

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

Involving Certain Employees of

SAWYER COUNTY (SHERIFF'S DEPT.)

Case XL
No. 28212 ME-2015
Decision No. 19219

Appearances:

Mr. Dennis A. Pederson, Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, 9730 W. Bluemound Road, Wauwatosa, Wisconsin 53226, appearing on behalf of the Petitioner.
Mr. Frank W. Duffy, County Clerk, Sawyer County, 406 Iowa Avenue, Hayward, Wisconsin 54843, appearing on behalf of Sawyer County.
Mr. James Ellingson, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO (By brief only), Route 1, Box 2, Brule, Wisconsin 54820, appearing on behalf of Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association, Law Enforcement Employee Relations Division having on May 28, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among law enforcement personnel in the employ of the Sheriff's Department of Sawyer County to determine whether said employees desired to be represented by said Petitioner for the purposes of collective bargaining; and hearing in the matter having not been scheduled pending efforts of the parties to enter into a stipulation for such an election, and efforts in that regard having not been successful, hearing in the matter was conducted on October 15, 1981 at Hayward, Wisconsin, before Edmond J. Bielarczyk, Jr., a member of the Commission's staff; that although its representative could not appear at the hearing, Wisconsin Council 40, AFSCME, AFL-CIO, was permitted to intervene in the matter, on the basis that it was the bargaining representative of the employees involved; and representatives of the County and the Petitioner having stated their positions with respect to the issues on the record, and AFSCME having filed a brief in the matter, after reviewing a copy of the transcript of the hearing; 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

1. That Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, hereinafter referred to as WPPA, is a labor organization and has its offices located at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.
2. That Sawyer County, hereinafter referred to as the County, is a municipal employer and has its offices at the Sawyer County Courthouse, 406 Iowa Avenue, Hayward, Wisconsin 54843; and, that among its governmental functions the County maintains and operates a Sheriff's Department, wherein individuals occupying the following classifications are employed:

<u>Classification</u>	<u>No. in Classification</u>
Sheriff	1
Chief Deputy	1
Deputy Sheriff	8
Dispatcher/Jailor	3
Jailor/Dispatcher	1
Dispatcher	1
Cook/Matron	2
Matrons	5

3. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization and has an office located at Route 1, Box 2, Brule, Wisconsin 54820; and that AFSCME and its Local 1213-B and the County were parties to a collective bargaining agreement, in effect from January 1, 1979 through December 31, 1980, covering wages, hours and conditions of employment of employees of the County in the following described collective bargaining unit:

All regular full-time and regular part-time employees of the Sawyer County Law Enforcement Department, but excluding the Sheriff, supervisory, confidential employees, cooks, matrons and the Chief Deputy.

4. That in the petition initiating the instant proceeding WPPA seeks an election to determine whether the employees in the above described unit desire to be represented by it for the purposes of collective bargaining; that, however, during the course of the hearing on said petition, the County and WPPA agreed that the appropriate unit should properly be described as follows:

All regular full-time and regular part-time law enforcement employees having the power of arrest in the employ of the Sawyer County Sheriff's Department, excluding the Sheriff, and all executive, supervisory, managerial and confidential employees.

5. That although no representative of AFSCME was present at the hearing, said organization does not take issue with the description of the bargaining unit agreed upon by the County and WPPA.

6. That all parties agree that Chief Deputy, Donald Sheehan, who has the authority to effectively discipline employees, to authorize overtime, to assign work, and to grant employees time off, is a supervisory employee, and therefore is not to be included in the above-described bargaining unit; and that full-time Deputy Sheriffs, David Aubert, Wayne Corbine, Roger Diamond, Dave Lyman, Michael Stanton, Alvin VanCamp and Duane Weingarten, all having the power of arrest, are properly included in said agreed upon unit.

7. That Charles Skoles, Peter Weatherhead and Donald Parker are employed full-time in the classification of Dispatcher/Jailor; that AFSCME, contrary to the County and WPPA, would exclude said positions from the unit on the claim that said individuals do not possess the power of arrest; that, however, the record establishes that said individuals possess such power of arrest while they perform their duties; that Richard Hagen is employed as a regular full-time Jailor/Dispatcher and that Donald Mrotek is employed as a regular full-time Dispatcher; that AFSCME, contrary to the County and WPPA, also contends that said individuals do not possess the power of arrest; and that, on the contrary, the record again establishes that said individuals possess such power while performing their duties.

8. That two regular full-time Cook/Matron positions, occupied by Karen Cline and Josephine Wade, are maintained in the Sheriff's Department; that the occupants of said positions have the power of arrest, although they spend a majority of their time in cooking duties, while only performing as matrons when female prisoners are in custody, and only during the daytime shifts worked by said two employees; that during the ten month period from December 1, 1980 through September 30, 1981 the County housed female prisoners on 134 days; that, although

having the power of arrest, said two positions were not included in the law enforcement bargaining unit represented by AFSCME, but were included in general Courthouse unit, which unit is also represented by AFSCME; and that neither the County nor the labor organizations involved herein contend that said two employees should be included in the law enforcement unit.

9. That the County also employs five individuals as on-call Matrons, namely Vicky Turngren, Barbara Lyman, June Nelson, Julie Marrow and Delores Lein, all of whom possess the power of arrest; that Turngren, who performs duties as a part-time Secretary, is the daughter of the County Sheriff; that the remaining Matrons work the second and third shifts only when female prisoners are in custody; that Lyman, Nelson, Marrow and Lein are not required to work when called, inasmuch as the one called may have other plans, thus requiring the calling of one of the three remaining employees; and that the nature of the scheduling of their work hours, and the number of hours worked by them in the ten month period ending at the end of September 1981 establish that Lyman, Nelson, Marrow and Lein are casual part-time employees.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time law enforcement employees having the power of arrest in the employ of the Sawyer County Sheriff's Department, excluding casual employees, the Sheriff, and all executive, supervisory, managerial and confidential employees, constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That a question of representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act exists among the employees of Sawyer County in the collective bargaining unit set forth in para. 1, supra.

3. That since Cook/Matrons Karen Cline and Josephine Wade possess the power of arrest, to effectuate the statutory directive set forth in Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act to avoid fragmentation of collective bargaining units, said positions are properly included in the law enforcement unit set forth in para. 1, supra, rather than being included in the unit consisting of employees of Sawyer County employed in the "Courthouse" unit.

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


DIRECTION OF ELECTION

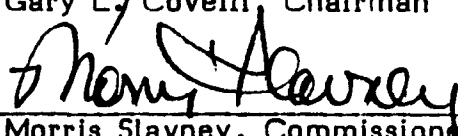
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within (30) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time law enforcement employees having the power of arrest in the employ of the Sawyer County Sheriff's Department, excluding casual employees, the Sheriff and all executive, supervisory, managerial and confidential employees, who were employed by Sawyer County on December 28, 1981, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees voting desire to be

represented by the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division (LEER), or by Wisconsin Council 40, AFSCME, AFL-CIO, or by neither of said organizations, for the purpose of collective bargaining with Sawyer County, on wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 28rd day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

In this proceeding the WPPA seeks an election among law enforcement personnel having the power of arrest, employed in the Sawyer County Sheriff's Department to determine whether said employees desire to be represented by WPPA for the purpose of collective bargaining. AFSCME has represented said unit in the past. While AFSCME made no appearance at the hearing, since it had been a party to the most recent collective bargaining agreement covering employees in the Sheriff's Department, it was permitted to intervene, and its participation has consisted of filing a brief upon a review of the transcript of the hearing.

While the parties agreed to the description of the bargaining unit, it is to be noted that the Commission has amended the agreed upon description to specifically set forth that casual employees are excluded from the unit.

The parties agree, and so does the Commission, that the position of Sheriff and the Chief Deputy are excluded from the unit. The commission also accepts their agreement that the full-time Deputies are included in the unit. AFSCME would exclude from the unit the Dispatcher/Jailors, the Jailer/Dispatcher, and the Dispatcher, on the claim that the occupants of such positions do not possess the power of arrest. The record establishes otherwise, and therefore said positions are included in the unit.

The County, as well as both organizations, would exclude the full-time Cook/Matrons from the unit, apparently on the basis that they only act as matrons when female prisoners are in custody, and perhaps on the basis that the occupants of the position are included in the non-law enforcement employee "Courthouse" unit presently represented by AFSCME. However, the two employees involved work full-time in the Sheriff's Department, they have been granted the power of arrest, and they are subject to the supervision and management of the Sheriff. Their inclusion in the "Courthouse" unit bifurcates law enforcement personnel into two units, thus causing an unwarranted fragmentation contrary to the policy expressed in MERA. They are properly included in the unit involved herein rather than in the "Courthouse" unit.

Inasmuch as the Matrons, other than the Cook/Matrons are employed on an "on call" basis, and because the record established that the individuals on such "on call" employment work only when they are available, we are satisfied that they do not possess a sufficient community of interest with regular full-time and regular part-time employees to be included in the collective bargaining unit. Further, Vicky Turngren, the daughter of the Sheriff, occupies such a position. Had we included the Matron positions in the unit, Turngren would not have been included among the eligibles to vote, for the reason that her relationship, as the child of the head of the Department, would create an unacceptable conflict of interest.

Dated at Madison, Wisconsin, this 28th day of December, 1981.

By Gary L. Covelli
Gary L. Covelli, Chairman
Morris Slavney
Morris Slavney, Commissioner