

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
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LABOR ASSOCIATION OF WISCONSIN, INC.	:	Case 58
	:	No. 43526 ME-392
Involving Certain Employes of	:	Decision No. 22789-A
	:	
LINCOLN COUNTY	:	
(SHERIFF'S DEPARTMENT)	:	
	:	

Appearances:

Mr. Dennis A. Pedersen, Representative, Labor Association of Wisconsin, Inc., Route 1, Box 288, Tomah, Wisconsin 54660, appearing on behalf of the Association.

Mr. Charles A. Rude, Personnel Coordinator, Lincoln County Courthouse, 1110 East Main Street, Merrill, Wisconsin 54452, appearing on behalf of the County.

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

On January 22, 1990, the Labor Association of Wisconsin, Inc., hereinafter the Association, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify a bargaining unit of municipal employes by including four patrol sergeants and four detective sergeants in the Association's bargaining unit. Thereafter, the parties engaged in settlement efforts which ultimately were not successful. A hearing on the petition was held on February 5, 1991 in Merrill, Wisconsin before Examiner Raleigh Jones, a member of the Commission's staff. The record was closed July 9, 1991 upon notification that neither side was filing a post-hearing brief. Being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Labor Association of Wisconsin, Inc., hereinafter the Association, is a labor organization with offices located at Route 1, Box 288, Tomah, Wisconsin.
2. Lincoln County (Sheriff's Department), hereinafter the County, is a municipal employer with offices at Lincoln County Courthouse, 1110 East Main Street, Merrill, Wisconsin.

3. In Lincoln County (Sheriff's Department), Dec. No. 22789 (WERC, 8/85), the Commission certified the Association as the exclusive collective bargaining representative of:

All regular full-time law enforcement employes of the Lincoln County Sheriff's Department with the power of arrest, including deputies, jailer/dispatchers, and juvenile officer, excluding the sheriff, chief deputy, sergeants, detective sergeants, unsworn personnel, clerical, seasonal, temporary, managerial, executive and confidential employes.

4. On January 22, 1990, the Association filed a unit clarification petition with the Commission requesting that four patrol sergeants and four detective sergeants be included in the existing bargaining unit represented by the Association. All sergeants have been excluded from the bargaining unit for at least the last 12 years. At the hearing the Association amended their petition so as to seek only the inclusion of the two detective sergeant positions held by Ron Hirte and Jerry Schroeder. The County opposes their inclusion in the unit on the grounds they are supervisors.

5. The Sheriff's Department is headed by Sheriff Ronald Kruger. Next in the organizational chain of command is the Chief Deputy, Robert Lee. Underneath him are the sergeants and underneath them are the deputies. There are no captains or lieutenants in the department. There are currently seven sergeants and thirteen deputies in the department. The department operates with four shifts, and four sergeants act as shift commanders. Three deputies and a shift commander are assigned to each shift.

6. Prior to November, 1989, there were five sergeants (four patrol sergeants and one detective sergeant) and 16 deputies, three of whom were Ron Hirte, Robert Hartkopf and Jerry Schroeder. At the time, Hirte was a road deputy, Hartkopf was a juvenile officer and Schroeder was a detective (a/k/a investigator) in the Detective Bureau. In November, 1989, the Sheriff transferred Hirte and Hartkopf from the aforementioned assignments to the Detective Bureau, changed their title to investigators and then promoted all three investigators (Hirte, Hartkopf and Schroeder) to detective sergeant. This action resulted in there being a total of eight sergeants in the department (four patrol sergeants and four detective sergeants). The stated reason for changing the investigators into detective sergeants was to give the department scheduling flexibility that did not exist so long as the investigators were in the bargaining unit and covered by the labor agreement. Hartkopf died prior to the instant hearing and his detective sergeant position has reverted to a bargaining unit patrol position and is not in issue here.

7. There is no job description for the detective sergeant position. Schroeder and Hirte's main duty is to function as a detective/investigator. They investigate crime scenes and in that regard assume command at the scene from the shift commander and direct the officers. The detective sergeants, like the patrol sergeants, are empowered to call additional staff to a crime scene if they feel it is warranted, even if it would result in overtime payments, but the record does not contain any instances where this has ever happened. They also perform follow-up investigations after road officers have made a preliminary investigation. Schroeder is in charge of the drug unit and performs follow-up investigations for all drug complaints. Hirte assists Schroeder in drug work and also performs follow-up investigations for all other crimes. Neither Schroeder nor Hirte drives a squad car. The work Schroeder and Hirte now perform as detective sergeants is identical to the work formerly performed by the investigators.

8. Schroeder and Hirte are not shift commanders, but they each fill in as acting shift commander about once a month when the shift commander is absent. Schroeder and Hirte get the same pay as the other five sergeants in the department. The 1990 sergeant rate was \$12.34 per hour while the 1989 patrol officer rate (the rate in existence as of the time of the hearing) was \$11.22 per hour. Schroeder and Hirte, like the other sergeants, can approve overtime, but all overtime usage is reviewed by the Sheriff. Schroeder and Hirte are not empowered to approve sick leave or vacations. Detective sergeants do not have any involvement in processing employee grievances; grievances are filed first with the shift commander, not the detective sergeants. Schroeder and Hirte do not have any formal involvement in the hiring of patrol officers, including the interviewing of job applicants. The hiring process is coordinated by the chief deputy who performs background checks on job applicants. The Sheriff makes the actual hiring decision. In the two most recent instances where patrol officers were hired, the Sheriff solicited the opinion of Schroeder and Hirte, as well as a bargaining unit employee, concerning who to hire. Neither Schroeder nor Hirte have taken any disciplinary action against a patrol officer since they became detective sergeants. Specifically, they have not fired, suspended, or given written or oral warnings. Schroeder and Hirte cannot independently impose discipline beyond an oral warning and cannot effectively recommend written warnings, suspension or discharge. Schroeder and Hirte are not empowered to promote employees. Schroeder has transferred deputies from one shift to another. When these transfers occurred, they were done in accordance with the terms of the labor contract. Schroeder also transferred deputies from one shift to another when he was an investigator in the bargaining unit. Neither Schroeder nor Hirte has ever evaluated an employee, although Schroeder once wrote a letter of commendation for a deputy assigned to his drug unit.

9. Detective sergeants Jerry Schroeder and Ron Hirte do not possess supervisory responsibilities and duties in sufficient combination and degree to render them supervisory employees.

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

CONCLUSION OF LAW

Jerry Schroeder and Ron Hirte, occupants of the position of detective sergeant, are not supervisory employees within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

Based on the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The detective sergeant positions occupied by Jerry Schroeder and Ron Hirte are hereby included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 2nd day of October,
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chair

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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

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

(Footnote 1/ continues on page 5.)

(Footnote 1/ continued from page 4.)

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

. . .

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

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

LINCOLN COUNTY (SHERIFF'S DEPARTMENT)

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

BACKGROUND

The Association's petition alleged that four patrol sergeants and four detective sergeants should be included in the bargaining unit represented by the Association. At the outset of the hearing, the Association amended the petition so as to seek only the inclusion of the two detective sergeant positions now held by Jerry Schroeder and Ron Hirte. The County opposes the inclusion of these employees in the bargaining unit on the grounds they are supervisors.

DISCUSSION

Historically, we have considered 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily 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/

We have previously commented that the quasi-military organization of law enforcement departments presents a unique problem in making determinations regarding alleged supervisory status. 3/ Accordingly, we have considered the

2/ City of Rice Lake, Dec. No. 20791 (WERC, 6/83).

3/ City of Madison, Dec. No. 11087-A (WERC, 12/72).

present case in light of our past decisions affecting law enforcement departments.

When we have found officers, either sergeants or lieutenants, to be supervisors, it has been because the record demonstrates a high level of involvement in major labor relations decisions. For example, the sergeants we have found to be supervisors had the authority: to independently issue verbal and written reprimands and to effectively recommend more severe forms of discipline, to consistently participate in hiring decisions, to conduct meaningful performance evaluations and to call-in additional employees; 4/ to issue oral or written reprimands, or impose a day's suspension, pursuant to written policies; 5/ to consistently participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders and to conduct meaningful performance evaluations; 6/ and, to independently change work schedules, to consistently participate in hiring decisions, to independently take oral and/or written disciplinary action and to effectively recommend more severe discipline, to conduct performance evaluations and to do work substantially distinct from patrol officers. 7/

Those officers we have found to be non-supervisory have displayed few, if any, of these factors. For example, we found sergeants to be non-supervisory because they had little or no role in the hiring or transfer decisions, could not effectively recommend discipline above a written warning, could not recommend promotions, conducted evaluations which were only preliminary, and shared many work features with those they oversaw. 8/ A lieutenant, who had the routine authority to call in replacements, change work schedules, and approve days off, who performed the same duties as patrol officers, had no role in grievance adjustments, did not conduct written evaluations, lacked the authority to impose or effectively recommend discipline, and was often the sole officer on duty, was found to be non-supervisory. 9/ We have also found a chief deputy, in charge of the department on an "on-call" basis every third

4/ Sauk County, Dec. No. 17201-A (WERC, 6/87).

5/ Dane County, Dec. No. 21406 (WERC, 2/84).

6/ City of St. Francis, Dec. No. 24473 (WERC, 4/87).

7/ La Crosse County, Dec. No. 19539 (WERC, 4/82).

8/ Milwaukee County, Dec. No. 74855 (WERC, 10/87).

9/ City of Kiel, Dec. No. 11370-A (WERC, 3/85).

weekend, to be non-supervisory because the record demonstrated that ". . .he never hired, fired, laid off, adjusted the grievance of, promoted, transferred or rewarded any employe. . .", and his ". . .discipline of employes have (sic) been limited to 'talking to' one or two employes. . .". 10/

10/ Menominee County, Dec. Nos. 23352-23355 (WERC, 3/86).

In this case, we find that Schroeder and Hirte are not supervisors because they possess few indices of supervisory status. They have not disciplined, evaluated or promoted anyone since becoming detective sergeants in 1989. As to the question of disciplinary authority, the Sheriff testified that all sergeants can issue oral warnings. He also stated, however, that the last time significant discipline occurred in the department, approximately 7-10 years ago, he, as Sheriff, issued written warnings, suspensions and discharges. Given the foregoing, we conclude that although Schroeder and Hirte have the authority to issue verbal warnings, they cannot effectively recommend that an employe receive a written warning or be suspended or discharged. Schroeder and Hirte have no role in evaluations or promotions.

Nor does it appear that Schroeder or Hirte have any hiring authority. While the Sheriff solicited their hiring opinion when the last two deputies were hired, he also solicited the opinion of a bargaining unit employe. Thus, we are not persuaded that the level of Schroeder and Hirte's involvement in the hiring process is particularly reflective of supervisory status.

Schroeder and Hirte do approve overtime on a limited basis, but overtime usage is subject to review by the Sheriff. They do not approve sick leave or vacations. They do serve as acting shift commander about once a month when the regular shift commander is absent. Schroeder has transferred deputies from one shift to another.

Schroeder and Hirte essentially function as criminal investigators and spend almost all of their time doing this work. While they direct the activities of the deputies at a crime scene, they exercise this responsibility in a manner which persuades us that they supervise the activity of criminal investigations, and not the employes in the labor relations sense.

Given the foregoing, we conclude that Schroeder and Hirte do not possess supervisory authority in sufficient combination and degree to make them supervisors. Accordingly, since Schroeder and Hirte's responsibilities do not warrant their exclusion as supervisors, we have included them in the bargaining unit.

Dated at Madison, Wisconsin this 2nd day of October, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chair

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner