

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DODGE COUNTY

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, on behalf of the Union.

No. 18076-A

6. That the department operates on a three shift, twenty-four hour basis with a staff consisting of the sheriff, the chief deputy, one patrol captain, one patrol lieutenant, three patrol sergeants, one communications sergeant, one jail technician, seven detectives, four secretaries, six full-time and four part-time jailors, one matron/cook, four matrons, and various other part-time employees; that the chief deputy is responsible for the over-all operations of the department in the absence of the sheriff, for the direct supervision of the detectives and clericals, for the communications unit where Sergeant Maas is located and for the jail unit where Sergeant Wallace is located; that while there is some evidence which suggests that the chief deputy may oversee the Patrol Division, other evidence reveals that Patrol Captain Robert Sell and Patrol Lieutenant Gordon Muenchow primarily are responsible for the operation of the patrol division which includes the three patrol sergeants and twenty patrol officers.

7. That each of the three patrol sergeants, Richard Tomashek, William Oestreich, and Stephen Fitzgerald, are assigned to one of the three shifts maintained by the Sheriff's Department along with six or seven patrol officers in the Patrol Unit; that the patrol sergeants report to the patrol lieutenant and patrol captain; that patrol sergeants perform all duties normally performed by patrol officers and spend a substantial amount of time on road patrol; that unlike patrol officers who remain in a specific patrol sector, patrol sergeants are free to travel the entire county evaluating potential trouble spots and occasionally meeting with and/or assisting patrol officers; that while "on the road", patrol sergeants often report to the scene of important occurrences to insure proper handling and staffing; that although one patrol sergeant is the highest ranking officer on the midnight shift, the duties of that sergeant and the other patrol sergeants primarily consist of monitoring the activities of the patrol officers in a routine fashion and are similar to the duties of a lead person; that patrol sergeants review and discuss errors in citations and reports issued by patrol officers with the officers to insure accuracy; that patrol sergeants normally do not issue written warnings under their own signature, but on one occasion a patrol sergeant issued a written warning under his own signature with the approval of the chief deputy; that patrol sergeants do not hire, fire, promote, discharge nor effectively recommend such actions; that patrol sergeants approve overtime pursuant to guidelines set forth by the chief deputy, but that such overtime may be worked routinely without prior approval by patrol officers who secure approval after the fact; that patrol sergeants do not have a significant input into the personnel decisions of the patrol unit; that patrol sergeants have the authority to send a patrol officer home if he reports unfit for duty, but the patrol officers have never sent anyone home; and that each patrol sergeant performs one additional administrative duty as follows: Tomashek is responsible for the review of all patrol officer time sheets to insure accuracy; Oestreich is responsible for maintaining Sheriff's Department vehicles; Fitzgerald is responsible for all scheduling including vacations, illness, and other absences for work by patrol officers.

8. That the jail sergeant, John Wallace, is assigned to and responsible for the operation of the jail unit and the administration of the State Huber program; that he reports directly to the chief deputy; that he spends a substantial portion of his time performing all duties normally performed by other jailors; that he directs the activities of six full-time and four part-time jailors but that such supervision is of a routine nature and is similar to that performed by a lead person; that he schedules hours for full and part-time jailors; that he has, on one occasion, denied a vacation request but that said denial was merely an instance where the affected jailor had not reviewed the posted vacation schedule; that the jail sergeant approves overtime within guidelines set forth by the chief deputy, and that such overtime up to one hour may be worked routinely without prior approval by jailors who secure approval after the fact and that the jail sergeant can authorize overtime in excess of an hour without consulting the chief deputy; that the jail sergeant reviews all time sheets for jail unit employees and submits them to the chief deputy for review; that the jail sergeant does not hire, fire, promote, transfer, discharge employees, nor recommend such action; that the jail sergeant does recommend the retention of part-time jail employees after consulting with other jailors regarding their performance while on probation; that he can relieve an employee who reports unfit for duty but there is no indication that he has ever sent anyone home; that he procures bids regarding the purchase of supplies and equipment but that he has no authority to make any purchases in excess of fifty dollars without the signature and approval of the chief deputy; that all expenditures in excess of fifty dollars must have the express approval of the chief deputy; that he has made recommendations for purchases of equipment to the chief deputy or sheriff who may or may not concur with those suggestions; and

that he prepares initial budget requests for the jail unit which are then reviewed and/or amended by the chief deputy, sheriff, and other County officials.

9. That the communications sergeant, Douglas Maas, is assigned along with five dispatchers and one communications technician to the communications unit; that he reports to the chief deputy and sheriff; that he spends a substantial portion of his time performing all duties normally performed by other dispatchers; that he directs the activities of other Communications Unit employees but that such supervision is of a routine nature and similar to that performed by a lead person; that he schedules hours of work in a routine manner for Communications Unit employees; that he can authorize overtime but only within specific guidelines set forth by the chief deputy; that Maas does not hire, fire, promote, discharge nor effectively recommend such action; that he has made purchases for the Communications Unit but only for expenditures up to fifty dollars with the signature and approval of the chief deputy and that he has no authority to make purchases in excess of fifty dollars, as these purchases require the express review and approval of the chief deputy or sheriff; that he has made recommendations regarding the purchase of equipment to the chief deputy and sheriff who may or may not concur with said recommendations; that he prepares the initial budget for the communications unit which is then reviewed and/or amended by the chief deputy, sheriff and/or other County officials.

10. That the five sergeants in issue do not possess supervisory duties and responsibilities in sufficient combination and degree to be rendered supervisors.

11. That none of the five sergeants participate in the formulation, determination, and implementation of policy to a significant degree nor do they have the effective authority to commit the County's resources.

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

#### CONCLUSION OF LAW

1. That since the positions of patrol sergeant, jail sergeant and communications sergeant are neither supervisory nor managerial in nature, the occupants of said positions are "municipal employees" within the meaning of Section 111.70(2)(b) 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/

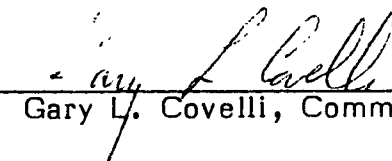
That the positions of patrol sergeant, jail sergeant and communications sergeant are included in the unit set forth in Finding of Fact No. 3 above.

Given under our hands and seal at the City of  
Madison, Wisconsin this ~~14th~~ day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person  
(Continued on page 4)

1/ (Continued)

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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 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. Unless a rehearing is requested under s. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

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

In its petition, the County seeks to exclude all five of its sergeants (three patrol sergeants, the jail sergeant and the communications sergeant) from the bargaining unit of law enforcement personnel currently represented by the Union. The sergeants have been included in this unit since the Union was certified as its representative in 1980. The sole issues for consideration are whether or not the five sergeants are supervisors or managerial employees.

Section 111.70(1)(o)1 of the MERA defines the term "supervisor" as follows:

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.

In concluding whether an individual is a supervisor, the Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees; whether the supervisor is primarily supervising an activity or is primarily supervising employees; the level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees; whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; the number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees; the amount of independent judgment and discretion exercised in the supervision of employees; and the authority to direct and assign the work force. 2/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case, the Commission will find an employee to be a supervisor. 3/

A review of the record regarding the duties and responsibilities of the sergeants clearly establishes that all five of the sergeants spend a substantial portion of their time performing the duties normally performed by the other employees in their respective units. The record further establishes that none of the five sergeants are directly involved in the hiring, promoting, or discharge processes. A review of the underlying facts with regard to each job position as set forth in the Findings of Fact satisfies the Commission that the factors necessary to find their positions as supervisory are not present in sufficient combination and degree to warrant such a conclusion.

Patrol Sergeants

One patrol sergeant is assigned to each shift along with six or seven patrol officers. He acts as the shift commander when the patrol captain and patrol lieutenant are not on duty. Each patrol sergeant is responsible for allocating his time between office work and road work depending on the demand for his services on the road.

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2/ City of Milwaukee (6960) 12/64; City of Manitowoc (18590) 4/81; Door County (Sheriff's Dept.) (20020) 10/82.

3/ City of Lake Geneva (Police Dept.) (18057) 3/81; Kenosha County (Brookside Care Center) (19435) 3/82.

On the average, patrol sergeants spend approximately 60 percent of their total time on the road. Unlike patrol officers, patrol sergeants do not have to remain in a specific patrol sector, but instead are free to travel the entire county, evaluating potential trouble spots and occasionally meeting with patrol officers. While "on the road", patrol sergeants often report to the scene of important occurrences to insure proper handling and staffing.

The County argues that, notwithstanding the fact that the patrol sergeants spend the majority of their time working alongside other patrol officers, they possess the authority to effectively recommend promotion, transfer, discharge and discipline. The record, however, belies the County's assertions. It establishes that patrol sergeants do not normally sign written warnings. They have no input when a vacancy occurs in their platoon. They do not recommend employees for promotion or transfer. While they do review traffic reports and citations, their review is primarily to insure that such reports are accurate and neat. While the patrol sergeants do evaluate patrol officers monthly in writing, there is no evidence that such evaluations are utilized by higher supervisory personnel with regard to promotion, transfer, discipline, etc. The record indicates that Patrol Sergeant Tomashek reviews the patrol officers' time sheets but that this is done primarily to insure accuracy and the chief deputy reviews them thereafter as well as the sheriff and county administrative secretary. Moreover, the chief deputy has changed time sheets without consulting Tomashek. Neither the patrol sergeants nor the chief deputy could specify any instances where patrol sergeants were involved in the discipline of patrol officers and there have been occasions when patrol officers were disciplined without the patrol sergeants being consulted. With regard to the County's assertions that patrol sergeants are expected to adjust grievances, in sixteen years only one grievance was brought to a patrol sergeant, Sergeant Tomashek. Grievances normally are presented to the patrol lieutenant. While there is some evidence suggesting that patrol sergeants give verbal reprimands to patrol officers, other evidence suggests that these "reprimands" may be nothing more than admonishments to improve or correct various aspects of employee performance.

It is true that patrol sergeants can relieve an officer who reports unfit for duty, but they have never done so. They also make recommendations on the retention of probationary employees but this supervisory activity is minimal and is not sufficient in and of itself or in combination with the authority to issue verbal reprimands to warrant a conclusion that the position is supervisory in nature. 4/ Rather, the "supervisory" responsibility in scheduling, reviewing time sheets, reports and citations, and approving overtime concerns routine matters rather than the exercise of independent judgment and discretion. Moreover, the majority of working time is spent in the performance of patrol duties, and in the supervision of activities rather than personnel. Accordingly, we conclude that the occupants of said positions are not supervisory employees.

#### Jail Sergeant

Similar to the patrol sergeants, the jail sergeant also spends the majority of his time performing the same duties normally performed by the other jailors. The jail sergeant, unlike the patrol sergeants, may issue a written warning under his signature but only after consulting with the chief deputy prior to doing so. The jail sergeant's scheduling of hours, approving of overtime and granting of time off duties all fall within the guidelines or operating procedures established by the chief deputy. The chief deputy also reviews jail employees' time sheets after the jail sergeant's review. The jail sergeant has never adjusted any grievances. Grievances originating in the jail unit are submitted to the chief deputy. Other than issuing one written warning as noted in the Findings of Fact, the jail sergeant has not been involved in disciplinary proceedings for jail employees. The jail sergeant does not interview or recommend the hiring of part-time jailors but he does make a recommendation on their retention after consulting with the other jailors regarding the probationary part-time employee's performance. As with the patrol sergeants, the jail sergeant may give verbal warnings or admonishments and may relieve an employee who reports unfit for duty. He has, however, never sent anyone home. Similarly, this ability to recommend retention of part-time jailors in and of itself or coupled with the authority to give verbal

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4/ Door County, supra.

warnings and relieve a jail employee from duty if unfit, is insufficient to warrant a conclusion that the position is supervisory. Contrary to the assertions of the County, we find the jail sergeant's duties, as they relate to the administration of the jail unit, to be routine in nature and directed more towards supervising activities rather than jail unit personnel. Based upon the above, we conclude that the occupant of the jail sergeant position is not a supervisory employee.

#### Communications Sergeant

The communications sergeant is assigned to the communications unit along with five dispatchers and one communications technician. He spends the major portion of his time dispatching, the duty normally performed by the employees in the communications unit. The communications sergeant monitors the dispatching activity in the department. He spends approximately fifteen minutes a week scheduling hours of work for the communications unit employees. He approves overtime but only within the specific guidelines set forth by the chief deputy. He doesn't have the authority to give written reprimands without discussing it with the chief deputy. He has never issued a written warning to a communications unit employee. Moreover, communications unit employees have been suspended without his knowledge or input into the disciplinary determination. Grievances have never been presented to him nor has he been involved in the resolution of any grievances. He does not evaluate communications employees in writing or formally in any other manner and there is no evidence that any informal evaluations which he might make are utilized by higher supervisory personnel to promote, transfer, discipline, etc. While he, too, similar to the other sergeants, has the authority to relieve an employee who reports unfit to work, he has never sent anyone home. Like the other sergeants, he can also give verbal reprimands or admonishments. We find, as with the other sergeants, that the ability to give verbal reprimands and relieve from duty a communications unit employee who reports to work in an unfit condition is insufficient to warrant a conclusion that the position is supervisory. We note that the communications unit sergeant spends the majority of his time in the performance of dispatcher duties and in the supervision of the dispatching activity, rather than communications unit personnel. His "supervisory" responsibility concerns routine matters and he does not exercise independent judgment and discretion. Accordingly, we have concluded that the occupant of said position is not a supervisory employee.

In determining whether an employee is a managerial employee, the Commission has held that the employee must participate in the formulation, determination and implementation of policy to a significant degree or must have the effective authority to commit the municipal employer's resources. 5/

The County claims that by virtue of their special duties, the patrol sergeants are managerial employees. While it is true that all three sergeants perform administrative tasks, the record, however, is devoid of any evidence to suggest that these tasks involve any significant participation in the County's policy-making processes. Thus, the patrol sergeants are not managerial employees.

The evidence indicates that both the jail sergeant and communications sergeant prepare the initial budget request for their respective units. They also make purchasing suggestions with regard to supplies and equipment. Both the budgets and the suggestions however are reviewed and/or amended by the chief deputy and/or sheriff and other County officials. Even for purchases of under fifty dollars, the jail and communications sergeants must secure the signature of the chief deputy; and for all purchases in excess of fifty, they must secure the express approval and signature of the chief deputy or sheriff.

It is apparent that the communications and jail sergeants do not have effective authority to commit the County's resources nor do they, by their budget preparation, participate in the formulation, determination, and implementation of County policy to any significant degree.

The County claims that the jail sergeant in his function as jail overseer and Huber Law administrator writes and implements jail policy. The record reflects that the jail sergeant insures that the jail and the treatment of prisoners comport with administrative rules published by the State Division of Corrections and

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5/ Green County (16270) 3/78; City of Wausau (14807) 7/76; School District of Town of Barksdale et al. (Ondossagon) (19667) 6/82.

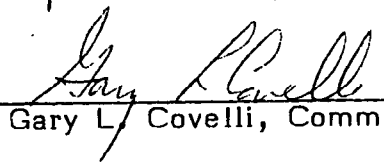
the policies set forth in the Huber Statute. Any change in rules which requires a change in operation or administration is submitted to the sheriff or chief deputy for approval prior to implementation. Thus, the jail sergeant does not formulate or implement jail policy to any significant degree. Therefore, we conclude that neither the communications nor jail sergeants are managerial employees.

Dated at Madison, Wisconsin this 14<sup>th</sup> day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner