

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
LEER DIVISION OF THE :  
WISCONSIN PROFESSIONAL :  
POLICE ASSOCIATION :  
Involving Certain Employees of :  
DOOR COUNTY :  
(SHERIFF'S DEPARTMENT) :  
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Case XXXVIII  
No. 29812 ME-2109  
Decision No. 20020

Appearances:

- Mr. Patrick J. Coraggio, LEER Administrator, 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226, appearing on behalf of LEER Division, Wisconsin Professional Police Association.
- Mr. Michael Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of Local 1658, AFSCME, AFL-CIO, Door County Sheriff's Department Employees.
- Mr. James C. Pankratz, Corporation Counsel, 920 Egg Harbor Road, Sturgeon Bay, Wisconsin 54235, appearing on behalf of Door County (Sheriff's Department).

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association having on May 11, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time employees of the Door County Sheriff's Department, to determine whether said employees desired to be represented for the purpose of collective bargaining by said Association; and a hearing having been held on July 27, 1982, in Sturgeon Bay, Wisconsin, before Examiner Duane McCrary; and at the outset of the hearing Local 1658, AFSCME, AFL-CIO, Door County Sheriff's Department Employees having been permitted to intervene in the matter on the basis of the fact that it is the voluntarily recognized bargaining representative of certain employees of Door County Sheriff's Department; and the Commission, having considered the entire record and the briefs of the parties, and being fully advised in the premises, hereby 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 Door County, hereinafter referred to as the County, is a municipal employer, having its offices at the Door County Courthouse, 138 South Fourth Avenue, Sturgeon Bay, Wisconsin 54235; 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
Road Sergeant	3
Communication and Jailer Sergeant	1
Investigator	1
Road Deputy	11
Communication/Security Deputy	5
Law Enforcement Clerk	1
Matrons	10

3. That Local 1658, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization and has an office located at P. O. Box 370, Manitowoc, Wisconsin 54220; and that AFSCME 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 the Sheriff's Department employees occupying the classifications of Road Deputy, Communication/Security Deputy and the Law Enforcement Clerk.

4. That in the instant proceeding WPPA seeks a representation election among law enforcement personnel in the employ of the Sheriff's Department in the following alleged appropriate collective bargaining unit:

all regular full-time and regular part-time employees excluding the Sheriff, Chief Deputy, Sergeants, Supervisors, managerial and confidential employees.

5. That WPPA would include the positions of Investigator, Road Deputy and Communication/Security Deputy; that, in addition to said three positions, AFSCME contends that the Road Sergeant and the Communication and Jailer Sergeant should also be included in said law enforcement unit; and that the County contends that the occupants of the Sergeant, as well as the Investigator, positions are supervisory employees.

6. That Gary Bies, Frank Sleeter and Charles Brann are employed full-time in the classification of Road Sergeant and work the 8:00 a.m. to 4:00 p.m., 4:00 p.m. to midnight, and, midnight to 8:00 a.m. shifts, respectively; that, at least three Road Deputies are usually assigned to a shift along with two Road Deputies who overlap on the second and third shifts; that the Road Sergeants actively assign the Road Deputies to work in three sectors of the County, north, middle and south, with the exception that on the day shift, one employee always patrols the northern sector; that if the Road Sergeant is off duty, the senior Road Deputy will make the assignments; that on weekends and at night the Road Sergeant must insure that the jail is run properly; that the Road Sergeant performs all duties normally performed by a Road Deputy and spends a substantial amount of time on road patrol; that the Road Sergeant is responsible for the law enforcement activity on his shift; that the Road Sergeant does not hire, fire, promote, discipline, discharge employees, nor effectively recommend such actions; that, however, their recommendations regarding transfers have been considered; that the Road Sergeants approve overtime work; and that the Road Deputies may be directed by the Investigator, Communication/Jailer Sergeant, Chief Deputy and Sheriff.

7. That Allen Buehler is employed full-time in the classification of Investigator and generally works either 8:00 a.m. to 5:00 p.m., or 8:00 a.m. to 4:00 p.m., Monday through Friday or whenever needed; that the Investigator processes all criminal investigations and related matters in the County; that, during the course of an investigation, Buehler assigns different aspects of the investigation to other officers while working with them, and has approved overtime for officers working with him; that Buehler directs the activities of other employees only while he is conducting an investigation and at no other time; that while the Investigator has the power to immediately suspend and to verbally reprimand employees, he has not done so; that Buehler has no authority to hire, fire, promote,

or evaluate employees; that the Investigator does not schedule vacations or shifts; and that Buehler is paid at the Road Sergeant's wage rate and primarily supervises an activity rather than employees.

8. That Floyd Miller is employed as Communication/Jailer Sergeant and generally works from 8:00 a.m. to 4:00 p.m.; that Miller directs the activities of five Communication/Security Deputies, who answer telephones, dispatch all calls, page and dispatch the ambulance, book prisoners and see to their needs; that the Road Sergeants, the Chief Deputy and the Sheriff may also direct the activities of the Communication/Security Deputies; that Miller is responsible for the secured portion of the jail, the proper admission of new inmates and their care; that Miller is responsible for serving all civil papers and warrants to be served in the County; that Miller advises the Road Sergeants of papers needing service and the Road Sergeants, in turn, give them to the Road Deputies for service; that Miller schedules vacation, holidays, sick leave and emergency funeral leave for the Communication/Security Deputies; that Miller does not possess the authority to fire, promote, transfer or discharge employees, however, he has counseled an employee for disciplinary purposes; and that Miller primarily supervises an activity rather than employees.

9. That the County maintains a list of ten female employees, who usually are the wives of deputies, who work as Matrons only when female prisoners are in custody; that Sergeant Miller contacts prospective Matrons on an ad hoc basis and effectively recommends their hire to the Sheriff; that once hired, the Matrons are given the power of arrest; that the County does not regularly employ Matrons on a full or part-time basis; and that said Matrons are casual part-time employees.

10. That the County employs Gordon J. Lauder as a Law Enforcement Clerk, who performs clerical functions and does not have 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 the positions of Road Sergeant, Communications and Jailer Sergeant and Investigator are non-supervisory in nature, and that therefore said positions are occupied by "municipal employees" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

3. That a question of representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act has arisen among the municipal employees in the collective bargaining unit set forth in para. 2, supra.

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

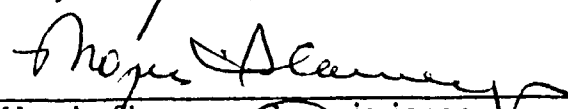
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time law enforcement employees having the power of arrest employed by the Sheriff's Department of Door County, excluding casual, supervisory, managerial, and confidential employees, who were employed by Door County on October 20, 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 desire to be represented by the Wisconsin

Professional Police Association, Law Enforcement Employees Relations Division (LEER) or by Local 1658, AFSCME, AFL-CIO, or by neither of said organizations, for the purpose of collective bargaining with Door County on wages, hours and conditions of employment.

Given under our hands and seal at the City of  
Madison, Wisconsin this 20th day of October, 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

WPPA in this proceeding requests the Commission to conduct an election among regular full-time and regular part-time non-supervisory law enforcement personnel employed in the Door County Sheriff's Department, and in that regard would include those officers occupying the classifications of Investigator, Road Deputy and Communication/Security Deputy. AFSCME, which represents Department employees (the last collective bargaining agreement between it and the County having expired on December 31, 1981, which agreement covered only the classifications of Road Deputy, Communication/Security Deputy, and Law Enforcement Clerk), now contends that the appropriate unit should also include the classifications of Road Sergeant and the Communication and Jailer Sergeant, while the County would exclude the Sergeants and the Investigator on the claim that the occupants of said positions are supervisory employees.

Hearing in the matter was held on July 27, 1982. The Department's Chief Deputy, Charles Gulley, the highest supervisory employe under the Sheriff, primarily testified as to the duties and responsibilities of the employes occupying the various classifications in the Department. Road Sergeant Gary Bies and the Investigator, Allen Buehler, testified as to their duties and responsibilities. Exhibits relating to the job descriptions of all classifications in the Department, except the Matrons, were made part of the record. In its brief, filed after the close of the hearing, AFSCME urged the Commission to schedule further hearing in the matter since neither the Communication and Jailer Sergeant, nor any Matron, testified during the course of the hearing with respect to their duties. On the basis of the record testimony, including the exhibits, we conclude that the evidence adduced during the course of the hearing, with respect to all classifications in issue, is sufficient for the Commission's determination of the issues involved.

It has long been established that the Commission, in determining the appropriateness of units consisting of law enforcement personnel, will include therein only otherwise eligible law enforcement personnel who have the power of arrest. 1/ The record herein established that the Law Enforcement Clerk does not possess that power. Therefore that position is excluded from the unit involved herein.

The record also establishes that the Matrons are employed on an "on-call" basis and work only when female prisoners are in custody. Therefore it is clear that their employment is casual, 2/ and neither regular full-time nor regular part-time, and it follows that the Matrons are not included in the unit herein.

Thus, we are faced with the remaining issues as to whether the incumbents in the Sergeant and Investigator positions, perform supervisory duties, in sufficient combination and degree, to exclude them from the bargaining unit. Section 111.70(1)(o) of the Municipal Employment Relations Act (MERA) defines the terms "supervisor" as follows:

1. 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 employes, 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 considers the following factors in determining whether employes should be excluded from employe units as supervisors: 3/

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- 1/ Walworth County (11686) 3/73; Marquette County (12625) 4/74.
  - 2/ City of Medford (Police Dept.) (16846) 2/79.
  - 3/ City of Milwaukee (6960) 12/64; City of Manitowoc (18590) 4/81.

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 a greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisory is paid for his skill or 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 judgment and discretion exercised in the supervision of employees.

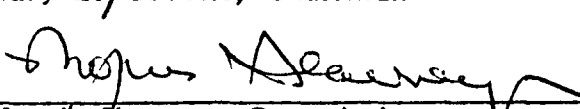
A review of the record regarding the duties and responsibilities of the Sergeants, as well as of the Investigator as set forth in the Findings of Fact, satisfies the Commission that the duties and responsibilities of the occupants of said positions are not present in sufficient combination and degree to establish said positions as supervisory. Much of the "supervisory" responsibility of said positions concerns routine matters rather than the exercise of independent judgment and discretion, and the majority of the working time of the occupants of said positions is spent in the performance of police duties, and in the supervision of activities, rather than personnel. Therefore, we have concluded that the occupants of said positions are "employees".


Dated at Madison, Wisconsin this 20th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
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Gary L. Covelli, Chairman

  
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Morris Slavney, Commissioner

  
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Herman Torosian, Commissioner