

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
DANE COUNTY :
Involving Certain Employees of : Case XC
DANE COUNTY : No. 31921 ME-2248
(SHERIFF'S DEPARTMENT) : Decision No. 21406
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Appearances:

Patrick J. Coraggio, LEER Administrator, 9730 West Bluemound Road,
Wauwatosa, WI 53226, appearing on behalf of the Union.
Mr. Cal W. Kornstedt, Assistant Corporation Counsel, Dane County, City-
County Building, Room 313-D, Madison, WI 53709, appearing on behalf
of the County.

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

Dane County having, on July 12, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its law enforcement employees, represented by Law Enforcement Employee Relations Division/Wisconsin Professional Police Association, by determining whether the position of Sergeant should be excluded from said unit; and hearing on said petition having been conducted at Madison, Wisconsin on August 16, 1983 before Douglas V. Knudson, a member of the Commission's staff; and a transcript of the proceedings having been received on October 3, 1983; and the parties having filed post-hearing briefs by November 9, 1983; and the Commission having considered the evidence and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Dane County, hereinafter referred to as the County, is a municipal employer with offices at the City-County Building, Madison, Wisconsin 53709.
2. That Law Enforcement Employee Relations Division/Wisconsin Professional Police Association, hereinafter referred to as the Union, is a labor organization with offices at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.
3. That the Union is the certified collective bargaining representative for a collective bargaining unit consisting of all regular full-time deputy sheriffs in the Dane County Sheriff's Department, excluding Captains, Evidence Technician, Lieutenants, Special Investigator and Chief Deputy.
4. That the County initiated the instant proceeding by filing a petition on July 12, 1983, wherein the County contends, contrary to the Union, that the position of Sergeant, excluding the two Civil Process Sergeants and Sergeant Brink, is supervisory in nature, and therefore, should be excluded from the bargaining unit represented by the Union; and that the County further contends the position of Technical Sergeant, occupied by John Van Dinter, is confidential as well as supervisory.
5. That the Sheriff's Department operates on a twenty-four hour, seven days a week basis under the direction of the Sheriff and the Chief Deputy; that there are four Captains, each of whom oversees one of the following operating divisions: Field Services, Security Services, Court Services, and Support Services; that the staff of the Field Services Division consists of one Captain, four Lieutenants, seven Sergeants, three Traffic Investigators, sixty-seven deputies and five civilian employees for a total of eighty-seven employees; that the Security Services (Jail) Division has a staff of one Captain, one Lieutenant, four Sergeants, thirty-

three deputies and nine civilian employees for a total of forty-eight employees; that the Court Services Division has a staff of one Captain, one Lieutenant, three Sergeants, twenty-three deputies and nine civilian employees for a total of thirty-seven employees; that the Support Services Division has a staff of one Captain, two Lieutenants, one Sergeant, three deputies and sixteen civilian employees for a total of twenty-three employees; that, in addition to the four operating divisions, there is an administrative support staff consisting of three Lieutenants, two Sergeants, sixteen deputies and five civilian employees for a total of twenty-six employees; that the total number of positions in the Sheriff's Department is two hundred twenty-two and one-half (222.5) with the following distribution by classification:

Sheriff	1
Chief Deputy	1
Captain	4
Lieutenant	11
Sergeant	17
Traffic Investigator	3
Deputy Sheriff	142
Civilian position	43.5

that the Field Services Division operates three outlying precinct stations for patrol purposes, each of which is commanded by a Lieutenant on the day shift with a Sergeant in charge of each of the other shifts; that the number of deputies on a shift at a precinct station ranges from four to seven; and that the Security Services Division operates three jail facilities and a booking area in the County Building and a Huber Center which is physically separate from the County Building.

6. That the Field Sergeants perform all duties performed by patrol deputies and normally spend a substantial amount of time on patrol, although they are free to travel in the entire precinct, unlike the deputies who are assigned to a specific patrol sector in the precinct; that Sergeants in the other Divisions generally spend a smaller, but still considerable, portion of their time performing the same duties as are performed by the other employees on their shift; that, in accordance with written departmental policies, which specifically give Sergeants the authority to issue oral and written reprimands and impose one day suspensions, Sergeants have issued both oral and written reprimands without seeking prior approval of such actions from higher ranking officers and have recommended more severe disciplinary actions, such as suspensions longer than one day in duration, some of which have been implemented; that Sergeants have recommended the transfer of employees to different assignments, some of which have been implemented; that some Sergeants have received and responded to grievances pursuant to the first step of the contractual grievance procedure while other grievances have been filed initially with the Captains or Chief Deputy; that Sergeants generally prepare written preliminary quarterly performance evaluations of the employees under their direction, which are reviewed with the employee by the Sergeant and then are forwarded to the Division Commander for use in preparing the formal evaluation sheet placed in the employee's personnel file; that Sergeants are involved in the training of new employees, which training is coordinated by the two Training Officers; that Sergeants have attended supervisory training sessions and courses, including those designed specifically for Sergeants; that in the absence of higher ranking officers the senior Sergeant on-duty acts as the Officer-In-Charge of the Division; that one Sergeant functioned as an Officer-In-Charge on the 3:00 p.m. to 11:00 p.m. shift for at least three months each in 1982 and 1983 while the Lieutenants on said shift were attending classes; that Sergeants frequently function as the Officer-In-Charge on other occasions; that Sergeants do authorize overtime for employees under their direction, including calling in employees prior to their scheduled starting time; and that Sergeants serve on panels conducting interviews of applicants for employment and promotions, which panels also include higher ranking officers, deputies and civilian employees.

7. That the Technical Sergeant, John Van Dinter, is the assistant training officer who, under the direction of the Training Officer, a Lieutenant, prepares, coordinates, and oversees the training of new employees, including the completion of their quarterly preliminary performance evaluations; that Van Dinter does not directly supervise a unit of other employees in the same manner as do the Field, Security and Court Sergeants; that Van Dinter has acted as the Officer-In-Charge; that, while Van Dinter apparently has assisted in developing bargaining positions for the County for its labor contract negotiations, the record fails to establish that said activity involved information which either is unavailable to the Union

or deals with the County's confidential strategy in collective bargaining; and that Van Dinter is a member of a planning unit which gets involved in budgetary issues and in developing a departmental budget.

8. That the Field Sergeants, Court Sergeants and Security Sergeants possess supervisory duties and responsibilities in sufficient combination and degree to be rendered supervisors.

9. That the position of Technical Sergeant, occupied by John Van Dinter, does not possess supervisory duties and responsibilities in sufficient combination and degree to be rendered supervisory in nature, and has insufficient involvement in budgetary and/or labor relations information so that the position is not confidential in nature.

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

CONCLUSIONS OF LAW

1. That, since the positions of Field Sergeant, Court Sergeant and Security Sergeant are supervisory in nature within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act, the occupants of said positions are not municipal employes within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act and appropriately are excluded from the collective bargaining unit described above.

2. That, since the position of Technical Sergeant, occupied by John Van Dinter, is neither supervisory nor confidential in nature, the occupant of said position is a municipal employe within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

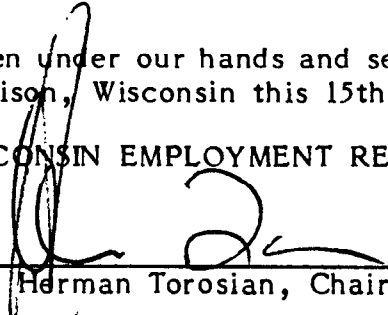
Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

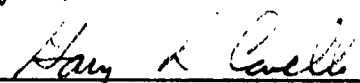
ORDER CLARIFYING BARGAINING UNIT 1/

That the positions of Field Sergeant, Court Sergeant and Security Sergeant are excluded from the bargaining unit set forth in Finding of Fact No. 3 above and that the position of Technical Sergeant is included in said bargaining unit.

Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

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.

(footnote continued on page 4)

1/ (footnote continued)

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 decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are 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,
CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT

In its petition the County seeks to exclude fourteen of its seventeen Sergeants from the bargaining unit of law enforcement personnel currently represented by the Union on the basis that said Sergeants are supervisors. The County contends that the Technical Sergeant, Sergeant Van Dinter, is a confidential employe, in addition to being a supervisor. The County concedes that the other three Sergeants are not supervisors, but rather are technical specialists.

Field, Court and Security Sergeants

The Sergeants spend a substantial portion of their time performing the same or similar duties as are performed by the other employes in their respective units. However, in accordance with written departmental policies, which specifically give Sergeants the authority to issue oral and written reprimands and impose one day suspensions, Sergeants have disciplined employes by the issuance of verbal and written reprimands without seeking prior approval from higher ranking officers. Some recommendations by Sergeants for more severe disciplinary actions, such as suspensions of more than one day in duration and transfers of employes, have been implemented. Further, most Sergeants prepare, on a quarterly basis, preliminary performance evaluations of the employes in their respective units. Although said evaluations are not the final document, the preliminary evaluations are discussed with the employe by the Sergeant and are utilized by the Division Commander in the preparation of the final evaluation document.

The County has a centralized master scheduling office to prepare work schedules on a departmental basis. Advance requests for time off are referred to the scheduling office. Sergeants can approve requests for time off which are received with little advance notice. Similarly, Sergeants can authorize overtime and call in additional employes to work.

Sergeants frequently function as the Officer-In-Charge of a shift in the absence of a higher ranking officer. One Field Sergeant acted in such a capacity for a three month period in each of the past two years.

Sergeants have served on hiring and promotion panels along with deputies and higher ranking officers, though, clearly, such panels are not composed solely of non-bargaining unit employes.

Decisions concerning the possession of supervisory authority especially for patrol sergeants are often very close questions. In this matter, the Sergeants possess, and many have exercised, the authority to impose on their own disciplinary actions not only in the form of oral reprimands but also written reprimands placed in the subordinate's file. They have also recommended more severe disciplinary actions, such as suspensions of more than one day, and some, though not all, of those recommendations have been followed by higher-ranking officers. The possession of such authority is a significant factor which distinguishes the instant case from others wherein sergeants lacking such extensive disciplinary authority were held to be non-supervisory. 2/ Said disciplinary authority, in conjunction with other factors, such as the involvement in performance evaluations, the attendance at supervisory training sessions, and the functioning as Officer-In-Charge, persuade the Commission that the positions of Field Sergeant, Court Sergeant and Security Sergeant possess sufficient responsibilities and authority to render their positions supervisory.

2/ Wood County (20071-A) 10/83; Dodge County (18076-A) 3/83; Door County (Sheriff's Department) (20020) 10/82.

Technical Sergeant

The position of Technical Sergeant does not directly supervise a unit of employees but, rather, as the Assistant Training Officer coordinates training programs under the direction of a Lieutenant. While the Technical Sergeant possesses the same authority to impose discipline as the other Sergeants possess, there is no evidence in the record to show that the Technical Sergeant has ever exercised such authority. Accordingly, it is concluded that, even though the Technical Sergeant prepares preliminary performance evaluations on probationary employees and acts as Officer-In-Charge on occasion, said position does not possess a sufficient combination of duties and responsibilities to constitute a supervisor.

The record does not establish that the Technical Sergeant's participation in the preparation of labor bargaining positions for the County involves information which either is unavailable to the Union or deals with the County's confidential strategy in collective bargaining. Therefore, the Technical Sergeant is not found to be a confidential employee. Further, while the Technical Sergeant is a member of a planning committee which gets involved in budgetary issues and assists in developing the department's budget, the record does not establish that such involvement includes the actual authority to commit the County's resources. Accordingly, we would not find the Technical Sergeant to be a managerial employee either.

Dated at Madison, Wisconsin this 15th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner