

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

In the Matter of the Petition of :

:

OCONTO COUNTY SHERIFF'S ASSOCIATION :

: Case 2

Involving Certain Employes of : No. 41257 ME-397

: Decision No. 21847-C

OCONTO COUNTY (SHERIFF'S DEPARTMENT) :

:

Appearances:

Mr. Michael G. Perry, Attorney at Law, 122 East Main Street, P.O. Box 142, Coleman, Wisconsin 54112-0142, appearing on behalf of the Association.

Mulcahy & Wherry, by Mr. Dennis W. Rader, Esq., 414 East Walnut Street, P.O. Box 1103, Green Bay, Wisconsin 54305-1103, appearing on behalf of the County.

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

Oconto County Sheriff's Association having on February 1, 1990, filed a petition requesting that the Wisconsin Employment Relations Commission clarify an existing collective bargaining unit to include seven part-time female jail officers; and a hearing having been held on April 24, 1989 at Oconto, Wisconsin, before Sharon Gallagher Dobish, a member of the Commission's staff; and a stenographic transcript of the proceedings having been made and received on May 14, 1990; and all briefs having been received and exchanged by the Examiner by July 6, 1990; and pursuant to the Commission's request, the County having submitted a supplemental exhibit on September 17, 1990; and the record having been closed on November 16, 1990; and the Commission having considered all of the evidence and arguments herein and being fully advised in the premises, hereby makes the following

FINDINGS OF FACT

1. That the Oconto County Sheriff's Association, hereafter the Association, is a labor organization with offices located c/o Attorney Michael G. Perry, 122 East Main Street, P.O. Box 142, Coleman, Wisconsin 54112-0142.

2. That Oconto County, hereafter the County, is a municipal employer with offices located at 300 Washington Street, Oconto, Wisconsin 54153; and that among its governmental functions, the County maintains a Sheriff's Department wherein the County currently employs five full-time male jail officers and one Head Jailer, all of whom are covered by the collective bargaining agreement between the County and the Association; and that the County also employs seven part-time female jail officers who are not currently represented by any labor organization.

3. That the Association herein petitions to include the seven part-time female jail officers in the existing collective bargaining unit as regular part-time employes; that the County opposes inclusion arguing that the jail officers are casual employes; that the Wisconsin Employment Relations Commission in its Dec. No. 21847-B (WERC, 10/84) certified the instant bargaining unit as follows:

all regular full-time and regular part-time law enforcement employes who possess the power of arrest employed by the Sheriff's Department of Oconto County excluding supervisory, confidential, and managerial employes;

and that the current collective bargaining agreement between the County and Association describes the collective bargaining unit as follows:

all full-time and regular part-time personnel of the Sheriff's Department employed by the County, excluding the Sheriff and the Director of Police Services.

4. That on October 23, 1990, Drivers, Warehouse and Dairy Employees Union, Local 75, filed an election petition seeking to represent the seven part-time female jail officers in a separate bargaining unit.

5. That the County's job description applicable to both the full-time male jail officers and the part-time female jail officers reads as follows:

GENERAL DUTIES OF JAILERS

1. The jailers shall be responsible for the security of the Oconto County jail and the proper processing of prisoners into and out of the jail.
2. The jailers shall properly maintain the record and photo files pertaining to all prisoners confined to the jail.
3. They shall be responsible for the cleanliness and sanitation of all cells, cell blocks and general office and corridor areas within the jail.
4. All jailers are required to familiarize themselves with the Policy and Procedures manual for the jail and to abide by the policies and procedures as set forth in the manual.
5. The jailers shall report directly to the Jail Officer and shall perform other duties as directed;

that both the male and female jail officers are directed by Head Jailer Joseph Paluch and/or the Deputy Sergeant employed on the second and third shifts during the hours when Paluch does not ordinarily work, and ultimately by the Sheriff; that Paluch regularly works the day shift on Monday through Friday; that when a female prisoner is incarcerated, a female jail officer must be present to incarcerate her and to care for the female prisoner's needs 24 hours a day; that the male and female jail officers perform essentially the same duties except that the male jail officers cannot and do not pat down, book, take prints and pictures of female prisoners or check on or care for female prisoners; that the male jail officers are not allowed in the female prisoner's section even when a female jail officer is on duty; that the female jail officers cannot and do not pat down the male prisoners although the female officers can and do perform all other jail duties regarding male prisoners; that both the full-time male jail officers and the seven part-time female jail officers have been trained and certified by the State Law Enforcement Training and Standards Board, as required by law, at the expense of the County; that the part-time female jailers receive an hourly wage of \$5.92 (from which the County withholds State and Federal taxes), and no other benefits other than being covered by Social Security, Worker's and Unemployment Compensation; that the full-time male jail officers are paid an hourly wage of \$9.74 (effective 1-1-90) and they receive other benefits such as holidays, vacation, sick leave, longevity pay, night shift differential pay and retirement benefits pursuant to the effective collective bargaining agreement, and they are also covered by Worker's and Unemployment Compensation and Social Security; that pursuant to County Resolution #70-1989, the County has maintained pay rates for "jail officers" and "matrons" at an hourly rate of \$5.92 and this is the basis for the hourly rate paid to the seven certified part-time female jail officers; that the County no longer maintains a list of male "jail officers" nor does it employ any male "jail officers" at a rate of \$5.92 per hour, as all male jail officer work is now performed by the full-time male jail officers who are all members of the bargaining unit; that the County also no longer employs any "matrons" who are not certified as jail officers and that since January 1, 1990, all female jail officer work is performed by the seven certified part-time female jail officers at issue; that the part-time female and full-time male jail officers share the same supervision, conditions of employment, certification and training requirements, work locations, and disciplinary system; that neither male nor female jailers receive any on-call or call-in pay; that both the full-time male jail officers and the part-time female jail officers can trade shifts if they have a personal conflict with their schedules.

6. That although the collective bargaining agreement refers to part-time jailers, there are no employees currently employed in this position under that agreement; that in the late 1970's or early 1980's the County employed two part-time male jail officers, Cecil Lade and Wilbur Wolske, to fill in for the full-time jail officers when they were on vacation, sick leave or other leave; that these employees were then paid pursuant to the part-time jailer classification listed under the current agreement; that the Jail Officer is a

member of the bargaining unit and is listed in the collective bargaining agreement as earning \$10.51 per hour (effective 1-1-90); that, as noted in Finding of Fact 3, the County previously employed some "matrons" who are not State certified jail officers and who are, therefore, no longer employed or called to work by the County to perform female jail officer duties; that those "matrons" who are no longer employed by the County are as follows: Hertwig, Klinkhamer, Lewandowski, Mocco, Noak, Sees and Zahn; that the seven State certified part-time female jail officers who have been and continue to be called to duty over the past three years by the County are as follows: Nancy Zubko, Cindy Langlay, Sandy Robenhorst, Debbie Boucher, Marie Blaser, Linda Markiewicz and Chris Begolke; that in the early 1980's the County decided to employ only full-time jailers and the two part-time male jailers were then employed full-time; that in the Fall of 1989, the County also employed two floater/relief patrol officers (Chail Franks and Judy Eggie Kadlec); that pursuant to a grievance settlement reached in the Fall of 1989, the County has employed officers Franks and Eggie Kadlec as full-time patrol officers in the bargaining unit; that currently, the only part-time employees employed in the Sheriff's Department are the part-time female jail officers at issue here.

7. That when the County must incarcerate a female prisoner or transport a female prisoner to or from the County jail, it must employ State-certified female jail officers; that when the County needs to pick up and/or incarcerate a female prisoner immediately and without advance notice, Head Jailer Paluch normally begins by calling the part-time female jail officer on his list who lives the closest to the jail in Oconto, Wisconsin; that if the first female jail officer called upon declines to work, Paluch then goes down the list of certified part-time female jail officers until one of them accepts the available work; that all part-time female jail officers have the right to refuse emergency work of the type just described, for any reason and without any penalty; that the part-time female jail officer who accepts the emergency work available will normally then immediately report to the County jail to book, incarcerate and care for the female prisoner(s); that if, thereafter, it appears that a female prisoner or prisoners must be incarcerated at the jail for two or more days, Paluch then prepares a work schedule to cover the guarding and care of the female prisoner or prisoners for the expected period of incarceration; that after Paluch drafts a schedule, he has one of the female jailers review the schedule and call other female jail officers to coordinate the work hours available with their personal schedules; that normally, part-time female jail officers are scheduled for eight hour shifts unless a female prisoner is brought in for periods of less than 24 hours (such as when a prisoner is regularly released under the Huber Law to perform work during the days); that in the latter case, the part-time female jail officers work six hour shifts; that after a long-term schedule is set, if a part-time certified female jail officer is unable to work the hours scheduled, she must find a part-time certified female jail officer to replace her or work the hours herself; that this scheduling procedure is similar to that used for the full-time male jail officers who are expected to work the hours they are scheduled unless they can find a replacement from among the remaining full-time male jailers; that when a deputy sheriff must transport a female prisoner, Paluch schedules an off-duty part-time female jail officer to accompany the deputy and the prisoner during the transport; that the same procedure is used when a deputy sheriff must transport a male prisoner, with the exception that an off-duty full-time male jail officer is called upon and employed during these transports; that in each transport instance, the deputy sheriff is the female or male jail officer's supervisor during the transport; that the part-time female jail officers no longer work at the County jail when there are no female prisoners incarcerated at the jail, although until three months before the instant hearing, part-time female jail officers had performed canteen duties (looking after the personal needs of all prisoners) on a rotating basis two times per week for one or two hours each; that currently, canteen duties are being performed by full-time male jail officers during their regular shifts; that part-time female jail officers are no longer performing canteen duties because they indicated that they were not interested in performing these duties.

8. That, currently, the general requirements for the hire of jail officers in Wisconsin are listed at s. LES 2.01 of the Wisconsin Administrative Code and the County follows these requirements or rules in hiring and retaining both male and female jail officers; that previously, the County did not necessarily follow the applicable portions of the Wisconsin Administrative Code in the hire and retention of Sheriff Department employees including matrons/female jail officers; that, for example, Sheriff Woodworth (who has been Sheriff since January, 1987) personally contacted and hired two of the seven currently certified part-time female jail officers, Blaser and Robenhorst in 1987; that Sheriff Woodworth hired Blaser and Robenhorst on an informal basis (without utilizing advertising, postings, employment applications or a formal interviewing and evaluation process); that when the Sheriff hired Blaser and Robenhorst, he told them that their hours would be voluntary; that Boucher was contacted by then-Jail Officer Franks, after she put in an employment application; that Franks told Boucher that if accepted for employment, Boucher would be asked to work when female prisoners were present in the jail; that the remainder of the part-time female jail officers were hired by filing applications, being interviewed by the Deputy Sheriff and being considered for employment by the County Law Enforcement Committee; that the latter process is

the same process that has been used to hire bargaining unit personnel; that at the time of hire, none of the part-time female jail officers were told they would fill-in for male jail officers on vacations, sick leave or holidays; that in fact, the female jail officers have not been employed on the above basis nor have they been called in to work when the jail has been overcrowded although the female jail officers could be employed as the second jail officer during periods of overcrowding, at any time that a male jail officer is also on duty; and that if the jail is overcrowded, the County is required to have two jail officers on duty and at these times, Jail Officer Paluch has normally worked overtime to cover these situations.

9. That the seven part-time female jail officers have no guarantee that they will receive a certain number of hours of work in any period of time or that any of them will be called and offered work in any particular order; that once Head Jailer Paluch has set up a long-term schedule to cover the incarceration of a female prisoner or prisoners, the female jail officers work the hours shown on the long-term schedule, subject to the opportunity to trade work periods with other female jail officers; that in 1989, the County changed its fees for holding female prisoners from other jurisdictions from a flat fee of \$50.00 per day to \$50.00 per day plus the cost of the female jail officers (an additional \$150.00 per day) whenever the County did not have another female prisoner of its own in the jail; that this change in policy has caused other jurisdictions to remove their female prisoners from the Oconto County jail when no Oconto County female prisoners are present, since the fees for holding out-of-County female prisoners are then four times higher than those charged by other counties for holding these same female prisoners; that between September 1989 and January 1, 1990, female jail officers worked a total of 1656 hours when no female Oconto County prisoners were present; that excluding said 1656 hours, female jail officers worked the following hours during the noted time periods:

September 1989 through August 1990	3321.2 hours
September 1988 through August 1989	3092.45
September 1987 through August 1988	2756.50

and that between September 1989 and August 1990, the seven female jail officers at issue worked the following hours in the following months.

	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.
ZUBKO	104.50	229 107		146.5 72		86.5 21		21 24		9 26		4.5
	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.
ROBENHORST	0	0	0	0	131	83	7	6.5	47	5.5	46.7	16.5
MARKIEWICZ	0	0	174	58	112	40.5	0	0	0	0	16	0
LANGLAY	0	81.5	188	87.5	82.5	27.5	0	0	0	4	24	0
BOUCHER	58	190.25	172.5	116.5	48	17.5	40	17	40	27.5	46.5	
BLASER	76.5	153	131.5	145	104	85	0	18.5	41	0	26	23.5
BEGOLKE	0	53	203.5	118	121	47.5	0	8	32	0	24	2.25

10. That Zubko, Robenhorst, Boucher, Blaser and Begolke work a sufficient number of hours on a regular basis to warrant their being found to be regular part-time employees of the County.

11. That Markiewicz and Langlay do not work a sufficient number of hours on a regular basis to warrant their being found to be regular part-time employees of the County.

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

CONCLUSIONS OF LAW

1. That Zubko, Robenhorst, Boucher, Blaser and Begolke are regular part-time employees of the County.

2. That Markiewicz and Langlay are casual employees of the County.

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

ORDER 1/

1. That Zubko, Robenhorst, Boucher, Blaser and Begolke are hereby included in the bargaining unit represented by the Oconto County Sheriff's Association.

2. That Markiewicz and Langlay hereby continue to be excluded from the bargaining unit represented by the Oconto County Sheriff's Association.

Given under our hands and seal at the City of Madison, Wisconsin this 28th day of December, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

(See Footnote 1/ on Page 6)

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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

POSITIONS OF THE PARTIES

The Association

The Association asserts that the seven certified part-time female jail officers are regular part-time employes, not casual employes as the County has claimed. In this regard, the Association argues that three of the seven female jailers have been regularly employed since January 1987 and the remainder have been regularly employed by the County since January 1989; that the female jailers were formally hired, trained and retained by the County under the same procedures as bargaining unit employes; that the female jailers are assured of work on an emergency basis whenever a female prisoner is transported, arrested or held in the County jail and these female jailers are often scheduled on a long-term basis when a female prisoner must be held for more than two days; that once a long-term schedule is finalized, the female jailers must work the hours listed for them or arrange for their own replacement; that, for example, one female prisoner was held at the County jail for five months and, pursuant to Sec. 973.02, Stats., any convicted misdemeanor may be imprisoned for up to one year in a County jail should the judge choose to hand down such a sentence; and that by law, the Sheriff cannot operate the County jail without maintaining a list of certified female jailers who will make themselves available to work.

In addition, the Association argues the County has reduced the female jailers hours by transferring female prisoners more frequently because of the filing of the petition herein and the fact that three of the female jailers filed a sex discrimination complaint against the County.

The Association asserts that it is the regularity of employment, not the hours worked by an employe in any time period which is determinative of regular part-time employe status under Commission precedent. Therefore, the Association urges that these seven female jailers should not be found to be casual employes since the facts show that they are regular employes with a vital interest in the terms and conditions of employment.

Beyond the question of regularity, the Association contends that the female jailers in issue certainly share a community of interest with employes in the existing bargaining unit and, therefore, the female jailers should be placed in the existing unit to avoid undue fragmentation. In this regard, the Association notes that the female jailers share a common purpose and common goals, the same work location, the same duties, possess the same skills and training, they function under the same job description, and have the same supervisor and chain of command as the full-time male jailers who are members of the existing bargaining unit. Thus, the Association asserts that the female jailers should be included in the existing unit in the same way that part-time floater relief deputies were placed in that unit last fall.

In its reply brief, the Association claims that the County's argument that the female jailers are not regular employes because they are not guaranteed a certain number of work hours per work week or per year is erroneous since the female jailers must work and are guaranteed work any time a female prisoner is incarcerated in the County jail and the female jailers are placed on a schedule whenever a female prisoner is lodged in the jail for a specified time. The Association emphasizes that by law, the County must continue to employ certified female jailers under the circumstances above. In addition, the fact that the female jailers in issue are all certified jail officers affords them a guarantee that the County will continue to call them to work.

The Association asserts that the full-time male jailers can refuse call-ins as well as change their long-term schedules by trading, just as the female jailers can, so that the female jailer position is not made casual by these factors. The fact that female jailers do not receive call-in pay while the male jailers do receive such pay, the Association argues, is all the more reason to allow these women union representation.

The Association points out that the fact that the County has a part-time male jailer rate on its books does not mean that the County has any such part-time employes. On the contrary, the Association contends, no such part-time male jailers have been employed for the past 10 years, according to the testimony of the County Accountant/Administrator. Furthermore, the Association asserts that the fact that the County has now included the part-time floater relief deputies in the instant unit shows that the County recognizes its need to employ regular part-time workers.

Thus, the Association argues that since the record demonstrates that the female jailers are regularly employed by the County, they should be included in the existing unit.

County

The County asserts that the female jailers are casual employes who have no regular or guaranteed work hours or work schedule and no expectation of being called in at any specific time, who receive no on-call pay, who select the hours they wish to work before a long-term schedule is set, and who do not fill in for or replace any regularly employed bargaining unit employes. The County argues that the fact that the part-time floater relief deputy position was placed in the unit by the parties is not relevant here.

The County also contends that the method by which female jailers are called in to work and the fact that the female jailers no longer perform canteen duties because they do not wish to do so, demonstrate the female jailers' casual status.

The County further argues that the statistics indicating the hours worked by female jailers from September through December, 1989, are not typical or representative of the hours they could expect to work in 1990, since as of January 1, 1990, the County began charging approximately \$200 per day rather than \$50 per day to other jurisdictions for housing their female prisoners at the County jail whenever no Oconto County female is incarcerated. Finally, the County argues that the Association's attempt to show that the County shipped out female prisoners over the past four years to avoid unionization of the female jailers was not proven, and, in any event, the record showed that such instances were insignificant in number and based on a legitimate desire to avoid paying for the incarceration of several male prisoners. Thus, the County urges that the petition be dismissed.

In its reply brief, the County argues that the number of hours worked by the female jailers is not determinative of the issue in this case and that the evidence does not demonstrate regularity of employment, especially in light of the change in the County's policy regarding the amount the County will charge other jurisdictions for housing such jurisdictions' female prisoners when an Oconto County female prisoner or prisoners is not present in the jail. Specifically, the County argues that the total number of hours worked by female jailers from 1987 through 1989 was 9,651.20. However, the County asserts that the 5,401.25 hours worked by female jailers in 1989 should be decreased by 1,656 hours, as female prisoners from other counties were housed during those hours without Oconto County female prisoners being present in the jail. Thus, given the change of County policy, these 1,656 hours should not be considered in the overall totals. The County, therefore, asserts that the average number of hours over the period of 1987 through 1989 should be considered to be 2,689 per year or 112 twenty-four hour days out of 365, barely 1/3 of the year. Therefore, the County distinguishes Douglas County 2/, in which matrons were found to be regular part-time employes, as the female jailers there worked 80% of the yearly work days on previously assigned shifts, unlike the instant case.

The County further emphasizes that the community of interest arguments raised by the Association are not determinative factors in this case. The County asserts that its position has been clear -- that since the female jailers are casual employes, they must be excluded from any unit. The fact that these matrons may share a community of interest with other unit employes is not material here, the County argues. The County urges that it cannot and does not control the work load of the female jailers. Rather, the female jailers themselves control if and when they will work whenever a female prisoner happens to be incarcerated in the County jail. Thus, the County urges dismissal of the petition in its entirety.

DISCUSSION:

Initially, we are confronted with the question of whether we should proceed to resolve the issue before us in this unit clarification proceeding. This question arose when Teamsters Local No. 75 filed an election petition during the pendency of the unit clarification proceeding seeking to represent the seven female jail officers.

2/ Decision Nos. 18209-A and 18210-A (WERC, 9/81).

The bargaining unit represented by the Oconto County Sheriff's Association consists of all regular full-time and regular part-time employes possessing the power of arrest (emphasis added). Thus, if, as claimed by the Association, any or all of the female jailers are regular part-time employes, the Association is already entitled to represent these employes. Therefore, although the female jail officers are currently unrepresented, the Association's existing status as the certified bargaining representative of regular part-time employes takes precedent over the Teamsters' desire to represent those female jailers who are regular part-time. Thus, it is appropriate for us to proceed to decide the merits of the unit clarification petition. The Teamsters are, of course, free to pursue the election petition as to those female jailers we find to be casual 3/ and thus not part of the Association's unit.

Turning to the merits of the unit clarification petition, both the County and the Association agree that it is proper to place regular part-time female jailers in the Association's unit. The only question is whether any or all of the female jailers are regular part-time employes.

It is clear that the female jailers in question can refuse work. However, we have held that where a regular amount of work is available for part-time employes, individuals who perform something more than a de minimus amount of that work on a regular basis will be found to be regular part-time employes despite their ability to reject work. 4/ We turn to a determination of whether the work record of any of the seven part-time female jailers meets this test.

The record establishes that female jailers presently work only when there is a female prisoner in the County jail or when a female prisoner is being transported by a County deputy sheriff. The following chart sets forth the pertinent aggregate information as to the number of days a female prisoner was in the jail and the hours worked by female jailers. 5/

3/ Casual employes are municipal employes within the meaning of Sec. 111.70(1)(i), Stats., and thus are entitled to be represented for the purposes of collective bargaining. City of Phillips, Dec. No. 26151 (WERC, 9/89).

4/ City of Phillips supra; Village of Niagara, Dec. No. 12446-A (WERC, 5/79); Village of Mount Horeb, Dec. No. 19188 (WERC, 12/81); City of Milton, Dec. No. 13442-A (WERC, 6/83).

5/ A portion of the hours listed can be attributed to the canteen duties matrons performed until early 1990. However, in our view the number of hours involved performing canteen duties is small enough so as to be insignificant to the determination of regular part-time or casual status.

<u>Time Period</u>	<u>Days</u>	<u>Hours</u>
September 1989 through August 1990	151	3321.2 6/
September 1988 through August 1989	121	3092.45
September 1987 through August 1988	80	2756.50
September 1986 through August 1987 7/	60	1058.25

Although it is true that there will always be uncertainty as to when female jailers will be needed, the foregoing reflects that there has been and increasingly continues to be a significant number of hours of work for female jail officers to perform on a regular basis. 8/

As to the question of whether any or all of the female jailers in dispute perform work with sufficient regularity to qualify as regular part-time employes, Finding of Fact 9 sets forth the work record of the seven matrons for the most recent year. Within this year, the record from January 1990 through August 1990 is of particular significance as it was only in January that the County began its exclusive use of these seven individuals. Reviewing this work record, we find that Zubko, Boucher, Blaser and Begolke have all worked at least nine of the last 12 months. This work record clearly establishes sufficient regularity to satisfy us that they are all regular part-time employes who therefore are included in the Association's unit. While Robenhorst has only worked eight of the last 12 months, she has worked the eight most recent months for which we have evidence. Thus, we are also satisfied that her work has sufficient regularity to qualify her as a regular part-time employe included in the Association's unit. Markiewicz and Langlay have only respectively worked in five and seven months of the most recent 12 month period and their work in the most recent six months has been sporadic. Thus, we conclude that they are casual employes who continue to be excluded from the unit.

Dated at Madison, Wisconsin this 28th day of December, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

6/ Because the County persuasively argued that the January 1990 increase in the per diem cost of housing non-County prisoners has and will eliminate use of the County jail by other counties to house female prisoners, the figures for September 1989 through August 1990 only reflect days and hours worked when female County prisoners were present or being transported. We also find persuasive the County contention that it has not significantly increased the transfer level of female prisoners in recent months.

7/ Information from September 1986 through December 1986 is not present in the record. This figure is derived from the January 1987 through August 1987 data which reflects 40 days of work and 705.5 hours of work.

8/ We acknowledge that the percentage of days in a year when work is available is far lower than the 80% figure present in Douglas County, supra. However, in our view the number of hours of work available on a regular basis is the critical factor in our determination.