

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

WISCONSIN PROFESSIONAL POLICE :
ASSOCIATION/LEER DIVISION :

Involving Certain Employees of :

LACROSSE COUNTY :
(SHERIFF'S DEPARTMENT) :

Case LXVIII
No. 28489 ME-2039
Decision No. 19539

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Appearances

LaCrosse County by Mr. William Shepherd, Assistant Corporation Counsel, and
Mr. Kenneth E. Guthrie, County Personnel Director, LaCrosse County
Courthouse, LaCrosse, WI 54601, appearing on behalf of the Municipal
Employer.

Mr. Patrick J. Coraggio, LEER Administrator, 9730 West Bluemound Road,
Wauwatosa, WI 53226, and Mr. Dennis A. Pedersen, Collective Bargaining
Consultant, Route 1, Box 288, Tomah, WI 54660, appearing on behalf of
the Petitioner.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association, Law Enforcement Employee Relations
Division having on August 7, 1981 filed a petition requesting the Wisconsin
Employment Relations Commission to conduct an election among law enforcement
personnel in the employ of LaCrosse County to determine whether said employees
desire to be represented by said Petitioner for the purposes of collective
bargaining; and hearing in the matter having been conducted on October 28, 1981 at
LaCrosse, Wisconsin, before Douglas V. Knudson, a member of the Commission's
staff; and post hearing briefs having been received by February 19, 1982; 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 LaCrosse County, hereinafter referred to as the County, is a
municipal employer and has its offices at the LaCrosse County Courthouse,
LaCrosse, Wisconsin 54601; and, that among its governmental functions the County
maintains and operates a Sheriff's Department and a Traffic Police Department.

3. That LaCrosse County Traffic Police and Deputy Sheriff's Association,
hereinafter referred to as the Association, is a labor organization and has an
office located at P.O. Box 1803, LaCrosse, Wisconsin 54601; and, that the
Association and the County were parties to a collective bargaining agreement in
effect from January 1, 1981 through December 31, 1981, covering wages, hours and
conditions of employment of employees of the County in the following collective
bargaining unit:

All regular Law Enforcement personnel, radio operators, and
Jailors, including those regularly assigned female jailors,
but excluding all supervisory, elected, clerical,
confidential, or part time personnel, which includes "on call"
relief jailors.

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; and that the
parties stipulated to the following description of the bargaining unit for such an
election:

No. 19539

All regular full-time and regular part-time law enforcement employees having the power of arrest, including jailers, employed by LaCrosse County, but excluding all supervisory, managerial, elected, clerical, confidential, and, casual employees, which includes on call relief jailers.

5. That at the hearing herein, conducted on October 18, 1981, the Association stated it did not want to appear on the ballot in the election; that however, subsequently, on February 15, 1982, the Association notified the Examiner in writing that it had changed its position, and desires to appear on the ballot in any election directed herein; and, that said notification was received prior to the close of the briefing schedules and therefore was timely filed.

6. That the County contends Sergeants Larry Robinson, Larry Norris, Ted Lisota, and Lee Wolf, all employed in the Traffic Police Department, and Dorothy Lord, employed as a sergeant in the Sheriff's Department, are supervisory employees and should be excluded from the bargaining unit; and, that WPPA contends the sergeants are not supervisory employees and should remain in the bargaining unit.

7. That the four sergeants in the Traffic Police Department report directly to the Chief of Police and have as their main duty the supervision of the three patrol officers on their respective shift under them; that each sergeant supervises a shift, and in the absence of the Chief, has command of the department; that the position of assistant chief has been vacant since 1979 and the four sergeants have assumed the duties previously performed by the assistant chief, such as court officer functions, safety programs, and, training; that the involvement of the sergeants in the hiring process includes interviewing, rating, and checking references of job applicants; that the sergeants have given oral reprimands and written reprimands; that the sergeants can change patrol assignments or work schedules when necessary; that the sergeants approve requests by the patrol deputies for sick leave, vacation, leave without pay, funeral leave, compensatory time off, and overtime; and that the sergeants annually evaluate the performance of patrol deputies and prepare monthly summaries of the activities of the deputies for the chief.

8. That the jail sergeant, Lord, who reports to the Sheriff and under Sheriff, is directly responsible for the day-to-day operation of the jail and for the supervision of the personnel employed in the jail as jailers; that Lord has effectively recommended the hiring of two additional jailers and the discharge of a probationary employee; that Lord prepares the work schedules for the jailers; and, that Lord can authorize overtime and call in additional employees without prior approval.

9. That all of the five sergeants in issue exercise supervisory responsibilities in sufficient combination and degree so as to constitute them supervisory employees.

10. That the telecommunicators who work in the Central Dispatch Center do not have arrest powers, and therefore, are not appropriately included in a bargaining unit of employees having the power of arrest.

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

CONCLUSIONS OF LAW

1. That a question concerning representation exists among the employees included in the following collective bargaining unit deemed appropriate within the meaning of section 111.70(4)(d)2.a. of the Municipal Employment Relations Act:

All regular full-time and regular part-time law enforcement employees having the power of arrest, including jailers, employed by LaCrosse County, but excluding all supervisory, managerial, elected, clerical, confidential, and, casual employees, which includes on-call relief jailers.

2. That the occupants of the position of sergeant are supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and therefore, are not municipal employees within the meaning of section 111.70(1)(b) of the Municipal Employment Relations Act.

3. That the position of telecommunicator is filled by employees without the power of arrest, and therefore the occupants of said position are not law enforcement personnel within the meaning of the Municipal Employment Relations Act, and as such are excluded from the collective bargaining unit involved herein.

4. That the Association made a timely request to appear on the ballot in the election directed herein.

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 forty-five (45) 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 including jailors, employed by LaCrosse County, but excluding all supervisory, managerial, elected, clerical, confidential, and, casual employees, which includes on-call relief jailors, who were employed by LaCrosse County on April 14, 1982, 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, or, by the LaCrosse County Traffic Police and Deputy Sheriff's Association, or, by neither of said organizations, for the purpose of collective bargaining with LaCrosse County, on wages, hours and conditions of employment.


Given under our hands and seal at the City of Madison, Wisconsin this 14th day of April, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

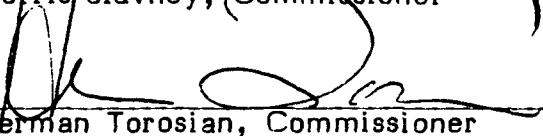
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

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

By its petition filed on August 7, 1981, the Wisconsin Professional Police Association, LEER Division, seeks an election among law enforcement personnel employed by the County, which personnel are presently represented by the LaCrosse County Traffic Police and Deputy Sheriff's Association. At the hearing, the president of the Association stated that it did not wish to appear on the election ballot. The Association subsequently notified the Examiner that it desired to be placed on the ballot. The Commission deems such notification to be timely in nature, and therefore, the Association will appear on the ballot in the election directed herein.

The parties agreed to a bargaining unit of regular full-time and regular part-time law enforcement employees having the power of arrest, including jailors, employed by LaCrosse County, but excluding all supervisory, managerial, elected, clerical, confidential, and, casual employees, which includes on-call relief jailors. The parties, however, were unable to agree as to whether the five sergeant positions, presently occupied by Larry Robinson, Larry Norris, Ted Lisota, Lee Wolf, and Dorothy Lord, should be included in the bargaining unit. The Employer, contrary to the Union, maintains that said positions should be excluded from the bargaining unit on the basis that the occupants of said positions are supervisors. The parties were also unable to agree as to whether the telecommunicators should be included in the bargaining unit.

The Issue as to Sergeants

The organizational structure for the Traffic Police Department consists of a chief, an assistant chief and four sergeants, in addition to four investigators and sixteen patrol deputies. The position of assistant chief has been vacant since 1979 when Assistant Chief Robert Pehler was promoted to Chief. The County does not plan to fill the position of assistant chief in the future. Since that time, the four sergeants have handled the duties previously performed by the assistant chief, including court officer functions, scheduling of employees, and conducting of safety and training programs. The only person having greater authority than the sergeants is the Police Chief.

The sergeants in the Traffic Department have been involved in the hiring of employees since Chief Pehler took over the department in 1979. Due to a low turnover of personnel, the department has hired only two employees since 1979. The sergeants were involved in the interviewing and rating of the job applicants on both of those occasions. Sergeant Norris also did the background investigation of the applicants, which involved checking their references.

The sergeants have the authority both to take and to effectively recommend disciplinary action against employees by initially issuing an oral or a written reprimand, and then, advising the Police Chief of any further action which the sergeant believes should be taken. Sergeants have given written reprimands to several employees. The sergeants also have exercised their authority to give oral reprimands to the employees under their supervision. Only one employee has been discharged from the Traffic Department in the last several years. Sergeant Wolf was involved in the investigation resulting in that discharge which was for the misappropriation of funds.

Pehler has told the employees of the Traffic Department that the sergeants are his right-hand men and that their orders are to be obeyed. The job description specifies that the sergeants have supervisory responsibilities over patrol deputies, jailors and/or support personnel. The patrol sergeants have the authority to change a patrol assignment because of employee sickness, absenteeism, or, other events within a patrol area. The sergeants also can change employee work schedules to cover employee absences. When requesting sick leave, vacation, leave without pay, funeral leave, compensatory time off, or overtime certification, a patrol deputy completes a form and gives it to the shift sergeant for approval. If a patrol deputy calls in sick, the sergeant has the discretion to replace the absent deputy either by having an on duty deputy work overtime, or by calling in an off duty deputy. The sergeant can, and has, performed the patrol duties of the absent officer, when he has not replaced the absent officer.

In the absence of the Police Chief, the senior available sergeant is in

command of the LaCrosse County Traffic Police. Sergeant Robinson, who is the least senior Sergeant, recently was in charge of the department for a two or three day period while the Police Chief was at a convention in Oshkosh.

The main duty of the patrol sergeants is to supervise the three patrol deputies on their respective shifts. Each sergeant supervises a shift. The sergeants also perform patrol duty, which includes checking on the deputies then on patrol, but do not patrol an assigned area as do the patrol deputies. The amount of time spent in the field by these sergeants varies according to the shift. The day shift sergeant spends almost all of his time in the office, whereas sergeants on the other shifts spend a majority of their time on patrol duty. As part of their duties in supervising employees, the sergeants prepare an Employee Development Review for each employee on their shift on an annual basis. The sergeants have so evaluated the patrol deputies since 1979. Sergeants Norris, Lisota and Wolf also perform a monthly written summary of the activities of the patrol deputies on their respective shifts for the Chief.

In the Sheriff's Department, the jail sergeant, Lord, reports to the Sheriff and underSheriff. Lord is in charge of ten jailers. There are no other sergeants in the jail. Like the sergeants in the Traffic Department, Lord also has responsibilities for hiring, evaluating, disciplining and discharging of the jail employees in the Sheriff's Department. Lord has effectively recommended the hiring of two additional jailers, and, the discharge of a probationary employee. Lord has the authority to authorize jail employees to work overtime or to call in additional employees for work without the prior approval of the Sheriff or underSheriff. In situations where an additional jailer is required, Lord calls in a jailer from the "on call list." Lord prepares the work schedules for employees in the jail.

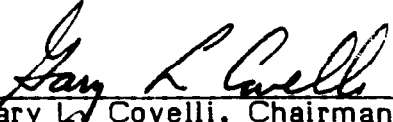
Although a finding that the sergeants are supervisors results in a rather high ratio of supervisory to non-supervisory personnel within the Traffic Department, given the measure of authority exercised by the sergeants the Commission concludes that the employees occupying the positions of sergeant in both the Sheriff's Department and the Traffic Department are "supervisors" within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and therefore, appropriately are excluded from the bargaining unit. 1/

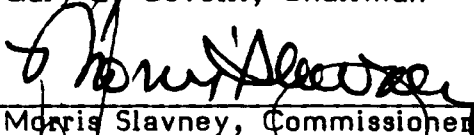
The Issue as to Telecommunicators


As a result of a reorganization by the County, the radio operators will be moved from the Traffic Police Department to a new Central Dispatch Center and will assume the title of telecommunicators. The Central Dispatch Department will be under the joint authority of the LaCrosse City Council and the LaCrosse County Board. This department will provide telecommunication services for the police, fire and medical services of both the City and the County. No personnel in the Central Dispatch Department have arrest powers at the present time, nor, will they have such powers in the future. The telecommunicators will not be utilized for assisting either the patrol deputies or the people that work in the jail. Since the telecommunicators do not have the power of arrest, they are not appropriately included in a bargaining unit consisting of employees having the power of arrest.

Dated at Madison, Wisconsin this 14th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

1/ Village of Butler (16844).