

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION
Involving Certain Employees of
MARINETTE COUNTY
(SHERIFF'S DEPARTMENT)

Case 63
No. 36676 ME-76
Decision No. 22102-D

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Steve Dettinger, 20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf of the Wisconsin Professional Police Association/LEER Division.
Mr. James E. Murphy, Corporation Counsel, Dunlap Square Building, Marinette, Wisconsin 54143, appearing on behalf of the County.
Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Intervenor, Council 40, AFSCME, AFL-CIO.

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

The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division having, on March 10, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of County law enforcement employees by including in that unit eight employees with five different position titles, generally referred to as Clerk-Dispatchers; and hearing in the matter having been conducted on May 15, 1986, before Examiner Carol L. Rubin, and a stenographic transcript of the proceedings having been prepared; and briefing by the County and WPPA/LEER having been completed on September 9, 1986, followed by additional correspondence; and on September 30, 1986, AFSCME, Council 40 having filed a letter with the Commission indicating that it was a party of interest and wished to intervene in the matter; and after extensive efforts to resolve the issues in dispute through stipulation, additional hearing having been scheduled for April 20, 1987; and said hearing date having subsequently been postponed at the request of the parties; and a second day of hearing having been held on June 29, 1987, in Marinette, Wisconsin and a stenographic transcript of the proceedings having been prepared and filed on July 17, 1987; and at hearing, the parties having been given the opportunity to present oral arguments, but no additional written briefs were filed; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Marinette County, referred to herein as the County, is a municipal employer having its offices at 1926 Hall Avenue, Marinette, Wisconsin 54143; and that among its government functions, the County maintains and operates a number of departments, including a Sheriff's Department.

2. That Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as WPPA, is a labor organization having its offices at 7 North Pinckney Street, Madison, Wisconsin and functioning as the collective bargaining representative of certain employees of the Marinette County Sheriff's Department who possess the power of arrest.

3. That Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Local 1752-A, hereinafter referred to as AFSCME, are labor organizations with offices located at 5 Odana Court, Madison, Wisconsin 53719.

4. That on March 10, 1986, WPPA filed a unit clarification petition requesting that the following positions be included in the Sheriff's Department bargaining unit: Records Manager-Dispatcher (1 employee), Dispatcher-Clerk (1

employee) Clerk-Dispatcher (1 employee), Secretary-Dispatcher (1 employee), Dispatchers (4 employees); and that these positions are generally referred to by the parties as Clerk-Dispatchers.

5. That AFSCME, Local 1752-A (now known as Local 1752) has been and continues to be the exclusive bargaining representative for a Marinette County bargaining unit described as follows: All regular full-time and regular part-time employees of the Marinette County Courthouse, but excluding all elected personnel, supervisory personnel and confidential personnel as defined by the ACT; that this unit was certified by the Wisconsin Employment Relations Commission, Case II, No. 13004, ME-469, Dec. No. 9195, dated October 6, 1969; and that prior to 1982, all Clerk-Dispatchers in the Sheriff's Department were included in said unit and covered by the terms and conditions of past courthouse unit collective bargaining agreements.

6. That until an election held on December 26, 1984, AFSCME, Local 1752-B was, for at least fourteen (14) years, the exclusive bargaining representative for certain employees in the Marinette County Sheriff's Department; and that pursuant to an internal agreement between Local 1752-A and 1752-B, with which the County consented, effective in 1982 Dispatchers were treated by the County and AFSCME as members of Local 1752-B; and that other Clerk-Dispatchers remained in Local 1752-A.

7. That pursuant to the results of the election noted in Finding of Fact 6 above, WPPA/LEER was certified as the exclusive bargaining representative of a bargaining unit described as follows: All regular full-time and regular part-time law enforcement personnel with the power of arrest of the Marinette County Sheriff's Department, excluding supervisory, managerial, executive and confidential employees; and that prior to said election, the County, AFSCME and WPPA/LEER stipulated to the above unit description and stipulated to an eligibility list which excluded civilian employees including all Clerk-Dispatchers.

8. That Appendix A of the 1985 collective bargaining agreement between Local 1752-A and Marinette County is entitled "Wages," and includes a long list of positions including: Records Manager-Sheriff's Department, Special Clerk-Sheriff's Department, and Records Manager Dispatcher-Sheriff's Department; that said positions are also included in the 1986 collective bargaining agreement between the parties; that the "Records Manager-Sheriff's Department" and the "Records Manager-Dispatcher" mentioned in the 1985 and 1986 Local 1752-A collective bargaining agreement are currently filled by one person, Connie Winshel; and that there has been no employee paid at the rates specified for "Special Clerk" in the Local 1752-A collective bargaining agreement since 1982, although the position continues to be listed in the successor Local 1752-A agreements.

9. That the primary duties of the Dispatcher positions, currently occupied by 4 employees, involve communications functions, including the receipt of emergency calls for the Sheriff's Department and the dispatching of units in response to such calls, the answering of nonemergency calls, assisting citizens as needed with registration forms etc., maintaining of various files and lists, and operating the building security system to ensure prisoner and officer security including assistance in insuring jail security, monitoring of cameras and the building intercom system as needed; that the dispatchers work one of three shifts (7:00 a.m.-3:00 p.m., 3:00 p.m.-11:00 p.m. and 11:00 p.m.-7:00 a.m.) providing 24-hour per day coverage, 7 days a week; and that the written job description for the dispatcher position also includes as a duty to act as a matron when needed.

10. That the primary duties of the Dispatcher-Clerk position, currently occupied by one employee, include dispatching, maintaining 911 records, false alarm files, false alarm billings, accident files, accident map, registrations, warrant files, OAR list, warrant list, insurance billings, and accident/criminal photo filing, as well as other secondary duties; that while performing as a clerical employee the Dispatcher-Clerk works from 8:00 a.m. to 4:30 p.m. Monday through Thursday; and that she also acts as a relief dispatcher on Fridays, holidays and weekends.

11. That the primary duties of the Clerk-Dispatcher include maintaining uniform crime reports, payroll records, and vacation, sick leave, holiday pay, compensatory time-off and overtime records, payroll memos to the auditor, payroll

reimbursement, stolen property file, time-cards, complaints, warning letters, copy machine maintenance, juvenile referrals and other secondary duties; and that the Clerk-Dispatcher normally works Monday through Friday from 8:00 a.m. to 4:30 p.m., but can also be required to work as a dispatcher on Fridays and on one of the other shifts if needed.

12. That the primary responsibility of the Records Manager-Dispatcher is to insure that proper record keeping procedures are followed and that filing is done completely and accurately; the incumbent in that position works from 7:30 a.m. to 4:30 p.m. Monday through Friday, except when needed as a relief dispatcher.

13. That both the primary and secondary duties of the Secretary position are primarily clerical; that her primary duties include civil process, criminal summons process, mail distribution, press releases, department memos, correspondence, accounts payable and receivable, supply ordering, stock maintenance, gas billings, etc.; and that the usual hours for this position are 7:30 a.m. to 4:30 p.m., Monday through Friday.

14. That on January 1, 1985, the incumbent employees referred to as Clerk-Dispatchers were appointed "Special Deputy Sheriffs in and for Marinette County" by Sheriff Joseph Larson; that the written appointments and oaths of Deputy Sheriff were signed, notarized and filed with the Clerk of Courts; that in addition, Sheriff Larson issued a policy and procedure statement entitled "Dispatchers and Office Personnel Acting as Deputies"; that this document stated: that there would be no salary increase when any of the relevant employees were acting as a Deputy Sheriff; that they shall be considered a Deputy Sheriff whenever they are engaged in transporting a female prisoner; and that they shall be considered a Deputy Sheriff when on duty in the Marinette County law enforcement center for the purposes of effecting an arrest, service of legal papers, and matron duty; that Constance Winchell, the Records Manager-Dispatcher, believed that she was empowered to make arrests while on duty even though she had never exercised that power; that Winchell has been responsible for serving criminal process anywhere from once a week to once a month, and that she has acted as a matron anywhere from once a week to once a month and on one occasion was the sole officer responsible for escorting a prisoner when the jail sergeant was called back to his office.

15. That when the County filed its initial brief in this matter on July 2, 1986, it attached to its brief eight pages of documents entitled "Notice of Termination," each dated July 1, 1986; that said notices of termination were addressed to each of the Clerk-Dispatchers, and stated the following: You are hereby notified that your appointment as Special Deputy Sheriff in and for Marinette County, State of Wisconsin, and your power of arrest under said office is hereby terminated effective immediately; that the notices were signed by Sheriff Larson; that in a letter dated August 5, 1986, the parties were notified by the Examiner that the various Notices of Termination would be received into the record as County Exhibit 1, subject to WPPA's right to reopen the hearing to elicit any relevant testimony regarding the terminations.

16. That Clerk-Dispatchers are currently civilian employees who do not possess the power of arrest; and that with regard to the bargaining unit status of the Clerk-Dispatchers since the December 26, 1985 election, the parties contend the following:

a) AFSCME Local 1752-A contends that: 1) all civilian employees, including those generally referred to herein as Clerk-Dispatchers, who do not possess the power of arrest have been and should continue to be included in the courthouse unit; and 2) that said employees do not constitute an appropriate separate bargaining unit.

b) WPPA/LEER contends that the Clerk-Dispatchers have in the past been included in the Sheriff's Department unit, and should be included now in that unit, whether they possess the power of arrest or not.

c) The County states that since the election on December 26, 1984, it has not treated the Clerk-Dispatchers as being part of any bargaining unit, but gave said employees a four percent

pay increase in 1985 and 1986 consistent with that given to both represented and unrepresented employees. The County takes the position that the Clerk-Dispatchers could appropriately be included in the courthouse unit or in a separate unit or remain unrepresented. However, for the reasons previously argued in its brief, the County contends that the Clerk-Dispatchers do not possess the power of arrest and should not be included in the existing law enforcement unit currently represented by WPPA/LEER.

17. That on September 26 1986, WPPA submitted to the Commission a written request for the consolidation of the instant matter with two other election cases pending before the Commission; and that the motion to consolidate was denied by the Commission in an Order dated April 27, 1987 1/.

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

CONCLUSIONS OF LAW

1. That because the Clerk-Dispatchers do not currently possess the power of arrest, they are not law enforcement personnel within the meaning of Sec. 111.77, Stats., and thus are not appropriately included in the bargaining unit with the County deputies who do possess the power of arrest.

2. That the positions generally referred to as Clerk-Dispatchers share a sufficient community of interest with the County Courthouse employees to constitute a part of the County Courthouse bargaining unit; and that a separate bargaining unit consisting only of Clerk-Dispatchers in the Sheriff's Department would result in an undue fragmentation of bargaining units under Sec. 111.70(4)(d)2.a., Stats., and thus would be inappropriate for the purpose of collective bargaining.

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

ORDER CLARIFYING BARGAINING UNIT 2/

That the County Courthouse bargaining unit described above in Finding of Fact 5 be, and the same hereby is, clarified by including within that unit the positions of Records Manager-Dispatcher, Dispatcher-Clerk, Clerk-Dispatcher, Secretary-Dispatcher, and Dispatchers, generally referred to by the parties as Clerk-Dispatchers.

Given under our hands and seal at the City of
Madison, Wisconsin this 28th day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

1/ City of Menasha, Dec. No. 24446 (WERC, 4/87).

2/ 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. (Footnote 2 continued on page 5)

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 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. 227.49, 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

BACKGROUND

This proceeding involves the bargaining unit status of five different positions, generally referred to as Clerk-Dispatchers, occupied by eight individuals. When WPPA filed its initial unit clarification petition, it did so under the understanding that the Clerk-Dispatchers had been deputized. Subsequent to the hearing, the County submitted evidence that the status of the Clerk-Dispatchers had changed. 3/ Also subsequent to hearing, AFSCME requested and was granted intervenor status. 4/ These facts led to additional briefing, to WPPA's modification of its original arguments, and to a second day of hearing on June 29, 1987.

Position of WPPA

In its initial brief, WPPA argued that the WERC had a clearly established line of cases holding that if employees possess the power of arrest, they are appropriately included in a law enforcement unit. According to WPPA's initial position, the Clerk-Dispatchers must be included in the law enforcement unit by virtue of their power of arrest, regardless of their means of hire. WPPA objected to the admission of the termination notices into the record. Subsequent to their admission, WPPA modified its position. In its supplemental brief, WPPA argued that the WERC should modify its existing "Powers of Arrest" test to include within law enforcement units all those employees who perform traditional law enforcement specific tasks or perform support services, as a majority of their duties, for a law enforcement department within a law enforcement facility under law enforcement supervision. WPPA contends that the existing rule has resulted in fragmentation of traditional units. While dispatchers, jailers and process servers were traditionally all regular certified law enforcement officers, in recent years, as a result of financial pressures, employers have begun civilianizing a variety of traditional law enforcement duties--simply in order to avoid paying regular officers wages for these assignments.

In WPPA's view, the existing rule also permits employers to arbitrarily and unilaterally determine the units into which certain employees will be placed. While unit membership should be a function of real, substantial job duties, the power of arrest is frequently just a titular power. The Clerk-Dispatchers here are a good example, since their duties have remained essentially unchanged despite the granting and subsequent withdrawal of the power of arrest. Employers, without any change in the fundamental character of the work performed, can and do force a substantial number of their law enforcement department personnel into units of the employer's choice, simply by giving or taking away the power of arrest. According to WPPA, the power of arrest is a conspicuous but unreliable indicator of whether or not an employee is assigned to genuine law enforcement related activities.

WPPA also argues that traditional law enforcement support staff have a greater community interest within their departments than they do with courthouse employees. Such employees see themselves as part of a distinctive organization, with separate supervision, distinct hours and terms of employment and frequent isolation in separate facilities.

WPPA contends that the need to restrict the special provisions of Sec. 111.70 and Sec. 111.77 to a discrete body of law enforcement personnel can be met by a

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- 3/ On July 2, 1986, the County filed with the Commission eight Notices of Termination of power of arrest signed by the Sheriff. After consultation with the Commission, the Examiner received the Notices of Termination into the record as County Exhibit 1, subject to WPPA's right to reopen the hearing to elicit testimony regarding the Exhibit.
- 4/ AFSCME asserted that it had not received notification of the prior hearing and that it already represented the positions in question, as evidenced by the fact that the position classifications appeared in the wage appendix of the labor agreement for the County Courthouse unit.

broader, more practical rule. There is no indication that the legislature intended to require that the WERC adopt its current restrictive definition. So long as some definition exists which does not include employees unrelated to law enforcement, the necessary limits of the special provisions of Chapter 111 are preserved. WPPA urges the WERC to adopt the following simple and fact specific test for inclusion in law enforcement units: An employee shall be eligible for inclusion in a law enforcement unit when that employee performs traditional law enforcement specific tasks (including police patrol, criminal investigation, jail duty, dispatching, and the serving of process) or performs support services, as a majority of that employee's duties, for a law enforcement department within a law enforcement facility and under law enforcement supervision. WPPA contends that such a test preserves the historical scope of law enforcement units, preserves the distinctive community of interest found within law enforcement departments, and prevents arbitrary and unilateral manipulation of units by employers. WPPA urges that under this test these Clerk-Dispatchers, even without the power of arrest, should be permitted to join the law enforcement unit. First, they all perform significant and traditional law enforcements tasks--dispatching, matroning, and the service of process. Second, their purely clerical duties are confined to department affairs and are performed in department facilities under department supervision.

Position of the County

The County contends that the Clerk-Dispatchers could appropriately be included in the courthouse unit, or in a separate unit, or remain unrepresented, but that they should not be included in the existing law enforcement unit.

The County first contends that any previous Commission decisions regarding the power of arrest can be distinguished because of Marinette County's unusual Civil Service Ordinance. Pursuant to Sec. 59.21(8), Stats., and an Attorney General's opinion (68 Op. Atty. Gen. 334, 1979), the County has a Civil Service Ordinance whereby the County, and not the Sheriff, determines the number of deputies. Therefore, in the County's view, the Sheriff was acting outside the scope of his authority in deputizing these employees. The County further notes that the Sheriff has since withdrawn the appointments, and the employees currently have no power of arrest of any kind.

Position of AFSCME

AFSCME contends that the Clerk-Dispatchers have been, and should continue to be, included in the Courthouse unit represented by AFSCME, Local 1752. AFSCME notes that these employees do not possess the power of arrest and perform essentially clerical functions. Further, AFSCME notes that the bargaining history clearly establishes that AFSCME's Courthouse unit has always represented at least some of the Clerk-Dispatcher positions; the Dispatchers were only treated as part of the law enforcement unit when AFSCME also represented that unit and by mutual agreement between AFSCME and the County. AFSCME also points out that prior to the 1984 election in which WPPA was chosen exclusive bargaining agent, all of the parties - including WPPA - stipulated to the exclusion of the Clerk-Dispatchers from the law enforcement unit.

DISCUSSION

Because of the changes in the status of the Clerk-Dispatchers which occurred during the pendency of this case, and the eventual intervention of AFSCME, there has been some shifting of issues and arguments in this case. When the matter was originally heard, testimony focused upon the duties of the Clerk-Dispatchers, their mode of hire, and the nature of their special deputization. Initially, WPPA contended that although the Clerk-Dispatchers might have only a limited power of arrest, they did in fact possess the power of arrest and thus should be included in the law enforcement unit.

Subsequent to the initial date of hearing, the County Sheriff terminated whatever power of arrest these Clerk-Dispatchers may have possessed. WPPA has argued that this case demonstrates that the existing power of arrest standard permits employers to arbitrarily and unilaterally determine the units into which certain employees will be placed.

A County Sheriff has certain constitutional and statutory powers, including the ability to confer or remove the power of arrest. At the second day of hearing on June 29, the Sheriff testified that he originally conferred the very limited power of arrest at the request of the Clerk-Dispatchers; he subsequently terminated the powers of arrest after consultation with the corporation counsel. Neither WPPA nor AFSCME has argued that the Sheriff's terminations of July 1, 1986 were not effective; in fact, the parties have stipulated that the Clerk-Dispatchers are currently civilian employees who do not possess the power of arrest. While a case could arise where a Sheriff's actions or motives in conferring or terminating the power of arrest were so abusive that an extraordinary remedy might be needed, the record in this case does not establish such a situation. Therefore, we do not believe this fact situation warrants a change in our long standing rule regarding power of arrest.

The WPPA has made a number of other arguments urging us to modify our well established principal 5/ that only those employees who perform duties related to the law enforcement function and who have the power of arrest will be found to be "law enforcement personnel" properly included in a law enforcement unit governed by Sec. 111.77, Stats. We are not persuaded by those arguments. As we have indicated in prior cases, our interpretation is supported by the definition of various types of law enforcement personnel found elsewhere in the statutes. 6/ As we stated in both City of Menasha and Marathon County:

Those employees who possess the power of arrest play a critical role in maintaining the public peace and because of same, the Legislature failed to provide that said employees in their attempt to settle disputes under Sec. 111.77, Stats., have the right to strike. On the other hand, employees in law enforcement departments who do not possess the power of arrest do not play the same critical role in maintaining the public peace. Consequently, the Legislature has provided these employees with a different statutory scheme under which to attempt to settle disputes, and said employees are afforded the right to strike under the limited circumstances set forth in Sec. 111.70(4)(cm), Stats. Because law enforcement personnel and other municipal employees are subject to different statutory provisions regarding their respective rights to strike or to pursue interest arbitration, it is inappropriate to include the civilian employees who do not possess the power of arrest in the same bargaining unit with law enforcement personnel. To combine law enforcement personnel with non-law enforcement personnel would create an untenable situation when implementing the interest arbitration and limited right to strike provisions of Secs. 111.77 and 111.70(4)(cm), Stats.

In summary, the Commission is not persuaded that there is any substantial basis to alter its long-standing policy of relying on the power of arrest as the determinative factor in establishing the composition of law enforcement bargaining units. We further note that the Legislature has amended the Municipal Employment Relations Act several times during years we have been applying this policy and has not seen fit to modify the law in a manner which would produce a different result. Furthermore, if we were to adopt the WPPA position, the department employees who do not possess the power of arrest

5/ City of Menasha, Dec. No. 24446 (WERC, 4/87); Marathon County, Dec. No. 24467, 24468 and 20999-A (WERC, 5/87); Kenosha County, Dec. No. 21910 (WERC, 8/84); Vernon County, Dec. No. 21082 (WERC, 10/83); Waukesha County, Dec. No. 14830 (WERC, 8/76).

6/ In addition to the definition in Sec. 165.85(2)(c), Stats., see also Sec. 102.475(8)(c), Stats., which defines a law enforcement officer for purpose of death benefits; and Sec. 967.02(5), Stats., which defines a enforcement officer in the criminal procedure code; and Sec. 40.02(48)(b)(1) and (3), Stats., which define a police officer and deputy sheriff for purpose of retirement benefits.

would be deprived of the limited right to strike they have been statutorily granted.

Thus we will not include the Clerk-Dispatchers, who do not possess the power of arrest, with the law enforcement officers who do.

AFSCME has contended that the Clerk-Dispatchers should be included in the existing courthouse unit and, in fact, are already in that unit. In evaluating the appropriate placement of employees into bargaining units, we consider the following factors

1. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
2. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
3. Whether the employees in the unit sought have separate or common supervision with all other employees.
4. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
5. Whether the unit sought will result in undue fragmentation of bargaining units.
6. Bargaining history.

It has already been established that the Clerk-Dispatchers do not have the power of arrest, nor do they carry weapons. The record establishes that their duties primarily involve clerical work or communications. Their performance of matron or prisoner escort duties are of an irregular and infrequent nature. Their clerical and communications duties involve skills similar to the skills of other clerical employees in the courthouse. While the Clerk-Dispatchers work under different supervision, work out of a separate location, and work rotating shifts, they are not hired through the same Civil Service system used for deputy Sheriffs.

In addition to a desire to avoid unnecessary fragmentation of bargaining units, we also note that the bargaining history revealed by the record, including stipulations by the parties, establishes that for some years in the past, at least some of the positions in dispute were included in the courthouse bargaining unit represented by AFSCME. The inclusion of some Dispatchers in the law enforcement unit in 1982 resulted solely from an agreement between AFSCME and the County to treat such Dispatchers as part of that unit, and did not result from any changes in duties.

In view of the bargaining history, the similarities of basic skills and working conditions, and the number of employees involved, the Commission finds that the positions generally referred to as Clerk-Dispatchers share a sufficient community of interest with courthouse unit employees to be included in the courthouse bargaining unit, and that the differences between said groups of employees are thus insufficient to overcome the statutory mandate against fragmentation of bargaining units. Thus, we have issued an order clarifying the

County law enforcement bargaining unit by excluding the Clerk-Dispatchers from that unit and instead including them in the Courthouse unit represented by AFSCME.

Dated at Madison, Wisconsin this 28th day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner