

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

MILWAUKEE DEPUTY SHERIFF'S  
ASSOCIATION

Involving Certain Employees of

MILWAUKEE COUNTY (SHERIFF'S  
DEPARTMENT)

Case 193  
No. 33474 ME-2363  
Decision No. 22519

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Appearances:

Gimbel, Gimbel and Reilly, Suite 930, One Plaza East, 330 East Kilbourn Avenue, Milwaukee, Wisconsin 53202, by Mr. Franklyn M. Gimbel, appearing on behalf of the Milwaukee Deputy Sheriff's Association.

Mr. Patrick J. Foster, Director, Labor Relations, Courthouse Annex, Room 309, 907 North 10th Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

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

Milwaukee Deputy Sheriff's Association having filed a petition on June 14, 1984, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of Milwaukee County non-supervisory law enforcement personnel by including the Identification Bureau Supervisor; and the Milwaukee Deputy Sheriff's Association having filed a petition on July 31, 1984, requesting the Wisconsin Employment Relations Commission to clarify the above-described collective bargaining unit by excluding the Internal Affairs Officer, and the parties having agreed to consolidate the two petitions into one case, with said agreement confirmed by a letter from the Examiner to the parties on August 13, 1984; and a hearing having been held on August 23, 1984, in Milwaukee, Wisconsin before Examiner James W. Engmann, a member of the Commission's staff; and a stenographic transcript having been prepared and forwarded to the parties on September 26, 1984; and the parties having filed initial briefs in the matter which were forwarded to the parties on November 1, 1984; and the parties having filed reply briefs in the matter which were forwarded to the parties on November 16, 1984; and the Commission having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order clarifying bargaining unit.

FINDINGS OF FACT

1. That Milwaukee County, herein referred to as the County, is a municipal employer with its offices at 901 North 10th Street, Milwaukee, Wisconsin 53233; and that among its municipal functions the County maintains and operates a Sheriff's Department.

2. That the Milwaukee Deputy Sheriff's Association, herein referred to as the Association, is a labor organization representing municipal employes for the purposes of collective bargaining with its offices at 821 West State Street, Milwaukee, Wisconsin 53233; and that the Association is the voluntarily recognized representative of the collective bargaining unit consisting of Milwaukee County non-supervisory law enforcement personnel.

3. That the Association filed a Petition to Clarify Bargaining Unit of Municipal Employes with the Wisconsin Employment Relations Commission on June 14, 1984 seeking to include the position of Identification Bureau Supervisor in the collective bargaining unit; that the Association filed a second Petition to Clarify Bargaining Unit of Municipal Employes with the Commission on July 31, 1984, seeking to exclude the position of Internal Affairs Officer from the unit; and that the parties agreed to consolidate the two petitions into one case; and that said agreement was confirmed by a letter from the Examiner to the parties dated August 13, 1984.

4. That the position of Identification Bureau Supervisor is currently held by Leverett Baldwin; that Baldwin has been employed by the Sheriff's Department for 12 years; and that prior to being made Identification Bureau Supervisor in June of 1975, Baldwin held the positions of Deputy Sheriff I and Deputy Sheriff II.

5. That on February 3, 1982, Baldwin completed a Civil Service Commission form denominated "Position Description"; that Part 1 of said form required him to describe in detail in his own words the work he does; that he listed the following as duties he performs:

1 - Under general direction, to have charge of the Sheriff's Department Bureau of Identification; 2 - Check the preceding shifts' booking forms for accuracy and fingerprint card quality for classification; 3 - Supervise and assist in the taking of all criminal and civilian fingerprints and prepare evidence for court; 4 - Supervise and assist in the formal completion of all fingerprint cards (i.e., classify and file them). 5 - Dust, photograph, and lift latent fingerprints; 6 - Supervise and assist in the taking of all criminal (mug photos), civilian (I.D. photos), investigative, accident and departmental photos; Civil Service I.D. photos and fingerprints; 7 - Develop and print criminal, investigative, accident and departmental photos for both Black and White and Color. Prepare evidence for court; 8 - Present evidence in court as a qualified witness; 9 - Maintain Bureau records and prepare reports; 10 - Instruct and supervise bureau personnel in record-keeping procedures; 11 - Maintain confidentiality of criminal history files; 12 - Instruct, supervise and assist in the procuring of criminal records for other Law Enforcement Agencies as well as the operation of the time terminal (i.e., teletype machine,) in addition to Time Terminal a new computer system . . . 13 - Take and classify fingerprints for other Law Enforcement Agencies upon request. Take, develop, and print photographs for other Law Enforcement Agencies upon request; 14 - Assign, instruct, train, and supervise bureau personnel in the performance of their duties; to be responsible for the appearance, efficiency, and conduct of assigned personnel; to see that departmental and Civil Service rules and regulations are enforced and to report infractions; 15 - Record all time for Identification Bureau personnel; 16 - Do special or confidential work for Sheriff's Department Divisions, County Corporation Counsel, District Attorney, and other County departments; 17 - Instruct in photography and fingerprints in the Sheriff's Department Training Academy; 18 - Maintain proficiency in applied science and technical procedures; 19 - Prepare and control the annual bureau budget; 20 - Confer with officials, attorneys, and citizens and answer inquiries, adjust complaints or refer them to higher authorities; 21 - Perform such other duties as may be assigned.

that Part 2 of said form required Baldwin to list titles and number of employees supervised; that he listed the following:

Identification Bureau Assistant	
Deputy Sheriff I's	- 12
Clerk Steno III's	- 1
Clerk Typist II's	- 4
Work Training Project Employee	- 1

that said form required that he give the name and title of his immediate supervisor; and that he listed Ronald A. Bollhoffer, Inspector.

6. That said form required a statement from Baldwin's supervisor, Bollhoffer; that on said form Bollhoffer stated, "In addition to supervision of the personnel listed above, the Identification Bureau Supervisor is also expected to supervise and check the fingerprint and photographic work done by the deputies assigned to the Booking Room"; that said form required Bollhoffer to list the most important duties of the Identification Bureau Supervisor; that Bollhoffer listed the following duties:

- a. Accurate and up-to-date records
- b. Photographic techniques
- c. Fingerprint taking and accurate classification and comparison
- d. Ability to testify in court as an expert witness on records.
- e. Maintain a "state of the art", of identification techniques.

that Bollhoffer listed the following qualifications for the position of Identification Bureau Supervisor:

(Special or professional education in) Fingerprint, photography

Certification in latent print examination

One year experience in classifying and filing of fingerprints and same in photography.

Ability to work effectively with darkroom equipment both Black and White and Color.

and that Bollhoffer signed and dated said form on February 3, 1982.

7. That the Identification Bureau is a three-shift operation; that Baldwin is in charge of all three shifts; that Baldwin works the first shift; that the Assistant Supervisor and two clerical employees also work the first shift; that two clerical employees work the second shift; that one clerical employee works the third shift; that Baldwin normally reports to a Captain but because of a vacancy he currently reports to the Acting Deputy Inspector; that he makes out the clerical employees' work schedules and fills out their time sheets; that he authorizes vacation and personal days for clerical employees or he authorizes the Assistant Supervisor to do so in his absence; that he gives permission for clerical employees to go home if they are sick on first shift, and the Sergeant of the jail grants such permission on the second and third shifts and informs Baldwin the next day; that he attempts to adjust any grievance that a clerical employee may have; and that he does not have independent authority to assign overtime for clerical employees but only makes such assignments after receiving authorization from his immediate supervisor; that he oversees the work of the clerical employees on a day-to-day basis, particularly those working the first shift.

8. That the 12 Deputy Sheriff I's referred to in Finding of Fact 5 work in the Booking sections of the jail; that the Sergeant in the jail sets the schedules for these Deputies; that Baldwin does not have authority to grant days off for Deputies; that he does not have the authority to make specific assignments to these Deputies; but that he does instruct these Deputies as to the proper taking of fingerprints and photographs.

9. That Baldwin is paid approximately \$29,000 a year; that he is paid approximately \$1,500 a year more than Sergeants and approximately \$4,000-5,000 less than Lieutenants; that he is the only person to hold the position of Identification Bureau Supervisor in the Department; that he is paid much of the \$1,500 more than a Sergeant because of his ability, training and experience in the taking and classification of fingerprints and the taking and developing of photographs; that in April, 1984, Baldwin attempted to apply for the Captain's exam; that Civil Service informed Baldwin he was not eligible to take the Captain's exam because he was not a Lieutenant; that Sergeants, the Supervisor of Communication and the Identification Bureau Supervisor are eligible to compete for Lieutenant; that the Identification Bureau Supervisor is also eligible to compete for Sergeant; and that Sergeants, Deputy Sheriff I's and Deputy Sheriff II's are in the collective bargaining unit.

10. That Baldwin is in charge of the collection of evidence at the scene of a crime; that in directing that activity, he has authority to direct Deputies to assist him; and that some Deputies take fingerprints and photographs and investigate crime scenes; and that Lieutenants do not.

11. That Baldwin does not have the authority to recommend the hiring of clerical personnel or sworn officers; that he did recommend the discipline of a clerical employee more than one year prior to the hearing; that he made his recommendation to his supervisor, a Deputy Inspector, based upon a complaint from a Lieutenant regarding that clerical employee's performance; that he no longer has the authority to effectively recommend discipline of clerical employees, as this function has been taken over by the Internal Affairs Unit; that he does not have the authority to effectively recommend discipline of sworn officers; that if a sworn officer did something that might require discipline, he would notify the sworn officer's Sergeant, as Department rules require of all sworn personnel; and that he would not make a recommendation regarding discipline to the Sergeant.

12. That Baldwin prepares a budget for the Identification Bureau for presentation to the Sheriff; that in the past he has attended meetings where only non-bargaining unit personnel were present and where general Sheriff Department policy matters were discussed; and that he has not participated in said meetings for several months prior to the hearing.

13. That as Identification Bureau Supervisor, Baldwin primarily supervises an activity rather than primarily supervising employees and does not exercise supervisory responsibilities in sufficient combination and degree to make him a supervisory employee.

14. That the Internal Affairs Unit is part of the Special Services Section; that the Unit consists entirely of Sergeant John Tobiaz and Deputy II Richard Pisarki, with no clerical personnel; that as Internal Affairs Officer, Tobiaz reports directly to the Sheriff; that complaints about employees of the Sheriff's Department go to the Sheriff who reads said complaints before forwarding them to Internal Affairs; that the duty of the Internal Affairs Unit is to investigate said complaints to ascertain the truth regarding the allegations in the complaint; and that, as Internal Affairs Officer, Tobiaz is authorized to investigate complaints about all employees of the Sheriff's Department, including civilian employees, sworn personnel, and the Sheriff.

15. That when Tobiaz receives a complaint from the Sheriff, he reviews it and opens a file; that in his investigation Tobiaz has authority to request employees to take certain tests, such as chemical tests to determine blood alcohol and polygraph tests; that some employees have refused to take such tests when requested by Tobiaz; that in his investigation Tobiaz can order an employee to answer questions; that the collective bargaining agreement contains an addendum advising unit members under investigation on the proper format to respond to questions asked by the Internal Affairs Unit; and that the collective bargaining agreement requires that a representative of the Association be present when a unit member under investigation is interviewed by the Internal Affairs Unit.

16. That as Internal Affairs Officer, Tobiaz has access to all files of the Sheriff's Department, including personnel files which contain prior disciplinary actions against employees; that the Sheriff has access to these files; that the Inspector and Deputy Inspector may or may not have access to said files; and that Captains and all persons of lesser rank do not have access to said files.

17. That upon completion of his investigation, Tobiaz makes a judgment as to the validity of the alleged rule violation; that he prepares a report and submits it to the Sheriff who can determine if and what discipline is appropriate and that, in the alternative, the Sheriff can forward the case to the Bureau Commander for discipline or recommendation or he can forward it to the Captain's Review Board.

18. That the Sheriff forwards most such cases to the Captain's Review Board for investigation and recommendation; that Tobiaz sets up the Board composed of three Captains who do not supervise the employee involved; that the Board holds an investigatory and non-adversarial hearing; that Tobiaz presents the case to the Board; that the Board then calls witnesses, including the accused, who may be represented by the Association; that the Board then meets in closed session to

sustain or dismiss the complaint; that if the Board sustains the charge, Tobiaz presents the individual's background to the Board; that the Board then makes its recommendation regarding discipline; and that Tobiaz forwards said recommendation to the Sheriff.

19. That in his report to, or in his discussions with, the Sheriff, Tobiaz does not make any recommendations as to discipline of the employee involved; that before the Captain's Review Board he testifies to the facts of the case but he does not recommend what discipline the Board should recommend to the Sheriff; and that he does not have the authority to advocate for an employee under investigation.

20. That Tobiaz represented the Sheriff in a meeting between the County Corporation Counsel and the Association regarding a request to release information generated by an Internal Affairs investigation; that Tobiaz appeared at a negotiation session between the County and the Association to discuss a procedure for Association representation of people under investigation; and that these negotiations produced the written addendum on the right of unit members to be represented by the Association mentioned in Finding of Fact 15.

21. That as Internal Affairs Officer Tobiaz has sufficient access to, knowledge of, and participation in confidential matters related to labor relations so as to be considered a confidential employee.

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

#### CONCLUSIONS OF LAW

1. That Leverett Baldwin, Identification Bureau Supervisor, is not a supervisor and is a municipal employee within the meaning of Sec. 111.70(1)(j), Stats., and accordingly is appropriately included in the collective bargaining unit described in Finding of Fact 3 above.

2. That John Tobiaz, Internal Affairs Officer, is a confidential employee and therefore, is not a municipal employee within the meaning of Sec. 111.70(1)(j), Stats., and accordingly should be excluded from the collective bargaining unit described in Finding of Fact 3 above.

Based on the above Findings of Fact and Conclusions of Law, the Commission issues the following

#### ORDER CLARIFYING BARGAINING UNIT 1/

1. That the position of Identification Bureau Supervisor shall be included in the above-described bargaining unit.

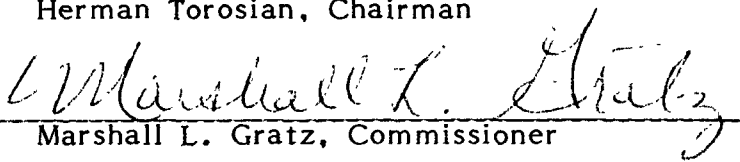
2. That the position of Internal Affairs Officer shall be excluded from the above-described bargaining unit.

Given under our hands and seal at the City of  
Madison, Wisconsin this 4th day of April, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

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(Footnote One appears on page six)

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

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

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

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(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. 227.20 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.

MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

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

The Milwaukee Deputy Sheriff's Association is the voluntarily recognized representative of a bargaining unit consisting of all Milwaukee County, non-supervisory law enforcement personnel. On June 14, 1984, the Association filed a Petition to Clarify Bargaining Unit of Municipal Employees seeking to include the position of Identification Bureau Supervisor in the bargaining unit on the grounds that the person holding said position was a municipal employee and not a supervisor. On July 31, 1984, the Association filed a second Petition to Clarify Bargaining Unit of Municipal Employees seeking to exclude the position of Internal Affairs Officer from the bargaining unit on the basis that the person holding said position was a confidential and not a municipal employee.

POSITIONS OF THE PARTIES

Identification Bureau Supervisor

The Association argues that this position is not supervisory in that the occupant of said position has no authority to hire or discipline, that his supervision of clerical employees is of a technical and ministerial nature, that he has no supervisory authority over sworn personnel, that his higher salary is for his technical expertise and not for supervising employees and that including him in the collective bargaining unit avoids undue fragmentation.

The County argues that the position is supervisory because the occupant has signed a document which states he supervises various employees; because he is in charge of a three-shift operation; because he supervises six clerical employees in that he makes out their work schedules, approves their time off, evaluates and reviews their work and adjusts their grievances and because he participates in matters where only non-bargaining personnel are present.

Internal Affairs Officer

The Association argues this position is confidential in that the occupant of this position investigates all employees of the Department; that he reports directly to the Sheriff; that he has access to confidential personnel files which are not accessible to other employees, such as bargaining unit members; that he represents the Sheriff on occasion; that he uses independent judgment to determine if a rule violation has occurred, and that he has no community of interest with the employees in the collective bargaining unit.

The County argues the position is not confidential in that the occupant does not have access to, have knowledge of, or participate in confidential matters relating to labor relations; that he does not deal with the County's strategy or position in collective bargaining, contract administration, litigation or similar matters pertaining to labor relations that are not available to the bargaining representative; and that he serves as a fact finder who does not participate in the decision-making process following his investigation of charges of misconduct.

DISCUSSION

1. Identification Bureau Supervisor

The Commission considers the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;

4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 2/

The County asserts that Baldwin supervises two distinct groups of employees: 12 Deputy Sheriff I's and 6 clerical employees. As for the 12 Deputies, the record is clear that Baldwin does not supervise these employees. His interaction with these employees is instructional. As with other Deputies at a crime scene, Baldwin supervises the activities of taking fingerprints or photographs or collecting evidence, rather than supervising these Deputies as employees. He cannot effectively recommend the hiring or discipline of them, nor does he direct or assign the work of these employees on a daily basis.

As for the six clerical employees, both parties agree that Baldwin supervises the work of these employees. The question before the Commission is whether Baldwin supervises the clerical employees in such a manner and to such an extent as to be considered a supervisor within the meaning of the Municipal Employment Relations Act.

Baldwin testified that he is in charge of all three shifts of the Bureau. As such he makes out the clerical employees' work schedules, including the granting of vacation and personal days and other time off. He testified that he reviews and evaluates their work and that he adjusts their grievances if he can. He is the only person available to supervise the work of the first shift clerical employees on a day-to-day basis.

On the other hand, however, Baldwin does not have the authority to effectively recommend the hiring or discipline of any employees. The Sheriff selects the employees and places them in the Bureau. The Sheriff disciplines the employees following investigation by the Identification Affairs Unit.

On balance and in consideration of all of the foregoing circumstances it is our conclusion that Baldwin primarily supervises an activity rather than supervising employees. We have therefore held that his position properly remains in the bargaining unit.

## 2. Internal Affairs Officer

The Commission has consistently held that an employee is excluded from a bargaining unit as a confidential employee if said employee has access to, has knowledge of, or participates in confidential matters related to labor relations. In order for information to be considered confidential, it must be of the type that deals with the employer's strategy or position in collective bargaining, contract administration, litigation, grievance handling or similar matters, and the information must be unavailable to the bargaining representative or its agent. 3/ The Commission has further held that "where the duties of an employee

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2/ E.g., City of Kiel (Police Department), Dec. No. 11370-A (WERC, 3/85); City of Manitowoc (Police Dept.), Dec. No. 20696 (WERC, 5/83).

3/ Dane County, Dec. No. 21397-A (WERC, 6/84); Wausaukee United School District No. 1, Dec. No. 15620-A (WERC, 6/83).

are closely related to activity which could lead to disciplinary action, such duties are confidential and, as such, an employee shall be excluded from a bargaining unit because of confidential status." 4/

The record is clear that Tobiaz participates in confidential matters related to labor relations. His entire job is to investigate employees to determine if they have violated work rules. To that end, he has the authority to investigate all employees of the Sheriff's Department and to require said employees to answer his questions. The end result of this investigation can be discipline of an employee. Indeed, members of the bargaining unit have a contractual right to be represented by the Association when Tobiaz interviews them.

The record is also clear that Tobiaz has access to and knowledge of confidential matters related to labor relations. He has represented the Sheriff at a meeting with the Association regarding the disclosure of confidential information developed by his investigation. He has also represented the Sheriff at negotiation sessions between the County and Association regarding the rights of unit members when they are the subjects of his investigation. In these instances he was privy to the employer's position as regards both contract administration and contract bargaining matters.

In addition, Tobiaz has access to all files in the Sheriff's Department, including personnel files. No other person, other than the Sheriff and possibly the Inspector or Deputy Inspector, has access to these files, including Captains, Lieutenants, bargaining unit members or the bargaining representative. While access to personnel files alone ordinarily is not a sufficient basis for exclusion of an individual as a confidential employee, 5/ we note that Tobiaz has access to said files during his investigation of whether an employee has violated a work rule, and that he discloses this confidential information to the Captain's Review Board when they are making a recommendation regarding discipline.

The County argues that Tobiaz is similar to the detectives in City of Manitowoc 6/ who were held to be municipal employees, and not confidential, by the Commission. In that case the Commission found that the detectives were called upon on occasion to investigate charges of misconduct against patrol officers. The Commission concluded that since the detectives served as fact finders who did not participate in the decision-making process following such investigations, this occasional duty was insufficient reason for concluding they were confidential employees. The Commission also expressed a concern that a decision to the contrary would exclude an inordinately large number of employees from the unit by spreading a limited quantity of work of a confidential nature among such employees.

Such a concern is not present in this case because all the investigations of rule violations are carried out by the Department's two-person Internal Affairs Unit. Also unlike Tobiaz, employees in City of Manitowoc were primarily investigators of criminal activity by the general public and only on occasion were they called upon to investigate fellow employees. Tobiaz investigates only employees of the Sheriff's Department, and that function constitutes the bulk of his job duties.

In addition, Tobiaz is not limited to fact finding. He makes an independent judgment of whether an employee has violated a rule, he sets up the Captain's Review Board, he presents the case of the alleged rule violation to the Board and he discloses confidential personnel information to the Board for use in its making of a recommendation regarding punishment.

Finally, there is or at least can be an adversarial relationship between Tobiaz and the employee he investigates. This is evident by the fact that he can compel testimony and that employees have bargained the right to be represented

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4/ Walworth County, Dec. No. 18846 (WERC, 7/81).

5/ Green County (Sheriff's Department), Dec. No. 16270 (WERC, 3/78); City of Menasha, Dec. No. 14523 (WERC, 4/76).

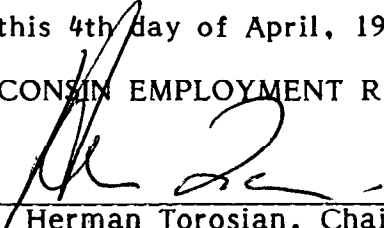
6/ City of Manitowoc (Police Department), Dec. No. 20696 (WERC, 5/83).

during interviews with Tobiaz. Based on his investigations, he makes a determination on whether the employee has violated a rule. Even though he does not recommend specific discipline, Tobiaz' role is so closely related to the process that can lead to disciplinary action that we find it appropriate to exclude him from the bargaining unit as a confidential employee.

Dated at Madison, Wisconsin this 4th day of April, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner