

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERALD KEARN, JAMES McARDLE,
EDWARD MONROE, RICHARD THELEN,
HAROLD HOULE, PETER SCHILLER,
ROBERT POPKE, RODDRICK WIGGINS,
ROBERT MANTEY and DONALD
DeBATTISTA,

Complainants,

vs.

MILWAUKEE DEPUTY SHERIFFS'
ASSOCIATION and MILWAUKEE
COUNTY,

Respondents.

Case CXLIV
No. 26787 MP-1152
Decision No. 18112-B

Appearances:

Mr. Gerald Kearn, 6415 South Carroll Circle, Franklin, Wisconsin 53132,
appearing on behalf of the Complainants.

Mr. Patrick J. Foster, Principal Assistant Corporation Counsel, Room 303,
Courthouse, 901 N. 9th Street, Milwaukee, Wisconsin 53233, appearing on
behalf of Respondent Milwaukee County.

Gimbel, Gimbel and Reilly, Attorneys at Law, Suite 900, MGIC Plaza, 270 E.
Kilbourn Avenue, Milwaukee, Wisconsin 53202, by Mr. Franklyn M.
Gimbel, appearing on behalf of Respondent Milwaukee Deputy Sheriff's
Association.

ORDER REVISING EXAMINER'S FINDINGS OF FACT,
REVISING AND AFFIRMING EXAMINER'S CONCLUSIONS OF
LAW AND AFFIRMING EXAMINER'S ORDER

Examiner Christopher Honeyman having, on January 27, 1982, issued his Findings of Fact, Conclusions of Law and Order, together with an Accompanying Memorandum, in the above-entitled matter, wherein he concluded that the Milwaukee Deputy Sheriff's Association and Milwaukee County did not interfere, restrain, or coerce, and/or discriminate against Gerald Kearn, James McArdle, Edward Monroe, Richard Thelen, Harold Houle, Peter Schiller, Robert Popke, Roddrick Wiggins, Robert Mantey and Donald DeBattista, Institutional Protection Officers in the employ of Milwaukee County, and therefore that said Association and the County did not commit, and had not committed, any prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 3 or Secs. 111.70(3)(b)1 and 2 of the Municipal Employment Relations Act, and wherein the Examiner dismissed the complaint filed by said individuals; and said Complainants having, on February 16, 1982, timely filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission review the Examiner's decision, pursuant to Sec. 111.07(5), Wis. Stats.; and no party having filed any brief in support of and in opposition to the entire record. The briefs filed with the Examiner of and in opposition to the

3. That Respondent Milwaukee County, hereinafter referred to as the County, is a municipal employer having its principal offices at its Courthouse located at 901 North Ninth Street, Milwaukee, Wisconsin; and that among its functions the County maintains and operates the County Institutions and the Sheriff's Department.

4. That prior to 1979, and continuing at all times thereafter, the Association has been, and presently is, the exclusive collective bargaining representative of all non-supervisory law enforcement personnel in the employ of the Sheriff's Department of the County.

5. That prior to the year 1970 the County employed employees at its Institutions, who were classified as Institutions Protection Officers, hereinafter referred to as IPO's, whose duties encompassed fire protection and police duties, the latter with respect to the custody of prisoners therein, including the security of the buildings comprising the Institutions; that the IPO's were all cross-trained to perform firefighter and law enforcement duties at the Institutions; that with respect to the latter duties the IPO's were sworn law enforcement officers, with the power of arrest, who testified in court, kept prisoners in custody, served process, were armed, gathered evidence and kept records similar to those maintained by the Deputy Sheriffs in the Sheriff's Department; and that the IPO's wore uniforms similar to those of the Deputy Sheriffs, and received part of their training at the Sheriff's Department Academy.

6. That, however, the IPO's limited their law enforcement duties to prisoners who were housed at the Institutions, did not share law enforcement duties performed by Deputy Sheriffs throughout the County; and that unlike the Deputy Sheriffs, the IPO's were not required to carry weapons while off duty, and were not subject to perform "standby" duties.

7. That prior to 1979 the IPO's were not included in any bargaining unit which was represented by any labor organization for the purposes of collective bargaining; that early in 1979, after the IPO's had been relieved of their fire-fighting duties, certain IPO's formed an organization known as the Institutions Protection Officers Association, hereinafter referred to as the IPOA, for the purpose of representing the IPO's for collective bargaining; that on March 5, 1979, the IPOA filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election to determine whether a majority of the IPO's desired to be represented by the IPOA for the purposes of collective bargaining; that hearing on said petition was conducted by the Commission on April 11, 1979, during which two additional labor organizations, namely District Council 48, AFSCME, and the Association intervened in the proceeding, AFSCME requesting the Commission to accrete the IPO's, then eight in number, to the over-all County wide unit represented by AFSCME, and the Association requesting that the IPO's be accreted to the law enforcement unit of Deputy Sheriffs, which unit was represented by the Association; that on August 10, 1979 the Commission issued its decision in the election proceeding, 1/ wherein it concluded that an election should be conducted among the IPO's to determine whether said employees desired to be represented for the purposes of collective bargaining by the Association, and that should the IPO's select the Association as their representative, the IPO's would be included in a single collective bargaining unit with the Deputy Sheriffs, but that, however, should the IPO's reject the Association, then the IPO's would remain unrepresented; and that in said decision the Commission determined not to permit either AFSCME nor the IPOA on the ballot for the reason that if either of said organizations were selected as the bargaining representative, such selection would result in the creation of a second law enforcement collective bargaining unit.

8. That on an undisclosed date in mid-August, 1979, the County Sheriff proposed to the County Board that the Sheriff's Department assume responsibility for security at the Institutions; that also at about this time representatives of the Association and the County commenced negotiations on an agreement to succeed the agreement covering the wages, hours and working conditions of the Deputy Sheriffs, which agreement was to expire in the latter part of December, 1979; that on September 11, 1979, IPO's Gerald Kearn and Peter Schiller met with the Executive Board of the Association, among them being the Association's President,

1/ Dec. No. 17199.

Gerald Rieder, and the Association's Counsel; that during said meeting those in attendance discussed the fact that the IPO's upon their contemplated transfer to the Sheriff's Department, would have their seniority commence from the date of their transfer to said department, rather than retain the seniority as the date of their employment with the County; that Kern and Schiller were advised that the wages of the IPO's would be frozen at their current rate (which was then greater than that of the Deputies), and that after the latter employes attained parity with the IPO's, the IPO's would then receive increases; that Kern and Schiller indicated that they were not pleased with respect to said matters, indicating that they desired to obtain "everything equal to what the Deputy Sheriffs get"; and that on September 25 Kern sent a letter to Rieder seeking answers in writing on issues raised in the September meeting, but that said letter was never answered.

9. That also at the September 11 meeting Kern and Schiller were advised that the IPO's would be assessed a \$100 initiation fee on becoming members of the Association as a result of the necessity to change the Association's by-laws, and for the services provided in representing the IPO's should the Association be selected as the bargaining representative by them.

10. That on October 9, 1979 the Commission conducted the election among the IPO's to determine whether they desired to be represented for the purposes of collective bargaining by the Association; that on the same day the IPO's were advised by a representative of the Association that the \$100 initiation fee would be waived if the Association were selected as the bargaining representative; that the results of the election disclosed that all 8 IPO's eligible to vote unanimously cast ballots in favor of the Association; that the results of said election were formally certified by the Commission on October 30, 1979; and that, as a result, the IPO's were included in the existing bargaining unit represented by the Association, which unit prior to the election consisted solely of some 412 law enforcement personnel then employed in the Sheriff's Department, consisting of Deputy Sheriff's I and II, Deputy Sheriff Radio Dispatchers, and Deputy Sheriff Sergeant.

11. That also on October 9, 1979 representatives of the Association and the County met in a negotiation session wherein, among other things, the Association proposed that the seniority of the IPO's be established as of the date of their transfer to the Sheriff's Department; and that on October 31, 1979 Counsel for the Association sent a letter to the County Executive, to the Chairman of the County Board Personnel Committee, and to the County Labor Relations Director, which stated, in material part, as follows:

My client has been advised that there is a strong possibility that certain individuals now in County service may be made deputy sheriffs in a lateral move. The Association would expect that if such event occurs, that those individuals would acquire Sheriff's Department seniority beginning with the date when they would become such deputy sheriffs and that as between any such group, persons having the longest amount of service in the security type jobs which they performed for the County, would have the greatest seniority of their group. If such lateral entry takes place in a way inconsistent with my client's hopes, we would expect and anticipate that we would be notified so that further discussions on this matter might be had.

12. That at a negotiation meeting held on November 27, 1979 representatives of the Association and the County entered into the following Letter of Understanding:

On 10/30/79, the Wisconsin Employment Relations Commission, following an election conducted on the Petition of the Institutions Protection Officers Association, certified the Milwaukee Deputy Sheriffs' Association as the exclusive bargaining representative for the classification of Institutions Protection Officer.

On November 27, 1979, Sheriff Michael S. Wolke forwarded a letter to the Milwaukee County Board of Supervisors requesting that the Institutions Protection Officers who had been transferred to his department through the budget process,

be reclassified to Deputy Sheriff I, effective January 1, 1980, or as soon thereafter as possible.

As a result of the current uncertainty which attends the classification of the incumbent Institutions Protection Officers, which cannot be resolved prior to the December 11, 1979, meeting of the Milwaukee County Board of Supervisors, it is understood and agreed that the application of the terms and conditions of the collective bargaining agreement between Milwaukee County and the Milwaukee Deputy Sheriffs' Association to the employes currently classified as Institutions Protection Officers shall be discussed and resolved between the Association and Milwaukee County when it has been determined by action of the County Board whether the incumbent Institutions Protection Officers remain in such classification or are reclassified to Deputy Sheriff I.

In the event the County Board reclassifies the incumbent Institutions Protection Officers to Deputy Sheriff I, the reclassified Institutions Protection Officers shall be placed in that step of pay range 18A which is the next higher than their current rate and shall enjoy all of the benefits of the classification of Deputy Sheriff I effective December 23, 1979.

In the event the County retains the classification of Institutions Protection Officer, then the parties shall meet to discuss wages, hour and conditions of employment for such Institutions Protection Officers for the year 1980.

13. That on November 29, 1979 the members of both bargaining teams tentatively agreed upon the terms to be included in the new collective bargaining agreement, which contained, among others, proposals resulting in the "endtailling" of IPO's upon their transfer to the Sheriff's Department by action of the County Board, and wage provisions resulting in the movement of the IPO's from Pay Range 20 to Pay Range 18A, resulting in hourly increases ranging from three to eighteen cents per hour, while the then Deputy Sheriffs in the Sheriff's Department were granted wage increases of sixty-five cents per hour; that said tentative agreement contained a proposal specifying that longevity and educational bonuses were to be based on years of service as a Deputy Sheriff in the Sheriff's Department; and that as a result of their seniority being "endtailed" the IPO's, for the purposes of layoff, had seniority as of the date they would be transferred into the Sheriff's Department.

14. That on November 30, 1979, at a membership meeting of the Association, which was not attended by any of the IPO's as they could not become members until their transfer into the Sheriff's Department pursuant to the constitution and by-laws of the Association, Association members in attendance ratified the tentative collective bargaining agreement; that the IPO's first learned of the tentative agreement between the Association and the County on December 7, 1979 at a meeting of the County Personnel Committee, during which the Association presented the Letter of Understanding of November 27, 1979 to the members of said committee, and that at the time IPO Kearn advised the committee that the IPO's were not a party thereto; and that following the close of said meeting Kearn obtained from the Association a copy of the proposed wage increases in accordance with the formula set forth in the Letter of Understanding.

15. That the IPO's, then increased to ten individuals, were formally sworn in as Deputy Sheriffs on January 6, 1980; and that the collective bargaining agreement, as previously tentatively agreed upon, was executed by representatives of the Association and the County on January 11, 1980, but that its effective starting date was set forth as December 23, 1979.

16. That in the agreement effective December 23, 1979 the provision relating to seniority for layoff purposes was set forth in Article 3.24(d) as follows:

Seniority for layoff purposes is the relative status of an employe based on continuous service with Milwaukee County as a Deputy Sheriff.

whereas in the collective bargaining agreement immediately preceding the aforesaid agreement said provision read as follows:

Seniority for layoff purposes is the relative status of an employe based on continuous service with Milwaukee County from the last date of hire.

and that the above change shortened the length of seniority possessed by twenty-two individuals, other than IPO's, who had become Deputy Sheriffs prior to December 23, 1979, for periods of from over ten years to thirteen months.

17. That inasmuch as, prior to the election resulting in the selection of the Association as their collective bargaining representative and the resultant inclusion of the IPO's in the Deputy Sheriff bargaining unit represented by the Association, the IPO's were advised by the representatives of the Association that, in negotiating the agreement to succeed the agreement covering Deputy Sheriffs, which was to expire in December, 1979, the Association would seek proposals which would result in "end tailing" the seniority of the IPO's upon their transfer into the Sheriff's Department, and would also attempt to negotiate wage proposals to obtain greater wage increases for Deputy Sheriffs to obtain parity for Deputy Sheriffs with wages to be paid to the IPO's, the Association and its representatives cannot be deemed to have interfered, restrained, and coerced, and/or discriminated against, the IPO's, in the exercise of their rights to engage in concerted activity, nor to have denied fair representation to the IPO's, by reaching an accord in collective bargaining with the County on said matters, which accord was reflected in the collective bargaining agreement effective December 23, 1979.

18. That the County did not interfere with, restrain or coerce, and/or discriminate against, the IPO's in reaching the accord with the Association on the terms of the collective bargaining agreement, covering the wages, hours and working conditions of Deputy Sheriffs in its employ, which became effective December 23, 1979.

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

REVISED AND AFFIRMED CONCLUSIONS OF LAW

1. That neither Milwaukee Deputy Sheriff's Association, its officers and agents, nor Milwaukee County, its officers and agents, by negotiating and entering into the collective bargaining agreement, effective December 23, 1979, covering the wages, hours, and working conditions of Deputy Sheriffs in the employ of Milwaukee County, committed any prohibited practices, either jointly or severally, within the meaning of any of the provisions of the Municipal Employment Relations Act.

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

AFFIRMED ORDER

1. That the complaint filed herein be, and the same hereby is, dismissed in its entirety. 2/

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

2/ 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 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
ORDER REVISING EXAMINER'S FINDINGS OF FACT, AND
REVISING AND AFFIRMING EXAMINER'S CONCLUSIONS OF
LAW, AND AFFIRMING EXAMINER'S ORDER

The Pleadings:

The instant complaint alleges that the Respondent Milwaukee Deputy Sheriff's Association (Association) committed prohibited practices within the meaning of Section 111.70(3)(b)1 and 2 of the Municipal Employment Relations Act (MERA) in the course of contract negotiations, when it failed to satisfy its duty of fair representation as regards the Complainants (IPO's). The complaint further alleges that the Respondent Milwaukee County (County) violated Section 111.70(3)(a)1 and 3 of MERA, by virtue of its participation in said negotiations and its approval of the resulting labor agreement. Specifically, the IPO's objected to the Association's failure to negotiate wages, longevity and educational bonuses for them at a level commensurate with their prior experience as IPO's and their placement at the bottom of the unit's seniority list when they were transferred to the Sheriff's Department and reclassified as Deputy Sheriffs. The IPO's alleged that the Association acted out of hostility towards them as a group and was influenced by internal political considerations. The Association denied the allegations of discrimination and bad faith, contending that the IPO's were treated in the same manner as others who had transferred into the Sheriff's Department before the IPO's. The County denied that it committed any violation of the provisions of MERA.

The Examiner's Decision:

The Examiner found that on October 9, 1979, the IPO's voted to be represented by the Association, which was certified as the exclusive bargaining representative by the Commission on October 30, 1979. On November 30, 1979 the members of the Association ratified a new collective bargaining agreement with the County covering Deputy Sheriffs for the year 1980. The agreement provided that seniority for the purposes of layoff, as well as longevity and educational bonuses, would be based on years of service with the Sheriff's Department rather than with the County. On December 11, 1979, the County's Institutions Security Committee voted to transfer the IPO's to the Sheriff's Department and to have that Department assume the responsibility for providing security at the County institutions. The former IPO's were sworn in as Deputy Sheriffs on January 6, 1980. In evaluating this sequence, the Examiner made the following three Findings of Fact:

. . .

9. That there existed within the Union at the time of Complainants' transfer a general understanding that all new entrants to the Sheriff's Department had layoff seniority calculated from the start of continuous service as a deputy sheriff; that said understanding had applied to twenty-five deputy sheriffs who were previously employed in other County departments; and that Complainants received wages and monetary benefits, under the terms of said agreement, at least as favorable as those received by any prior transferees into the Sheriff's Department.

The Examiner's memorandum included a detailed review and analysis of the evidence relating to the negotiations between the Association and the County, the past relationship between the IPO's and the Association and the process by which the IPO's became Deputy Sheriffs. On the first point, the Examiner noted that the Association and the County while they were negotiating the agreement which became effective December 23, 1979, were well aware of the possibility that the IPO's might be absorbed by the Sheriff's Department. Their treatment, however, was not a matter of primary concern to the negotiators. The Association proposed that they be "endtailed" (added to the bottom of the seniority list) for the purposes of layoff, if and when they would be transferred to the Sheriff's Department. This proposal was made to, and accepted by, the County on October 9, 1979. Later in the negotiations, the Association proposed that Section 3.24 of the agreement be changed, defining seniority in terms of continuous service as a Deputy Sheriff, rather than defining it from date of hire with Milwaukee County. This change was accepted by the County and incorporated into the new agreement. The president of the Association asserted in his testimony that the change was made for the purposes of clarifying the understanding of all the parties as to the manner in which seniority for layoffs was determined. While the Examiner found this proposition debatable, he concluded that the testimony could not be discredited because of the lack of protest from other Association members whose seniority was decreased by the amendment.

The Examiner noted that the longevity and educational bonuses for unit members had been determined on the basis of departmental seniority since well before the negotiations leading to the new agreement, and that neither party to the negotiations made any proposals regarding these benefits. He further noted that, while the Association's acceptance of the County's proposal relating to wages for the IPO's resulted in a very small increase for them in 1980 relative to other Deputy Sheriffs, the County Board had already determined to reduce their wage increases when fire fighting duties had been removed from the IPO's. Had the IPO's not become Deputy Sheriffs, the Examiner concluded, they would probably not have received any greater compensation than received by them as Deputy Sheriffs.

Turning to the relationship between the IPO's and the Association, the Examiner found little to support the allegations of bad faith and hostility, and concluded that the Association's intervention in the 1979 election demonstrated a willingness to provide representation to the IPO's, and the fact that Association officers met with the leaders of the IPO's and canvassed the IPO's regarding their concerns in negotiations further demonstrated a good faith intent to represent the IPO's, and rebutted the suggestion of hostility. The Examiner also concluded that the Association's disclosure of its general intention to "endtail" the IPO's seniority and red circle their wages in the event of their transfer to the Sheriff's Department, made prior to the representation election, served to bolster the Association's claim of good faith in their dealings with the IPO's.

In reviewing the process by which the IPO's became Deputy Sheriffs, the Examiner found that the decision to allow lateral entry to the Sheriff's Department was intended to protect the job security of the IPO's. Had lateral entry not been allowed, the eleven IPO's would have been forced to compete against two hundred other applicants for deputy's positions and take a competitive examination to qualify for the job. No other employe had ever become a Deputy Sheriff without going through the examination process.

The standard applied by the Examiner in evaluating the foregoing facts and evidence is that a union may not take actions towards those whom it represents which are arbitrary, discriminatory or in bad faith, 3/ but that beyond this restriction the union enjoys a broad range of discretion. 4/ The Association's conduct in "endtailing" the IPO's was found to be permissible under this standard, as it stood in accord with the treatment of prior transferees and the evidence failed to demonstrate any compelling grounds for granting preference to the IPO's as a class. Similarly, the wages and benefits afforded the IPO's were found to be

3/ The Examiner derived this standard from Vaca v. Sipes, 386 U.S. 171, 190 (1967), Mahnke v. WERC, 66 Wis. 2d 524 (1974) and Ford Motor Company v. Huffman, 345 U.S. 330 (1953).

4/ Masullo v. General Motors Corp., 398 F. Supp. 188 (1975), Vaca v. Sipes, supra, Ford Motor Company v. Huffman, supra.

consistent with those enjoyed by prior transferees. As to the IPO's final objection, that they had not been consulted nor permitted to vote on the agreement between the Association and the County, the Examiner found that the former IPO's had, in fact, been consulted regarding the proposed agreement, but were not eligible to vote on ratification since they were not yet Association members.

The Petition for Review:

The IPO's petition for review did not specify the basis for their objection to the Examiner's decision, stating simply "the right to appeal." The right to petition for review of an Examiner's decision attaches to any party who is "dissatisfied" 5/ with the decision. Where the petition does not state the petitioner's grounds with any particularity, and the only brief filed in support of the petition is that which was submitted for the Examiner's consideration, the petitioner is deemed to be renewing the arguments made before the Examiner 6/ and asserting that the ultimate Findings of Fact upon which the adverse portions of the decision rest are "clearly erroneous as established by the clear and satisfactory preponderance of the evidence." 7/ The Commission, in this case, would deem those to be Findings of Fact 9, 10 and 11.

Discussion:

The Examiner found, as an ultimate fact, that the Association generally understood seniority of Deputy Sheriffs prior to the new agreement was based on departmental service, rather than length of service with Milwaukee County in general. This Finding was based primarily on the testimony of Gerald Rieder, President of the Association. Mr. Rieder contended that the change in the collective bargaining agreement was in the nature of a clarification and was motivated by a federal court ruling relating to minority hiring practices within the County, and was unrelated to the entry of the former IPO's into the unit. This contention was balanced against the County's contrary understanding of the seniority provision and the facial meaning of the agreement itself. There being no objective evidence in the record to resolve the question one way or the other, the Examiner found it necessary to draw certain inferences from the surrounding circumstances and the available information. A significant factor in the Examiner's decision to credit Mr. Rieder's testimony was the failure of other affected employees to protest the amendment. The Examiner reasoned that this reflected the understanding of the group most critically concerned with the seniority language that there had been no change in their relative positions on the seniority list.

We disagree with the Examiner's conclusion in said respect. It is patently obvious from the plain wording of the provision involved, namely "Seniority for layoff purposes of an employe is based on continuous service with Milwaukee County from the last date of hire", that Rieder in no way could have interpreted said language to mean what he claimed it to mean. Further, there is no evidence that during the negotiations of said language or anytime thereafter anyone conveyed such an understanding nor is there any evidence of a past practice which would add credence to such an understanding.

Our Findings indicate that ten IPO's were transferred to the Sheriff's Department in January, 1980 and that their seniority was "endtailed" to reflect their seniority in said department on the date so transferred, but it also should be noted that some twenty-two Deputy Sheriffs already in the Department on said date had their seniority rankings reduced anywhere from over ten years to thirteen months.

While the IPO's contend that the Association was hostile towards them, thus motivating the Association to propose and negotiate changes in the collective bargaining agreement which favored the Deputy Sheriffs over the IPO's, in the Commission conducted election the eight IPO's eligible to vote unanimously

5/ Section 111.07(5), Wis. Stats.; City of Wauwatosa, Decision No. 13385-B, at 3 (12/75).

6/ Hillview Nursing Home, Decision No. 14704-B, at 3 (7/78).

7/ ERB 12.09(2)(a).

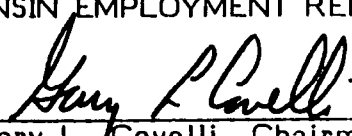
selected the Association as their exclusive collective bargaining representative, at a time when they were aware that such selection would place them in a single bargaining unit with the Deputy Sheriffs, that the County was contemplating their transfer into the Sheriff's Department as Deputy Sheriffs, that the Association was attempting to negotiate a seniority provision which would result in the "end tailing" of IPO seniority, and that the Association was proposing parity of wages for Deputies and the IPO's.

Under such circumstance we cannot conclude that the Association denied fair representation to the IPO's, or that it committed any other alleged violation of the provisions of MERA. It follows that the County also did not violate any of the provisions of MERA with respect to the rights of the IPO's.

Dated at Madison, Wisconsin this 25th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

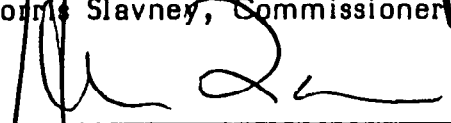
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner