

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION**  
Involving Certain Employees of  
**CALUMET COUNTY**

Case 123  
No. 63527  
ME-1102

**Decision No. 20050-B**

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**Appearances:**

**Gordon E. McQuillen**, Director of Legal Services, Wisconsin Professional Police Association, 340 Coyer Lane, Madison, Wisconsin 53713, on behalf of Calumet County Law Enforcement Employees Unit, Wisconsin Professional Police Association/LEER Division.

**James R. Macy**, Davis & Kuelthau, S.C. Attorneys at Law, P.O. Box 1278, Oshkosh, Wisconsin 54903, on behalf of Calumet County.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On April 1, 2004, Wisconsin Professional Police Association filed a petition with Wisconsin Employment Relations Commission by which it sought to clarify an existing Association represented bargaining unit of Calumet County Sheriff's Department employees by the inclusion therein of the position of Patrol Sergeant. The County opposes the petition because it believes the Patrol Sergeant is a supervisor and/or a confidential and managerial employee.

The matter was held in abeyance at the request of the parties with a hearing ultimately being held on August 16, 2005 in Chilton, Wisconsin, before Paul Gordon, Commissioner, with a stenographic record being made available to the parties. A briefing schedule was set and the record was closed on January 5, 2006 upon receipt of the Association's reply brief.

No. 20050-B

Having reviewed the record and being fully advised in the premises, the Commission hereby makes and issues the following

**FINDINGS OF FACT**

1. Calumet County, herein the County, is a municipal employer with offices at 207 Court Street, Chilton, Wisconsin and maintains a Sheriff's Department which provides law enforcement services 24 hours per day, seven days a week.

2. Calumet County Law Enforcement Employees Unit is an affiliate of Wisconsin Professional Police Association/LEER Division, herein the Association, with offices located at Madison, Wisconsin. The County and the Association are parties to a 2002-2003 collective bargaining agreement which contains the following recognition clause:

The Employer recognizes the Association as the exclusive bargaining agent for all regular full-time and regular part-time law enforcement employees employed in the Sheriff's Department excluding the Sheriff, Captain, Lieutenants, and supervisory, managerial, and confidential employees, and as their representative for purposes of collective bargaining on matters pertaining to wages, hours and conditions of employment in accordance with the certification of the Wisconsin Employment Relations Commission, Case XXVI, No. 29850 ME-216, Decision No. 20050 dated January 3, 1983.

3. In October, 2003, Sheriff Gerald Pagel proposed a reorganization of the Sheriff's Department to the County aimed at providing supervision of Patrol Officers during the evening and early morning hours while allowing Lieutenants to have day time schedules that better suited their responsibilities. In November, 2003 the County Salary and Personnel Committee considered and approved the proposed reorganization under which the number of employees would remain the same but the bargaining unit position of Traffic Sergeant would be converted to the non-unit position of Patrol Sergeant and two bargaining unit Corporal positions would be created.

Brett Bowe filled the new Patrol Sergeant position until March of 2005 when he was promoted to a Patrol Lieutenant position. Bill Tyson then filled the new position. Bowe generally supervises Tyson.

4. The Position Description for the former Traffic Sergeant position states in pertinent part:

## TRAFFIC SERGEANT

### Characteristic Work of the Class

Nature: Under the direction of the Traffic Captain serves as the lead man of a shift or tour of duty supervising the work assignments relative to the operating of the department in the absence of the captain, conducting himself within prescribed departmental policies, rules and regulations; performs traffic officer duties.

### Examples of Duties:

1. Assumes charge of a shift or tour of duty in the absence of the traffic captain
2. Independently resolves or contacts captain on major problems that occur during his assigned shift.
3. Inspects personnel and equipment.
4. Notes performance deficiencies and strives through training and counseling to correct them.
5. Enforces traffic laws, and other federal and state laws.
6. Investigates accidents and complaints and collects evidence.
7. Issues tickets and makes arrests.
8. Renders first aid and assistance.
9. May be assigned special program responsibilities.
10. Assists the sheriff or other law enforcement officers; such assistance shall be coordinated with the Traffic Captain.
11. Appears as a witness in court.
12. Maintains records and prepares reports.

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5. The Position Description for the Patrol Sergeant position at issue states in pertinent part:

<b>Job Title:</b>	Patrol Sergeant
<b>Salary Level:</b>	A07
<b>Department:</b>	Sheriff's Department
<b>Reports to:</b>	Field Service Lieutenant
<b>FLSA Status:</b>	Non-Exempt

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**Summary** Under general direction of the Lieutenant, performs responsible law enforcement work; supervises, and monitors daily operation of those employees assigned to the Field Services division. Performs related duties as required.

**Essential Duties and Responsibilities** *include the following. Other duties may be assigned.*

Works closely with Sheriff's Department administration to evaluate and ensure the safe, efficient, and effective operations of the Field Services division, so as to provide appropriate law enforcement services to the public. Makes recommendations regarding such matters as personnel, enforcement of laws, adjustment of patrol strength on assigned areas, or support activities. Responds to management requests for assistance in maintaining the professional level of service to the public by the Sheriff's Department.

Conducts shift briefings, reviews training materials and disseminates information of previous shift activities. Conducts orientation of new employees in accordance with appropriate procedures.

Supervises staff and assigns work tasks to individual deputies and investigators and utilizes other available resources to aid in the demands asked of the department. Ensures efficient completion of duties of assigned personnel on shift. Makes policy and procedural decisions when questions arise.

Provides guidance to deputies relating to day to day questions or problems that may arise from their own work responsibilities. Reviews reports of subordinates to ensure they are accurate and conform to Departmental standards. Responds to calls for assistance from patrol deputies and investigators.

Responds to criminal investigations, accidents and death investigations per departmental rules and regulations. Monitors the activities of the department staff and takes appropriate action toward aiding any officer or emergency service provider exposed to danger or any situation where danger might be impending.

In the absence of a superior, calls out aid from fellow officers or other agencies to control any existing or potential emergency.

Conducts preliminary investigations of incidents as necessary; collects and preserves physical evidence, protects crime scene, and reports and records all facts of incident.

Responds to calls for service, acts upon information of otherwise addresses concerns of the public without undue delay. Handles all calls with tact, diplomacy, and with only the amount of force necessary. Prepares news releases and handles public relations activities as required.

Maintains personal contact and keeps an open line of communication with department personnel, including administrative, field service, dispatch, and jail personnel concerning laws, rules, and procedures.

Inspects vehicles and other equipment issued to deputies to make sure all equipment is maintained to function as required, and assigns maintenance of the same. May authorize emergency repairs as needed to essential equipment.

Supervises and participates in the enforcement of all County Ordinances, State and Federal laws, rules and regulation, as well as departmental rules and regulations. Supervises and participates in the detection and apprehension of violators of the law, both municipal and criminal. Makes arrests and reports and enforces violations following recognized departmental policies and procedures.

Maintains relationships with other law enforcement agencies, courts, community groups, and others as assigned.

Observe all employees' appearance and conduct to ensure it meets department policy requirements.

Performs all normal patrol deputy tasks.

Reviews and prepares various reports on operations and activities.

It is unlikely an employee will perform all the duties listed on a regular basis, nor is the list exhaustive in the sense it covers all the duties an employee may be required to perform. The examples are merely indicative, not restrictive.

### **Supervisory Responsibilities**

Manages subordinate supervisors and employees in the Sheriff's Department Field Services Division. This mid-level supervisory position is required to assist with the direction, coordination, and evaluation of the division. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include making recommendations regarding the interviewing, hiring, and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and resolving problems. Maintains minimum staffing levels and approving time off requests.

In the absence of other division supervisors, is responsible for department operations, addresses complaints, and resolves problems in accordance with the organization's policies and applicable laws.

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6. Patrol Sergeant Tyson works a 3:00 p.m. to 11:00 p.m. shift on a six days on three days off schedule. From 8:00 p.m. to 11:00 p.m., Monday through Friday, he is the only non-unit employee on active duty in the Department. On weekends, he is the only non-unit employees on active duty for his entire shift. From 11:00 p.m. to 4:00 a.m., Monday through Friday, there are no non-unit employees on active duty although one of the two Corporals provides lead worker guidance as needed if they are on duty.

During his 3:00 p.m. to 11:00 p.m. shift, the Patrol Sergeant generally works with two unit employees (Patrol Officers or a Corporal) one of whom covers the northern part of the County and the other patrols the southern part. When two unit employees are on patrol, the Patrol Sergeant decides whether he will patrol or remain in the Department office for some or all of the shift. When two unit employees are on duty, the Sergeant will generally work primarily in the office. When only one other unit employee is on patrol, the Patrol Sergeant will likely patrol for the entire shift rather than call in a Patrol Officer on an overtime basis.

The Patrol Sergeant has the independent authority to allocate staff by altering employees' hours/shifts to insure that law enforcement needs are met during the Patrol Sergeants' 3:00 p.m.-11:00 p.m. shift and during the 7:00 p.m.-3:00 a.m. "power shift." The Patrol Sergeant also has independent authority to authorize overtime by regularly scheduled employees to meet unanticipated law enforcement needs that arise during a shift.

If not on duty, the Patrol Sergeant, like the Lieutenant, can be contacted at home by the Corporal or Patrol Officers to approve or disapprove the continuation of a high speed pursuit or with other such questions.

The Patrol Sergeant has the independent authority to grant or deny sick leave and vacation requests. Denials of vacation requests are generally based on other officers already having been approved for time off at the same time.

Citizen complaints about Department personnel are referred to the Patrol Sergeant or Lieutenant, who then investigate the matter to decide if discipline is warranted.

7. The Patrol Sergeant does not perform formal written evaluations of Patrol Officers, but informally makes his concerns known to his superiors. The Patrol Sergeant does take part in a written evaluation of officers in training based on daily reports of field training officers.

8. The Patrol Sergeant has independent authority to issue oral and written reprimand but will generally seek input from superior officers before issuing a written reprimand. The Patrol Sergeant has the authority to send an employee home immediately for disciplinary reasons. He cannot suspend without pay, demote or terminate because the Sheriff as this authority is vested in the Sheriff.

The Patrol Sergeant uses a computerized program which records and monitors supervisory activities, including confidential information regarding current personnel investigations and potential and actual discipline. Should he counsel or reprimand an officer, the Patrol Sergeant inputs that information into the system. Bargaining unit members do not have access to this system.

9. The Patrol Sergeant does not have authority to adjust grievances of unit employees. The first step in the contractual grievance procedure is the Lieutenant. The Patrol Sergeant is involved in investigating grievances and in management discussions as to how to respond to grievances.

10. The Patrol Sergeant participates in the hiring process as part of the management interview team. During interviews, all members of the interview team ask prepared questions and independently score the candidates. The scores are then tallied and discussed with the Sheriff making the final hiring decision. The Patrol Sergeant also performs background checks on applicants to determine if they are suitable for service with the Department. Recommendations of the Patrol Sergeant to discontinue consideration of a candidate after the background check have been followed.

The Patrol Sergeant makes recommendations to his superiors as to whether an employee should pass the probationary period.

The Patrol Sergeant participates in promotional interviews. He makes recommendations as to who might become Corporal and who might become field training officer, which recommendations have been accepted.

11. Like bargaining unit employees, the Patrol Sergeant earns overtime pay at time-and-a-half for hours worked in excess of his normal scheduled shift. He has leave bank and retirement fringe benefits that only non-unit employees receive.

12. The Patrol Sergeant attends the monthly management meetings which unit employees do not attend.

13. The Patrol Sergeant participates in management discussions regarding labor relations issues, but is not part of the County bargaining team. His input is sought as to changes in the bargaining agreement that would be beneficial for the operation of the Department.

14. For the past year there has been an ongoing effort to update the Department's policy manual. The Patrol Sergeant and Lieutenant are responsible for the patrol area of the policy update, which will ultimately go to the Captain and then the Sheriff, who each can change the proposals of the Sergeant and Lieutenant. The Sheriff has the ultimate approval. No policy changes have been formally adopted yet but the recommendations of the Sergeant thus far have been accepted. Suggestions for changes to policies are received from bargaining unit employees

15. As to the budget process, the Patrol Sergeant participates in discussions and decisions of what type of equipment the Department might need. He has the same input as the Patrol Lieutenant. Bargaining unit members have been asked for suggestions on matters such as firearms. Once a budget is established, the Patrol Sergeant may seek bids for equipment to determine which equipment would be the best and where to obtain the lowest price for items such as light bars for squad cars. However, purchasing decisions are made by the Captain and the Sheriff. The Patrol Sergeant cannot move budgeted money from one budget line to another.

16. The Patrol Sergeant possesses supervisory authority in sufficient combination and degree to be a supervisor.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

#### **CONCLUSION OF LAW**

The Patrol Sergeant is a supervisor within the meaning of Sec. 111.70(1)(o) 1, Stats. and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

#### **ORDER CLARIFYING BARGAINING UNIT**

The position of Patrol Sergeant shall continue to be excluded from the collective bargaining unit identified in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, the 24th day of April, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Chairperson Judith Neumann did not participate.



**CALUMET COUNTY**

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

**DISCUSSION**

We will first consider whether the Patrol Sergeant is a supervisor.

Section 111.70(1)(o)1, Stats., defines a supervisor as an individual who:

...has authority, in the interests 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 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.

When interpreting this statutory language, we consider the following:

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 alleged supervisor is paid for the employee's skills for the supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether the employee spends a substantial majority of time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above factors need be present for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01). The quasi-military organization of a Sheriff's Department presents unique problems in determining supervisory status of certain employees because officers of higher rank will generally have the authority to issue orders to subordinates, regardless of our determination of supervisory status. See, CITY OF GREEN BAY, DEC. NO. 31417 (WERC, 8/05), CITY OF MADISON, DEC. NO. 11087-A (WERC, 12/72).

As to Factor 1, the Patrol Sergeant has the same role in hiring as do the Lieutenants and the Captain in that he participates on the interview panel and his point rating is weighted the same as the others. He is responsible for background checks and, based on his findings and recommendations, there have been candidates who have not been given further consideration in the hiring process. His recommendations are also sought and considered as to probation and promotion decisions.

As to discipline, the Patrol Sergeant can issue oral and written reprimands. He has the authority to send an officer home, but cannot suspend without pay, demote or discharge. He investigates potential discipline situations and is involved in management discussions concerning potential employee discipline.

As to Factor 2, the Patrol Sergeant prepares the work schedule for his patrol shift. The collective bargaining agreement, especially seniority provisions, and established department procedure determine in large part who will staff a shift. The creation and filling of a schedule, especially where there are collective bargaining agreements and internal policies to follow, is not particularly indicative of a supervisory, managerial or confidential employee. See, e.g. SAUK COUNTY, DEC. NO. 17882-C (WERC, 7/04). However, for at least a portion of each shift that he works, the Patrol Sergeant is the highest ranking officer on duty and can independently reallocate staff between the 3:00 p.m. to 11:00 p.m. patrol shift and the 7:00 p.m. to 3:00 a.m. "power shift to meet service and staffing needs. He independently can call in additional officers if needed, hold personnel over into the next shift, and authorize overtime.

Concerning Factor 3, the number of employees supervised during the Patrol Sergeant's shift is generally two. However, his decisions as to reallocation of employees can have an impact on a larger number of employees. There are two Lieutenants, a Captain and the Sheriff who have supervisory authority over the Patrol Officers/Corporals but especially during those times when the Patrol Sergeant is the highest ranking officer on duty, he exercises considerable independent authority over this limited number of employees.

As to Factor 4, the Patrol Sergeant receives leave and retirement fringe benefits that are not available to bargaining unit employees. His access to overtime pay results in wage compensation greater than that of the employees he supervises.

Turning to Factors 5, 6 and 7, the record does not clearly establish the amount of time the Patrol Sergeant works in the office as opposed to on patrol. However, we infer from the evidence regarding the Department's efforts to become more fully staffed that the amount of patrol time will be decreasing and that the Patrol Sergeant will not generally be on patrol. In addition, the record makes clear that the Patrol Sergeant has many duties not shared by Patrol Officers/Corporals. Particularly in light of the substantial periods of time when he is the only non-unit employee on duty, we are convinced that the Patrol Officer is primarily involved in the supervision of employees and exercises significant independent judgment when doing so.

The duties performed by the Patrol Sergeant compare favorably with those of the Patrol Sergeants found to be supervisors in CITY OF SUPERIOR, DEC. NO. 17018-A (WERC, 2/99). Although the Patrol Sergeants there had more responsibility in conducting performance evaluations and directed the work of more employees, their other duties are very similar to those here: authority over work hours including the authority to call in additional personnel; hold personnel over to the next shift; authorize overtime, grant or deny leave requests in accordance with the contract; remove patrol officers from their regular work assignment as necessary; instruct officers on department rules and procedures; monitor the work activity of patrol officers for compliance with departmental rules, regulations policies and procedures; investigate citizen complaints; conduct internal investigations that factor into determining if discipline is warranted; authority to issue oral and written reprimands.

Similarly, when comparing the duties of the Patrol Sergeant here to those exercised by the Lieutenant/Road Supervisors in CITY OF GREEN BAY, DEC. NO. 31417 (WERC, 8/05), the Patrol Sergeants here have more supervisory indicia than the Road Supervisors (found not supervisors in that capacity) and compare favorably to the Shift Commanders, who were found to be supervisors. In CITY OF GREEN BAY, in contrast to the Patrol Sergeant as issue here, the non-supervisory Road Supervisors role in hiring was to participate on a screening committee which also included bargaining unit members; they did not have the authority to issue or even effectively recommend written reprimands; and they spent most of their time directing field work of patrol officers.

In summary, the Patrol Sergeant's role in hiring, his disciplinary authority, his ability to reallocate staff and his status as the only non-unit employee on duty for portions of his shift persuade us that, on balance, the Patrol Sergeant possesses supervisory authority in sufficient

combination and degree to be a supervisor. Given our conclusion, it is not necessary for us to consider whether the Patrol Sergeant is also a managerial or confidential employee.

Dated at Madison, Wisconsin this 24<sup>th</sup> day of April, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Chairperson Judith Neumann did not participate.

