

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

WOOD COUNTY

Involving Certain Employees of

WOOD COUNTY  
(SHERIFF'S DEPARTMENT)  
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Case XLVII

No. 29974 ME-2123

Decision No. 20071-A

Appearances:

Mr. Dennis A. Pedersen, Representative, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, Route 1, Box 288, Tomah, WI 54660, for the Union.

Mr. Weldon Nelson, Corporation Counsel, Wood County Courthouse, 400 Market Street, Wisconsin Rapids, WI 54494, for the County.

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

Wood County having filed a petition on March 17, 1983 requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its law enforcement employees represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division by determining whether the position of sergeant in the Sheriff's Department should be excluded from said bargaining unit as a supervisory position; and a hearing on said petition having been postponed indefinitely until the County filled the position of corporation counsel; and hearing on said petition having been conducted in Wisconsin Rapids, Wisconsin on July 7, 1983 by Douglas V. Knudson, an Examiner on the Commission's staff; and the parties having filed briefs by September 15, 1983; and the Commission having considered the evidence and arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. That Wood County, hereinafter the County, is a municipal employer with offices at the Wood County Courthouse, 400 Market Street, Wisconsin Rapids, WI.

2. That Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter the Union, is a labor organization with offices at Route 1, Box 288, Tomah, WI.

3. That the Union is the certified collective bargaining representative for a collective bargaining unit consisting of all regular full-time and regular part-time law enforcement employees with the power of arrest, employed by the Sheriff's Department of Wood County, excluding the Sheriff, Under-Sheriff, Lieutenant, supervisory, managerial, executive, confidential and all other employees.

4. That the County initiated the instant proceeding by filing a petition on March 17, 1983, wherein the County contends, contrary to the Union, that the position of sergeant is supervisory in nature and, therefore, should be excluded from the bargaining unit represented by the Union.

5. That the Sheriff's Department operates on a three-shift, twenty-four hour basis with a staff consisting of the Sheriff, the Under-Sheriff, one lieutenant, four patrol sergeants, one jail sergeant, six investigators, twenty four deputies, one law enforcement clerk, three process servers, two clerical employees and four dispatchers; and that the Sheriff, Under-Sheriff and lieutenant normally work from 8:00 a.m. to 5:00 p.m., Monday through Friday.

6. That each of the four patrol sergeants acts as a shift commander and is responsible for the direction and supervision of a shift staffed by four deputies and one dispatcher; that the patrol sergeants also oversee the jail when the jail sergeant is not present; that the patrol sergeants perform all duties normally performed by deputies and spend a substantial amount of their time (75-80%) on road patrol, although, unlike the deputies, the sergeants do not have assigned patrol areas within the County; that the patrol sergeants review and correct, when necessary, the work of the deputies; that one patrol sergeant recently did issue an oral reprimand to a dispatcher following a discussion of the dispatcher's performance with the Sheriff and a written record of said reprimand was placed in the dispatcher's personnel file; that the sergeants have issued oral reprimands to other employees, which primarily have been given on an informal basis to improve performance by correcting certain actions or conduct; that the opinions of the sergeants were sought by the Sheriff prior to the termination of a dispatcher approximately one year ago and the discharge of another employee several years ago; that the sergeants are not involved in the hiring of new employees, however the Sheriff discusses those employees with the sergeants prior to the completion of such an employee's probationary period; that the Sheriff has solicited and relied on the opinions of the sergeants concerning employees eligible for promotion, although the Sheriff also sought such opinions from one Sergeant while said individual was still a deputy; the sergeants have received oral grievances from other employees pursuant to the first step of the contractual grievance procedure, but have never resolved any of the grievances and always have referred such grievances to the Sheriff for response; that, when the lieutenant who usually handles all employee scheduling is not at work, the sergeants have approved requests by their subordinates for such things as sick leave, funeral leave, vacation and compensatory time off; that such requests are approved or denied in accordance with existing departmental policies; that the sergeants can change patrol assignments and can authorize overtime for the deputies on their shift; that sergeants can call in additional employees who are off duty, as one of the sergeants did in July 1983 when he called in all available off-duty officers to deal with a large disorderly crowd; that the same employee took a similar action in a similar situation when he held the rank of deputy; and that the sergeants, particularly the sergeant in charge of the shooting program, are involved in training programs.

7. That the jail sergeant oversees the operation and staff of the County's jail; that the jail sergeant basically works from 8:00 a.m. to 4:30 p.m., Monday through Friday and spends a majority of his time on administrative duties such as record keeping, issuing solicitor permits and acting as a court officer for the southern half of the County; that an investigator acts as the court officer for the northern half of the County; that the jail sergeant also performs all of the duties performed by the other jail employees; that the jail sergeant can authorize overtime for jail employees and last did so about six months ago; that requests for time off by jail employees are handled by the lieutenant or patrol sergeant; that the jail sergeant has never called in additional employees; that the jail sergeant has received one oral grievance which he referred to the Sheriff; that the jail sergeant has never either given a formal oral reprimand or issued a written reprimand; that during 1983 the jail sergeant requested the Sheriff to assign an additional deputy to the jail because of a high inmate population, which request was implemented; and that the jail sergeant has continued to perform the same functions and duties since his promotion to sergeant in January 1980, as he performed previous to said promotion when he was a deputy with the classification of jail administrator.

8. That the sergeants do not possess supervisory duties and responsibilities in sufficient combination and degree so as constitute them to be supervisors.

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

#### CONCLUSION OF LAW

That since the occupants of the position of patrol sergeant and jail sergeant are not supervisors, they are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

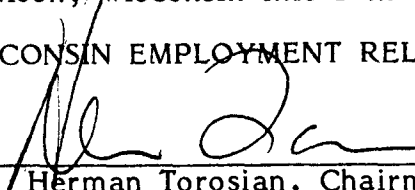
ORDER CLARIFYING BARGAINING UNIT 1/

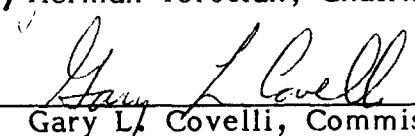
That the positions of patrol sergeant and jail sergeant are included in the bargaining unit set forth in Finding of Fact No. 3 above.

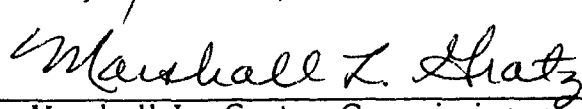
Given under our hands and seal at the City of  
Madison, Wisconsin this 12th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the

(Footnote 1 continued)

filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

In its petition the County seeks to exclude, as supervisors, all five sergeants from the bargaining unit of law enforcement personnel currently represented by the Union.

The sergeants have not been involved in the hiring of new employees. The Sheriff did transfer a road deputy to the jail at the jail sergeant's request, but the jail sergeant was not involved in the selection of the deputy to be transferred. The patrol sergeants have had input into some situations involving the transfer, promotion and discharge of employees. However, such input generally has been given at the Sheriff's request and has not been limited to sergeants. Although the patrol sergeants have issued oral reprimands, such reprimands, which typically are informal and are not entered into the employee's personnel file, appear to be corrections to improve employee performance, rather than disciplinary actions. The record contains only one instance of an oral reprimand being documented in written form in an employee's file.

The patrol sergeants spend a substantial portion of their time performing the duties normally performed by the road deputies on their shift. Their functions in overseeing the deputies and in performing certain office activities primarily are of a routine nature. In the absence of the lieutenant who handles scheduling, the sergeants follow departmental guidelines in granting requests for time off.

Similarly, the approval of overtime and the changes in assignment of deputies appear to be relatively standard procedures. Although sergeants have called in additional deputies to work in emergency situations, the same action has been taken by deputies. The patrol sergeants receive oral grievances which are referred to the Sheriff for a response.

The Commission is persuaded by the record that the sergeant positions do not possess duties and responsibilities in sufficient combination and degree to establish such positions as supervisory.


In the La Crosse County decision 2/ cited by the County, the sergeants exercised more extensive supervisory authority than do the sergeants at issue herein, since they were involved in the interviewing of applicants, the issuance of written reprimands, the regular approval of requests for time-off, and, the annual evaluations of employee performance


Dated at Madison, Wisconsin this 12th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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2/ Decision No. 19539, 4/82.