

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

OCONTO COUNTY SHERIFF'S
DEPARTMENT LABOR ASSOCIA-
TION

Involving Certain Employees of

OCONTO COUNTY
(SHERIFF'S DEPARTMENT)

Case L
No. 32955 ME-2326
Decision No. 21847

Appearances:

Parins, McKay, Mohr & Beinlich, S.C., by Mr. Frederick J. Mohr, 415 South Washington Street, P. O. Box 1098, Green Bay, Wisconsin, 54305, appearing on behalf of the Oconto County Sheriff's Department Labor Association.

Lawton & Cates, by Mr. Richard V. Graylow, 110 East Main Main Street, Madison, Wisconsin 53703, appearing on behalf of Oconto County Traffic Police Employees, Local 778, AFSCME, AFL-CIO, and Oconto County Sheriff Department Employees, Local 778B, AFSCME, AFL-CIO.

Mr. Robert La Count, County Board Personnel Committee Chairman, Oconto County Courthouse, Oconto, Wisconsin, 54153, appearing on behalf of Oconto County (Sheriff's Department).

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Oconto County Sheriff's Department Labor Association, having on February 14, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate unit consisting of all non-supervisory employees employed by the Oconto County Sheriff's Department, to determine whether said employees desire to be represented for the purpose of collective bargaining by said Association; and, after several postponements requested by various parties, a hearing having been held on April 24, 1984, in Oconto, Wisconsin, before Examiner Mary Jo Schiavoni; and at the outset of the hearing, Oconto County Traffic Police Employees Local 778, AFSCME, AFL-CIO and Oconto County Sheriff Department Employees Local 778B, AFSCME, AFL-CIO, having been permitted to intervene in the matter on the basis that they are the recognized bargaining representatives of certain employees of the Oconto County Sheriff's Department; and the parties having filed briefs on May 10 and May 17, 1984, and the transcript of the proceedings having been received on June 1, 1984; and the Commission, having considered the entire record, and being fully advised in the premises herein, hereby issues the following

FINDINGS OF FACT

1. That Oconto County, hereinafter referred to as the County, is a municipal employer maintaining its principal offices at Oconto County Courthouse, Oconto, Wisconsin 54153.

2. That Oconto County Sheriff's Department Labor Association, hereinafter referred to as the Association, is a labor organization and has its offices at P.O. Box 1098, Green Bay, Wisconsin 54305.

3. That Oconto County Traffic Employees Local 778, AFSCME, AFL-CIO and Oconto County Sheriff Department Employees Local 778B, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, are labor organizations, and have their offices at 1041 9th Street, P.O. Box 692, Marinette, Wisconsin 54143.

4. That among its governmental functions, the County currently maintains and operates a Sheriff's Department, wherein individuals occupying the following classifications are employed:

<u>Classification</u>	<u>No. in Classification</u>
Sheriff	1
Undersheriff	1
Traffic Officers (Road Deputies)	10
Jailors	7
Desk Sergeant	1
Radio Operators	4
Investigators	2
Secretary/Matron	1

5. That the parties stipulate that the only individuals to be excluded from the appropriate unit(s) as supervisors are the sheriff and undersheriff.

6. That prior to April 1, 1983, there were two separate departments in which the employes referred to in Finding of Fact 4 were employed; that the Sheriff's Department was under the direction of the sheriff who supervised the jailors, desk sergeant, the radio operators, investigators, and secretary/matron; that the Traffic Police Department was under the direction of a traffic captain who supervised the traffic officers; that in April 1, 1983, the two departments were merged into one department, the Sheriff's Department, under the direction of the sheriff; and that said department contains the classifications of all the employes as set forth in Finding of Fact 4.

7. That, prior to April 1, 1983, AFSCME Local 778 was voluntarily recognized by the County as the exclusive collective bargaining representative of all full-time personnel in the Traffic Police Department excluding the captain, and that the most recent agreement between the County and Local 778 extended from January 1, 1982 through December 31, 1982; that prior to April 1, 1983, AFSCME Local 778B was the certified collective bargaining representative of all regular full-time and regular part-time employes excluding the Sheriff, Undersheriff, confidential, supervisory and all other employes of the County, and that the County entered into an agreement with AFSCME Local 778B which extended from January 1, 1982 through December 1, 1982; and that both agreements contain the following provision:

ARTICLE XXV

Changes

If either party desires to negotiate any changes in this Agreement to become effective after the end of the terms thereof, or any extension thereof, they should notify the other party in writing of their desires to enter into such negotiations prior to July 15, 1982.

8. That on April 1, 1983, AFSCME Local 778B filed a petition for final and binding interest arbitration pursuant to Sec. 111.77, Wis. Stats.; that on September 9, 1983, Investigator Christopher Honeyman advised the Commission that he had closed the investigation after accepting final offers from both the County and AFSCME Local 778B; and that he recommended that the Commission issue an order requiring interest arbitration in the matter.

9. That the final offers of Local 778B and the County were as follows:

Final Offer submitted on behalf of

Oconto County Sheriff's
Local 778B

1. Wages - across the board
effective 1/1/83 - 4%
effective 7/1/83 - 3%
2. Clothing:
Deputies increase to \$250.
jailors/dispatchers \$150.

3. 1 Additional holiday -
full day Good Friday
full day Christmas Eve Day
4. Shift Differential
Deputies "C" Shift - 10~~0~~/hr
"D" Shift - 20~~0~~/hr
"E" Shift - 20~~0~~/hr

Jailors & Dispatchers
"B" Shift - 10~~0~~/hr
"C" Shift - 20~~0~~/hr.
5. And all other Tentative Agreements

County's Final Offer

1. Wages 5% across the Board January 1, 1983
2. Holidays 9 1/2
3. Uniform Allowance - \$250 for deputies

Practice of providing shirts for jailors should continue;
trousers will also be provided in 1983

10. That on September 14, 1983, the Commission certified the results of the investigation and ordered interest arbitration on September 14, 1983, and that it appointed Arbitrator Gil Vernon to hear the matter on October 11, 1983; that the matter is still pending before Arbitrator Vernon awaiting the receipt of briefs from Local 778B; that the matter still pending before Arbitrator Vernon involves a collective bargaining agreement for the year 1983 which extends from January 1, 1983, through December 31, 1983.

11. That on June 29, 1983, Local 778B by Staff Representative Cindy Fenton sent the following letter to the Oconto County Board of Supervisors:

Pursuant to the current labor agreement, Local 778B, Oconto County Sheriff's Department Employees, AFSCME, is hereby giving notice to the Employer of its desire to amend and otherwise revise the current labor agreement to become effective January 1, 1984; following resolution of the pending MED/ARB for 1983.

The Union will seek to amend and otherwise revise the current agreement concerning wages, hours, fringe benefits and conditions of employment. A detailed list of proposals will be submitted at our first meeting.

Please advise me as to a convenient date to begin negotiations.

12. That there is no petition for interest arbitration pending involving the 1984 contract year; and that the instant petition for election was filed on February 14, 1984 by the Association.

13. That four issues remain in dispute: (1) whether the compulsory final and binding arbitration proceeding pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act still pending before Arbitrator Vernon serves as a bar to the processing of the instant election petition; (2) whether there exists a question concerning representation; (3) the appropriateness of the collective bargaining unit petitioned for; and (4) whether certain employees should be included in the unit(s).

14. That the Association contends that its election petition should not be dismissed as untimely or barred by the pending interest arbitration petition for the contract year 1983; that it argues that the appropriate unit should include all regular full-time and regular part-time law enforcement employees who possess

the power of arrest excluding supervisory, confidential, and managerial employees; and that the Association argues that the secretary/matron should be included in the single law enforcement unit because she also has the power to arrest as do the other law enforcement employees.

15. That AFSCME contends that Local 778B's April 1, 1983 petition for interest arbitration blocks the instant election petition with respect to any and all units determined to be appropriate by the Commission; that AFSCME further argues that two units or voting groups must be created for purposes of voting in an election, one group consisting of all traffic officers (road deputies) and the other consisting of all non-traffic officers (non-road deputies); and that AFSCME further argues that the secretary/matron should be excluded from both of the units because she is currently a member of a bargaining unit consisting of clerical/courthouse employees represented by AFSCME.

16. That the County takes no position on the timeliness of the election petition; that the County objects to two separate law enforcement units, but would not object to accreting the Jailors, Desk Sergeant, Radio Operators, and Investigator to the existing courthouse unit currently represented by AFSCME; and that the County takes no position as to whether the secretary/matron should be included in a law enforcement unit or should remain in the courthouse unit.

17. That all of the non-supervisory employees occupying the classifications set forth in Finding of Fact 4 possess the power of arrest, work under the common supervision of the sheriff and undersheriff, share opportunities for transfer and/or promotion, share common locker and work areas, and share a community of interest with respect to wages, hours, and conditions of employment which is sufficient to justify a conclusion that a bargaining unit consisting of said employees is appropriate.

18. That the secretary/matron possesses the power of arrest; that she serves as a jailor when female prisoners are kept in the County's jail; that she guards and transports female prisoners in addition to performing clerical duties on behalf of the sheriff, and thus possesses a sufficient community of interest with the employees in the bargaining unit set forth in Conclusion of Law 2 to warrant inclusion therein.

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

CONCLUSIONS OF LAW

1. That the election petition filed herein is timely.

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

3. That a question of representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act presently exists within the collective bargaining unit set forth in Conclusion of Law 2.

4. That the position secretary/matron is included within the bargaining unit set forth in Conclusion of Law 2 and therefore the occupant of said position is eligible to vote in the election directed herein.

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

DIRECTION OF ELECTION

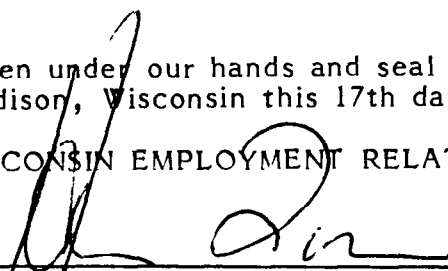
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time law enforcement employees who possess the power of arrest employed by the Sheriff's Department of Oconto County, excluding supervisory, confidential and managerial employees, who were employed by Oconto County on July 17, 1984, except such employees as may prior to the election quit their employment or be discharged, for cause, for the purpose of determining

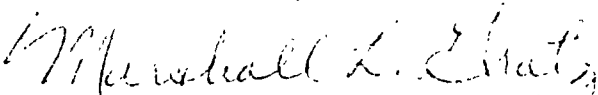
whether a majority of said employees desire to be represented by Oconto County Sheriff's Department Labor Association or by Oconto County Sheriff Department Employees, Local 778B, AFSCME, AFL-CIO, or by neither of said organizations, for the purpose of collective bargaining with Oconto County on wages, hours and conditions of employment.

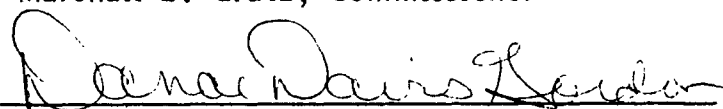
Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of July, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The parties at hearing on April 24, 1984 stipulated to the status of the County as a municipal employer and to their respective status as labor organizations. At issue in the instant proceeding are the timeliness of the election petition, the existence of a question concerning representation, the appropriateness of the petitioned-for collective bargaining unit, and the inclusion of the secretary/matron in the unit.

POSITIONS OF THE PARTIES:

The Association argues that the election petition in the instant case is timely filed and should accordingly be processed. It points out that both agreements which AFSCME had with the County expired on December 31, 1982. Citing Dunn County 1/ as persuasive, the Association argues that the 1982 agreement and any informal agreement between AFSCME and the County to extend the terms and conditions thereof until a successor agreement is reached will not act as a bar to the processing of an election petition. The Association argues that the interest arbitration proceeding should not serve as a bar either, because any arbitration decision issued will be restricted to the contract period from January 1, 1983 to December 31, 1983, and no petition for interest arbitration is pending for the contract year 1984. According to the Association, this situation is similar to that set forth in City of Franklin. 2/ It stresses that there must be a balancing of interests in recognizing employee freedom of choice versus encouraging the stability of existing bargaining relationships. Where, as here, the interest arbitration proceeding remains essentially unaffected by the election petition, the Association argues that the balance of interests should favor processing the election petition.

With respect to the existence of a question concerning representation, the Association argues that the filing of the petition accompanied by a strong showing of interest establishes that such a question exists in the instant case. The Association requests an over-all unit of all regular full-time and regular part-time law enforcement employees who possess the power of arrest excluding supervisory, confidential, and managerial employees. Said unit would also include the secretary/matron.

AFSCME, on the other hand, argues that the pending interest arbitration proceeding bars the Commission from processing the instant election petition. Citing La Crosse County, 3/ Dunn County, 4/ and City of Prescott (Police Department), 5/ it urges the Commission to dismiss the petition as untimely.

In the event that the petition is found to be timely filed, AFSCME contends that two units or voting groups must be created for purposes of voting in an election: one group consisting of all traffic officers (road deputies) and the other group consisting of all non-traffic officers (non-road deputies). This, it submits, is consistent with past practice, the bargaining history, and determinations already made by the Department of Employee Trust Funds on the status, i.e. protective vs. non-protective, of those employees potentially eligible to vote. AFSCME claims that the secretary/matron should be excluded from any law enforcement unit established because she has been voluntarily included by the County and AFSCME in a unit of courthouse employees, which AFSCME currently represents.

1/ Dunn County, Dec. No. 17861 (WERC, 6/80).

2/ City of Franklin, Dec. No. 19538 (WERC, 4/82).

3/ La Crosse County, Dec. No. 12931 (WERC, 8/74).

4/ Dunn County, supra.

5/ City of Prescott (Police Department), Dec. No. 18741 (WERC, 6/81).

The County takes no position on the timeliness of the petition. It does, however, object to the creation of two separate law enforcement units. It would not, however, object to the inclusion of the non-traffic officers into the existing courthouse unit. Moreover, the County takes no position as to whether the secretary/matron should be included in a law enforcement unit or should remain in the courthouse unit.

DISCUSSION:

The instant case involves a petition for interest arbitration filed on April 1, 1983, and an election petition filed on February 14, 1984. The petition for interest arbitration and the final offers of both AFSCME and the County appear to have been submitted on behalf of all the employees previously covered by both of the earlier agreements for the contract period from January 1, 1983, through December 31, 1983. There is no interest arbitration petition pending for any contract period after December 31, 1983. Local 778B has, however, served timely notice on June 29, 1983, of its desire to amend and revise the 1983 agreement to become effective in 1984 pending resolution of the interest arbitration proceeding for the 1983 contract year. This notice, however, merely served to preserve AFSCME's right to re-open the agreement once the pending 1983 proceeding is resolved by issuance of an arbitrator's award.

While it is true that in our previous decisions we found a petition for fact-finding to effectively block a subsequently filed election petition, 6/ those decisions were premised upon balancing the interests in allowing parties' involved in fact-finding proceedings to have a reasonable period of time to consider the fact finder's recommendations after their issuance against the interests of employees in having reasonable opportunity to change or decertify their bargaining representative. No such balancing is necessary with respect to a situation involving a petition for interest arbitration. Interest arbitration proceedings differ substantially from fact-finding proceedings in that once the arbitrator issues an award, the parties to the proceeding are bound by a collective bargaining agreement for a certain period of time. No uncertainty exists as to whether recommendations issued by a "fact finder" will be accepted or rejected by either party and ultimately, ratified by both parties. In the interest arbitration context, the rationale for permitting a reasonable period of time for insulated consideration or negotiation upon issuance of the arbitrator's award does not exist.

As AFSCME has correctly pointed out, 7/ we have held that, as a general rule, the Commission will not process an election petition filed after the normal expiration date of a collective bargaining agreement where such petition is filed on a date subsequent to the filing of a petition for mediation-arbitration involving the same collective bargaining unit. 8/ We did not, in those cases, address the issue now before us of whether such an election petition would be timely where the pending petition for interest arbitration covers a contractual period of time which has already expired under the terms of either AFSCME's or the County's final offer. We find that the election petition in this case is timely. The contract bar policy was established by the Commission for the purpose of encouraging stability in an established bargaining relationship by postponing, but not preventing elections for the purpose of changing or eliminating the bargaining representative during the term of the existing collective bargaining agreement. 9/

6/ City of Milwaukee, Dec. No. 9172 and Dec. No. 9477 (WERC, 1/70).

7/ Dunn County, supra; and City of Prescott (Police Department), supra.

8/ The facts in Dunn County differ from the instant facts in that the Commission found that where the election petition and a mediation-arbitration petition were filed on the same date, the filing of the mediation-arbitration petition did not take preference over the election petition, and the election petition was found to be timely. In City of Prescott, the Commission found that the contract was renewed and such a renewal barred the election petition. However it went on to conclude that the pending petition for mediation/arbitration served as a bar also.

9/ Durand Unified Schools, Decision No. 13552 (WERC, 4/75).

Here, the collective bargaining agreement between the parties has already expired. The circumstances before us more closely resemble those cases where we have held that an incumbent representative is not absolutely insulated from possible ouster once negotiations for a successor agreement extend beyond the normal expiration date of the existing agreement. Moreover, even an indefinite extension of the terms of a collective bargaining agreement, cannot, in and of itself, constitute a bar to a petition for an election filed after the regular term of the agreement has expired. 10/

In so holding we expressly qualify the broadly stated principles in Dunn County, supra, and City of Prescott, supra to the extent that we will entertain an election petition where the collective bargaining agreement pending before an arbitrator in an interest arbitration proceeding has already expired irrespective of the final offer selected by the arbitrator. Such a ruling balances the interest of establishing stable bargaining relationships with the rights of employees to change or eliminate an existing bargaining relationship.

Having found the petition to be timely filed, the filing of said petition with an appropriate showing of interest establishes the existence of a question concerning representation.

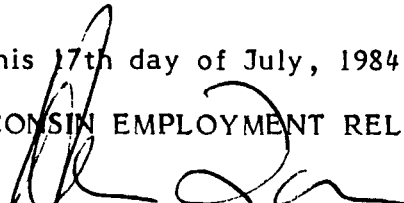
AFSCME argues that the unit requested by the Association is not an appropriate bargaining unit. It stresses previous bargaining history and the previous determinations made by the Department of Employee Trust Funds regarding protective vs. non-protective status of employees potentially eligible for inclusion in the petitioned-for unit in support of its position.

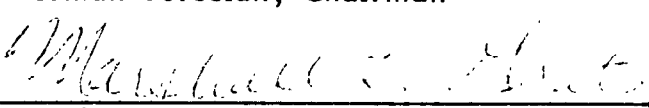
The record, however, reveals that in April of 1983, the Traffic Police Department was merged with the Sheriff's Department and all the employees in both departments were placed under the direction and supervision of the sheriff. Moreover, record evidence reveals that the jailors, desk sergeant, radio operators, investigators, and secretary/matron all possess the power of arrest as do the traffic officers (road deputies). All of the employees now work under the common supervision of the sheriff and undersheriff. They share opportunities for transfer and promotion as well as common locker areas and work areas. In finding said unit to be appropriate, we also note that AFSCME Local 778B, by its claim that the petition for interest arbitration bars an election for all the employees and by covering all the petitioned-for employees in its final offer in the ongoing interest arbitration petition, has bargained on behalf of an over-all law enforcement unit in its negotiations with the County. The employees community of interest, the merger, and the change in operation and supervision in the Sheriff's Department, warrant the conclusion that a unit consisting of all law enforcement personnel who have the power of arrest is appropriate. 11/

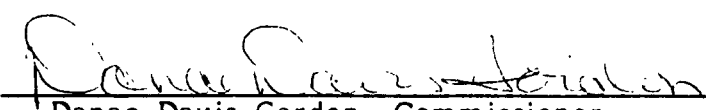
The record also reveals that the secretary/matron, Shirley Dodds, who is currently voluntarily included in a courthouse unit represented by AFSCME, also possesses the power of arrest. She is responsible for guarding and transporting female prisoners as well as performing secretarial services in the Sheriff's Department. As she, too, has the power to arrest, she is properly included in the law enforcement unit herein. 12/

Dated at Madison, Wisconsin this 17th day of July, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

(See Footnotes 10, 11 and 12 on Page 9)

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- 10/ LaCrosse County Dec. No. 12931 (WERC, 8/74); City of Green Bay, Dec. No. 16399 (WERC, 6/78).
- 11/ Vernon County (Sheriff's Department), Dec. No. 21082 (WERC, 10/83).
- 12/ Vernon County, supra.