

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Appearances :

Mr. Michael J. Wilson, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54220, on behalf of the Union.

Manitowoc County having filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit by determining whether Lieutenants in the employ of its Sheriff Department should be excluded from said unit, which is presently represented by Manitowoc County Sheriff's Department Employees, Local 986 B, AFSCME, AFL-CIO; and hearing in the matter having been held on August 11, 1980 at Manitowoc, Wisconsin before Examiner Amedeo Greco; and briefs having been received from the parties by November 10, 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, Conclusion of Law and Order Clarifying Bargaining Unit.

1. That Manitowoc County, hereinafter referred to as the County, is a municipal employer having its offices at the Courthouse, Manitowoc, Wisconsin; and that the County, among other functions, maintains and operates a Sheriff's Department.

2. That Manitowoc County Sheriff's Department Employees, Local 986 B, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization, having its offices at P.O. Box 370, Manitowoc, Wisconsin; and that at all times material herein the Union is the collective bargaining representative of non-supervisory law enforcement personnel in the employ of the County.

3. That prior to November 1, 1979 the County operated, as separate departments a Traffic Department and a Sheriff's Department; and in said regard the Union and the County were parties to two separate collective bargaining agreements covering wages, hours and working conditions of employees employed in said two separate departments for the year 1979; that effective November 1, 1979, by action of the County Board of Supervisors, the Traffic Department was merged with the Sheriff's Department; and that since said merger the County has recognized the Union as the collective bargaining representative of the employees in the merged department; and that the instant proceeding was initiated by the County seeking a determination as to

whether the position of Lieutenant in the Sheriff's Department should be excluded from the collective bargaining unit on the claim that such position is a supervisory position.

4. That presently the Sheriff's Department, which has approximately 60 employees, is headed by the Sheriff and a Chief Deputy; that the Department consists of four divisions, namely, Patrol, Investigation, Support, and Jail; that each of said divisions is headed by a Director, a position not included in the collective bargaining unit; that the Patrol Division has twenty six officers, including Director Orville Panosh; that the officers therein are employed on three shifts as follows:

<u>4:00 a.m. - 12:00 p.m.</u>	<u>12:00 p.m. - 8:00 p.m.</u>	<u>8:00 p.m. - 4:00 a.m.</u>
1 Lieutenant	1 Lieutenant	1 Lieutenant
1 Sergeant	1 Sergeant	1 Sergeant
4 Patrolmen	7 Patrolmen	10 Patrolmen;

that the Lieutenants do not as a general rule perform any patrol duty, and only do so when checking the performance of officers on their shifts or when assisting officers at the scene of a serious accident; that the Lieutenants assign duties, grant time off, approve compensatory time off, call in off duty officers in order to maintain minimum manning, effectively recommend the calling in of special units, such as the SWAT team, train officers, review the work performance of officers on their shifts, grant overtime, and maintain time records; and that when there is no superior officer on duty the Lieutenants are responsible for the operation of the department, such activity usually occurs during portions of the 12:00 p.m. - 8:00 p.m. shift, and during the entire following shift, and on said occasions the Lieutenants are in charge of any detectives on duty, as well as the jail even though the detectives are employed in a separate division, as are the jail employees.

5. That in January, 1980 the County issued a position description wherein the duties of the Lieutenants were described, and included therein were the responsibility for administering discipline, and evaluation of subordinate officers; that thereupon the Lieutenants advised the County that they would not perform such duties since they were bargaining unit employees; and that however, should the Commission conclude that the Lieutenants should be excluded from the unit as supervisors, the County will require the Lieutenants to assume and perform such responsibilities.

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 Lieutenants in the employ of the Manitowoc 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 Sec. 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 Lieutenant be, and the same hereby is,


excluded from the collective bargaining unit of law enforcement personnel in the employ of the Manitowoc County Sheriff's Department.

Given under our hands and seal at the
City of Madison, Wisconsin this 12th
day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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

In this proceeding the County seeks to exclude Lieutenants in the employ of its Sheriff's Department from a bargaining unit of law enforcement personnel on the claim that the incumbents of such positions perform supervisory duties. The Union opposes the removal of such positions from the existing unit. The duties and responsibilities of the position involved are set forth in the Findings of Fact.

The term "supervisor" is defined in Section 111.70(1)(o) of the Municipal Employment Relations Act (MERA) 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."

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:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgement and discretion exercised in the supervision of employees. 1/

1/ Fond du Lac County (10579-A), 1/72.

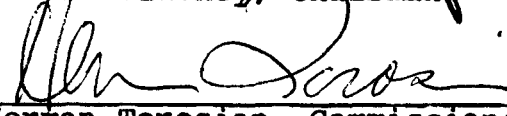
The Commission is satisfied that the Lieutenants herein perform duties and responsibilities in sufficient combination and degree to conclude that the incumbants thereof are supervisors within the meaning of MERA, and therefore we have excluded said positions from the bargaining unit involved herein.


Dated at Madison, Wisconsin this 12th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner