIV
No. 25140 MP-1029
Decision No. 17328-B

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller, Levy, & Brueggeman,
S.C.; Attorneys at Law, by Mr. Peter D. Goldberg, for
the Complainant.

Carroll, Parreni, Postlewaite, Anderson, & Graham, S.C.;
Attorneys at Law, by Mr. Thomas J. Graham, Jr., for
Respondent Chippewa County.

Brown, Whinnery & Peterson, S.C., Attorneys at Law, by
Mr. Gregory A. Peterson, for Respondent Wesley A.
Pederson.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

General Teamsters Union Local No. 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America having filed a complaint and an amended complaint wherein it alleged that Chippewa County and Wesley A. Pederson, Sheriff of Chippewa County had committed certain prohibited practices in violation of certain provisions of the Municipal Employment Relations Act and hearing having been held on November 14 and 16, 1979 at Chippewa Falls, Wisconsin before examiner Amedeo Greco, a member of the Commission's staff, and all parties have waived the issuance of Findings of Fact, Conclusions of Law and Order by the Examiner, and having instead requested that the Findings of Fact, Conclusions of Law and Order be issued by the Commission, and the Commission having reviewed the evidence, the briefs and arguments of Counsel, and being fully advised in the premises issues the following Findings of Fact, Conclusions of Law and Order, as well as a Memorandum accompanying same.

FINDINGS OF FACT

1. That General Teamsters Union Local No. 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Complainant Union, is a labor organization and has its offices at Chippewa Falls, Wisconsin.

No. 17328-B

2. That Chippewa County, hereinafter referred to as the Respondent County, operates a County government function, and in that regard, among other departments, operates as Sheriff's Department, and has its offices at Chippewa Falls, Wisconsin.

3. That Wesley A. Pederson, hereinafter referred to as Respondent Pederson, at all time material herein has been the Sheriff of Respondent County; that Respondent Pederson has his offices at Chippewa Falls, Wisconsin; and that Respondent Pederson holds the highest authoritative position in the Sheriff's Department.

4. That at all times material herein Complainant Union has been, and is, the exclusive collective bargaining representative of certain employees of the Respondent County, including Jailors in the employ of the Sheriff's Department; that in that regard the Complainant Union and the Respondent County have been parties to a collective bargaining agreement, effective at all times material herein, covering the wages, hours and working conditions of said employees, including the Jailors; that said agreement, among other things, provides for the processing of grievances filed by employees, including final and binding arbitrations, with respect to disputes arising over the interpretation or application of the provisions of said agreement, as well as provisions recognizing the principle of seniority in layoff and recall of employees, job postings and promotions; that said collective bargaining agreement was negotiated and executed on behalf of the Respondent County by the County Board's Personnel and Negotiations Committee; and that the Respondent Sheriff did not actively participate in the negotiation thereof and he did not personally execute same.

5. That, in accordance with procedures agreed to by the Respondent County and Complainant Union, oral and written examinations are given to job applicants and such procedure is followed to fill vacancies in certain positions in the Sheriff's Department; that Robert Wanish and Daniel Prince in 1975 took such examinations for the position of Jailer in the Sheriff's Department and their names were certified to the Respondent Sheriff for possible hire; that Wanish and Prince were initially hired by Respondent Sheriff in 1975 as Jailors, and said individuals have continued in said positions at all times material herein; and that shortly after the commencement of their employment, Wanish and Prince were issued deputy cards by Respondent Sheriff.

6. That as a result of having been deputized, Wanish and Prince, during the summer of 1979, qualified for, and commenced attending, a law enforcement training program, having a duration of 240 hours; that Respondent County had paid the necessary course fees for such attendance by Wanish and Prince; that by September, 1979 Wanish and Prince, during the year, had attended approximately 120 hours of said course; that on or about September 2, 1979 Respondent Sheriff altered some of the shifts of the Jailors, including the shifts of Wanish and Prince; and that as a result, Wanish on September 6, and Prince on September 2, filed separate grievances with the Sheriff's Department, alleging that the seniority provision of the collective bargaining agreement had been violated as result of the alteration of shifts.

7. That in the morning of September 12, 1979 Wanish met with Respondent Sheriff, along with the Chief Investigator and the Undersheriff, with respect to the grievance: Respondent Sheriff advised Wanish that his grievance was without merit and that Respondent Sheriff intended to revoke Wanish's deputy card; that thereupon Wanish inquired whether he would be permitted to retain his deputy card if he would withdraw his grievance; that in said regard Respondent Sheriff responded that he did not know; that at the close of said meeting the Chief Investigator advised Wanish that, since he no longer was deputized, Wanish was not eligible to attend the law enforcement training program, which was scheduled to resume that evening; that Wanish withdrew said grievance during the day, and that evening telephonically advised Respondent Sheriff of such withdrawal; that during the latter conversation Respondent Sheriff informed Wanish that if the latter behaved and did not cause trouble, his deputy card might be restored by the time the training program resumed at a later date; and that, at least as of the date of the hearing herein, Respondent Sheriff had not restored Wanish's deputy status.

8. That also on September 12, 1979 Respondent Sheriff, along with the Chief Investigator and the Undersheriff, met with Prince; that at the outset of the conversation Respondent Sheriff inquired as to why Prince had filed his grievance; that Prince indicated that he felt that the seniority provision of the collective bargaining agreement had been violated; that Respondent Sheriff also discussed prior disciplinary problems involving Prince; that prior to the close of the conversation Respondent Sheriff informed Prince that the latter's deputy card was being withdrawn and that same would be returned if Prince behaved himself; that as a result of the revocation of his deputy status, Prince was unable to attend the remaining sessions of the law enforcement training program; and that, at least as of the date of the hearing herein, Respondent Sheriff had not restored Prince's deputy status.

9. That the action of the Respondent Sheriff in revoking the deputy status of Wanish and Prince, was, in part, motivated as the result of the filing of grievances by Wanish and Prince.

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

CONCLUSIONS OF LAW

1. That Wesley A. Pederson is a supervisor, within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act, in his capacity as Sheriff of Chippewa County, and that therefore both Sheriff Pederson and Chippewa County are deemed Municipal Employers within the meaning of Sec. 111.70(1)(a) of the Municipal Employment Relations Act.

2. That Chippewa County, by the following acts of its Sheriff, Wesley A. Pederson and that Sheriff Wesley A. Pederson, independently, by revoking the deputy status of Robert Wanish and Daniel Prince, in part, because they had filed grievances alleging a violation of their seniority rights established in the collective bargaining agreement existing between General Teamsters Union No. 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Chippewa County, interfered with, restrained and coerced, as well as discriminated against, Robert Wanish and Daniel Prince in violation of Sec. 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act, because of the exercise of their rights set forth in Sec. 111.70(2) of the Municipal Employment Relations Act.

3. That since the collective bargaining agreement existing between General Teamsters Union Local No. 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Chippewa County provides for final and binding arbitration of disputes arising out of alleged violations of said agreement, the Wisconsin Employment Relations Commission will not assert its jurisdiction to determine whether either Chippewa County and/or Sheriff Wesley A. Pederson violated the contractual agreement procedure or whether Chippewa County and/or Sheriff Wesley A. Pederson violated said agreement by revoking the deputy status of Robert Wanish and Donald Prince.

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

ORDER

IT IS HEREBY ORDERED that Wesley A. Pederson, Sheriff of Chippewa County, as well as any other supervisory employe of the Sheriff's Department of Chippewa County shall:

1. Cease and desist from revoking the deputy status of any of the employes of the Sheriff's Department of Chippewa County in reprisal for exercising their right to file grievances alleging violations of the collective bargaining agreement existing between General Teamsters Union Local 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Chippewa County, covering wages, hours and working conditions of employes employed in the Sheriff's Department of Chippewa County, or in any like or related manner interfering with, restraining, coercing, or discriminating against, any employes in the exercise of their right to self-organization, to form labor organizations, to join or assist said General Teamsters Union Local No. 662, or any other labor organization, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action designed to effectuate the policies of the Municipal Employment Relations Act:

(a) Immediately reinstate the deputy status of Robert Wanish and Daniel Prince and permit them to complete the law enforcement training program which was interrupted by the unlawful revocation of their deputy status.

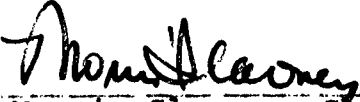
(b) Post in the offices in the Sheriff's Department of Chippewa County, where employes of said department may observe same, copies of the notice attached hereto and marked "Appendix A". Said notice shall be signed by Sheriff Wesley A. Pederson and shall be immediately posted by him, and shall remain posted for a period of sixty (60) days. Reasonable steps shall be taken by Sheriff Pederson to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days from the date of this Order as to what steps have been taken to comply herewith.

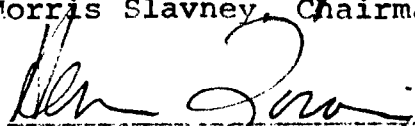
Given under our hands and seal at
the City of Madison, Wisconsin this
12th day of May, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

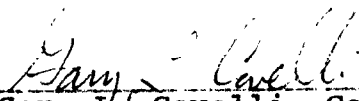
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary I. Covelli, Commissioner

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APPENDIX A

NOTICE TO ALL EMPLOYEES OF THE SHERIFF'S DEPARTMENT

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Municipal Employment Relations Act, I hereby notify employees of the Sheriff's Department of Chippewa County that:

1. I WILL Cease and Desist from revoking the deputy status of any of the employees of the Sheriff's Department of Chippewa County in reprisal for exercising their right to file grievances alleging violations of the collective bargaining agreement existing between General Teamsters Union Local 662 and Chippewa County, covering the wages, hours and working conditions of employees employed in the Sheriff's Department of Chippewa County, or in any other like or related manner interfering with, restraining, coercing, or discriminating against, any employees in the exercise of their right to self-organization, to form labor organizations, to join or assist said General Teamsters Local Union No. 662, or any other labor organization, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. I WILL IMMEDIATELY REINSTATE the deputy status of Robert Wanish and Donald Prince and permit them to complete the law enforcement training program which was interrupted by the unlawful revocation of their deputy status.

By _____
Sheriff, Chippewa County

THIS NOTICE MUST BE POSTED FOR A PERIOD OF SIXTY (60) DAYS AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Pleadings

In its complaint, the Union alleged that the County through the acts of the Sheriff, a supervisor of the County, interfered, restrained and coerced Wanish and Prince, municipal employes, by revoking their deputy status in retaliation of their filing grievances, and thereby discouraged membership in a labor organization by discrimination in regard to terms and conditions of employment, and further by refusing to bargain with the Union, all in violation of Sec. 111.70(3)(a)1, 3, 4, and 5 of the Municipal Employment Relations Act.

In its answer, filed October 24, 1979, the County denied that it had committed any prohibited practices, and further alleged affirmative defenses relating to the powers and authority of Sheriffs under Chapter 59, Wis. Stats. The County would have the Commission dismiss the complaint.

On November 14, 1979, during the first day of the hearing herein, the Union orally amended the complaint to include the Sheriff as a separate Respondent, and, further, the Union alleged that the acts committed by the Sheriff constituted a violation of Sec. 111.70(3)(c) of MERA.

The Sheriff filed an answer prior to the second day of hearing, wherein he denied that Wanish and Prince were municipal employes, and alleged that the Sheriff is not a municipal employer, that his activity involved was not in the interest of the County, that he was not bound by the terms of the collective bargaining agreement between the Union and the County, and that as an elective Sheriff his actions were protected by Art. VI, Sec. 4 of the Wisconsin Constitution.

The Material Facts

The material facts are not disputed and they are set forth in the Findings of Fact.

The Position of the Union

The Union contends that the Sheriff is a "person" within the meaning of Sec. 111.70(3)(c) of MERA, and that he is also a "supervisor exercising the full panoply of powers set forth" in Sec. 111.70(1)(o) of the Act. It further argues that Wanish and Prince are "municipal employes, in that they are employed by the County not in a supervisory, confidential, managerial or executive status; the fact that they had deputy status does not deprive them of such employe status, and that Wanish and Prince are entitled to the full protection of MERA. Therefore, the Union continues, said employes were interfered with, and restrained and discriminated against because of the exercise of their right to file grievances. The Union further contends that the Sheriff's acknowledgement that the return of deputy status is conditioned on good behavior, including

no further filing of grievances, indicates a continuation of such prohibited activity involving employee exercise of statutory and contractual rights. The Union also claims that the activity of the Sheriff indicates a refusal to process the grievances involved, constituting a violation of Sec. 111.70(3)(a)4. The Union would also have the Commission conclude that the "discipline" of Wanish and Prince, for the filing of grievances, constituted a violation of the collective bargaining agreement existing between the Union and the County, and therefore constituted a prohibited practice in violation of Sec. 111.70(3)(a) 5, MERA.

With respect to the issue as to whether the Sheriff's powers are limited by the collective bargaining agreement, the Union argues that the Sheriff is so limited, citing our Supreme Court's decision in City of Glendale 1/ and an opinion of the Attorney General 2/ in support of such modification of the Sheriff's powers set forth in Chap. 59, Wis. Stats. The Union further contends that neither MERA, nor the collective bargaining agreement, are in such conflict with the constitutional authority of the Sheriff which would result in voiding the application of either MERA or the terms of the collective bargaining agreement involved herein, and in support of such argument the Union cites State ex-rel Milwaukee County v. Buech. 3/

The Position of the County

The County contends that the power vested in the Sheriff by the Wisconsin Constitution and Chapter 59, Wis. Stats., when in apparent conflict with the provisions of MERA, must prevail over MERA, and thus the Sheriff has an unfettered right, at least in the absence of a Civil Service ordinance in the County, to appoint and remove any of his deputies at will. Although not directly in point, the County cites a number of our Supreme Court cases relating to conflicting statutory provisions, to the effect that where there is a conflict between a specific and a general statute, the specific statute governs. In that regard, it argues that the powers vested in the Sheriff in Chapter 59 are specific, and have not been repealed by the provisions of MERA. The County, in its brief, did not address issues as to whether the Sheriff was the agent of the County under MERA, or whether the Sheriff was a managerial or supervisory employee of the County within the meaning of MERA.

The Position of the Sheriff

In his brief, for the most part, the Sheriff makes the same arguments as the County. He also contends that Wanish and Prince, as deputies, are not "municipal employees", but "officers", and therefore not entitled to MERA protections. Therefore the Sheriff contends that he has the right to revoke their deputy status, even though Wanish and Prince may have MERA rights as "jailors".

1/ Glendale Professional Policemen's Assn. v. City of Glendale, 83 Wis. 2d 90 (1978).

2/ 63 OAG 147 (1974).

3/ 171 Wis. 474.

DISCUSSION

The Revocation of Deputy Status

There is no issue as to the reason, at least in part, as to why the Sheriff revoked the deputy status of Wanish and Prince. In his testimony the Sheriff admitted that he revoked said authorization partly for the reason that Wanish and Prince had filed grievances. Said motivation was revealed in his following testimony: 4/

- Q Can you tell me why you took the deputy cards for Mr. Prince and Mr. Wanish?
- A It was -- It was a disciplinary action on my part, because I thought in my own opinion that the grievance that they filed was unjust.
- Q Was your withdrawal of the deputy cards based solely upon the filing of grievances or other matters?
- A On the past acts of these two people.
- Q Was this more or less the straw that broke the camel's back?
- A That is correct.

With respect to returning the deputy status to Wanish and Prince, the Sheriff testified as follows: 5/

- Q Now you indicated that you would give the-- you would consider giving the deputy cards back if they straightened up and don't foul up any more. If Mr. Prince or Mr. Wanish were to file another grievance before you give back the deputy card, will that affect your decision whether or not to give back the deputy card?
- A Not if it's a legitimate grievance.
- Q But if you don't consider it a legitimate grievance, it might affect your decision?
- A It may and it may not.
- Q It may be cause for not giving back the deputy cards?
- A Yes.

Further, there is no doubt that the revocation of such deputy status prevented both Wanish and Prince from further attending the law enforcement training school, a benefit permitted them, as deputies, pursuant to Article XX of the collective bargaining agreement covering their wages, hours and conditions of employment.

4/ Transcript, p. 104, Vol II.

5/ Transcript, pps. 106 and 107, Vol. II.

Thus we are satisfied that if Wanish and Prince, as deputies, are municipal employees under the Municipal Employment Relations Act (MERA), such activity by the Sheriff, if the latter is subject to the provisions of MERA, would constitute conduct constituting acts of discrimination, interference, restraint and coercion in violation of Secs. 111.70(3)(a)3 and 1 of MERA.

The Municipal Employee Status of Wanish and Prince

As deputies, or as is any employee in the Sheriff's Department not having the power of arrest, Wanish and Prince are paid by the County for the proper dispatch of the County's business for which the employment of Wanish and Prince were necessary. The legislature has recognized that deputy sheriffs are county employees, as reflected in various provisions of MERA, especially those relating to interest arbitration in Sec. 111.77. The County herein has so recognized such a status when it negotiated a collective bargaining agreement with the Union covering the wages, hours and working conditions of the deputies and other employees in the Sheriff's department in its employ. Therefore, we conclude that deputies, as well as other employees in the Sheriff's Department, are not employed by the Sheriff to the exclusion of the County, but they are, in fact and law, employees of the County.

The Status of the Sheriff

While the Sheriff is elected, he serves the County, and is paid by the County. The Sheriff is responsible for the operation of the Sheriff's Department, and in that regard the Sheriff is not only a managerial employee, but also a supervisor in his relationship to the remaining employees in his department. Contrary to the positions taken by Counsel herein, we conclude that the Sheriff is an agent of the County and that he is responsible for activity prohibited by MERA, not a "person" within the meaning of Sec. 111.79(3)(c) of MERA, but as an agent of the County in his relationship to all the employees in his department.

Regulation of Sheriff's Activities by MERA

The County and Sheriff argue that the powers granted to Sheriffs by the Wisconsin Constitution 6/ cannot be limited by MERA. The Sheriff is a constitutional officer and derives his powers and duties from the same source that the County Board derives its powers, the legislature, and in performance of his statutory functions the Sheriff is not subject to regulation of a legislative nature by the County Board in absence of some state statute conferring such power upon the County Board. 7/ Our Supreme Court in State ex-rel Milwaukee County v. Buech has said

. . . While at common law the sheriff possessed the power to appoint deputies, it was not a power or authority that gave character and distinction to the office. Many other officers as well as sheriffs possessed the power. It was more in the nature of a general power possessed by all officers to a more or less extent and was not peculiar to the office of sheriff. It should not be held, in our judgment, that the constitution prohibits any legislative change in the powers, duties,

6/ Article VI. Section 4.

7/ 29 Op. Atty. Gen. 482 (1940).

function, and liabilities of a sheriff as they existed at common law. If that were true, a constitutional amendment would be necessary in order to change the duties of sheriffs in the slightest degree and, in this respect, "the state would be stretched on a bed of Procrustes". 8/

It is therefore clear that a sheriff's right to appoint and remove deputies may be altered, at least to some degree, by legislative changes. We are also confronted with Sec. 59.21(4), Wis. Stats., which provides, in pertinent part, as follows:

A person appointed under-sheriff or deputy for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the sheriff.

A limitation on such powers of sheriffs was recognized by our Supreme Court in the Buech case, in holding a then existing state statute pertaining to civil service, which also covered deputy sheriffs, to be constitutional. 9/ It is also well established in this state that the provisions of MERA, if possible, should be harmonized with other statutes so that the provisions of MERA may be given effect. 10/

We are satisfied that since MERA protects the right of deputy sheriffs in this State to engage in lawful concerted activities, without discrimination and without threats of reprisals to discourage them from exercising such rights, and that such protection is not in any way limited by either Art. VI, Sec. 4 of the Wisconsin Constitution or any statute relating to the employment of sheriff's deputies.

Thus we are satisfied that the Sheriff, as a supervisory employee of the County, and because of such relationship, the County, have committed prohibited practices with respect to the revocation of the deputy status of Wanish and Prince.

8/ 171 Wis. 474 (1920).

9/ Sec. 16.43, Wis. Stats., 1919.

10/ Muskego-Norway School Dist. No. 9 v. WERB, 35 Wis. 2nd 540 (1967); Glendale Professional Policemen's Assn. v. Glendale, 83 Wis. 2nd 90 (April, 1978).

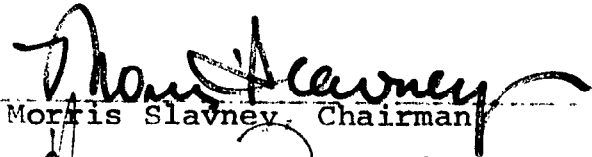
The Alleged Violations of the Collective Bargaining Agreement

The Union's allegations, that prohibited practices were also committed with respect to the Respondent's failure to process the grievances filed by Wanish and Prince, and further by refusing to proceed to arbitration on the "discipline" of said two employes, are matters concerned with procedures established by the Union and the County in their collective bargaining agreement. Since such allegations concern claimed "contractual subjects", such matters would properly be remedied by contractual arbitration and therefore the Commission will not exercise its jurisdiction to determine whether the collective bargaining agreement has been violated.

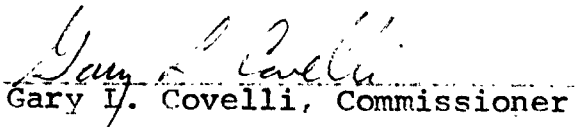
Dated at Madison, Wisconsin this 12th day of May, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary I. Covelli, Commissioner

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