

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

MILWAUKEE DEPUTY SHERIFFS
SUPERVISORS ASSOCIATION :

Involving Certain Employees of :

MILWAUKEE COUNTY
(SHERIFF'S DEPARTMENT) :

Case 221
No. 36983 ME-93
Decision No. 24855

Appearances:

Mr. Robert W. Nolan, 7435 West Jackson Drive, West Allis, Wisconsin 53219,
appearing on behalf of Milwaukee Deputy Sheriff's Supervisors
Association.

Mr. Patrick J. Foster, Director, Labor Relations, 901 North Ninth Street,
Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.
Gimbel, Reilly, Guerin and Brown, Attorneys at Law, by Mr. Franklin M.
Gimbel and Ms. Marna Tess-Mattner, 330 East Kilbourn Avenue,
Milwaukee, Wisconsin 53202, appearing on behalf of Milwaukee Deputy
Sheriff's Association.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DIRECTION OF ELECTION

Milwaukee Deputy Sheriff's Supervisors Association having, on May 16, 1986, filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election among supervisory law enforcement personnel of Milwaukee County to determine whether said supervisory personnel desire to be represented by said Association for purposes of negotiations; and Milwaukee County having, on June 25, 1986, filed a petition requesting the Commission to clarify the existing bargaining unit of non-supervisory law enforcement employees by excluding sergeants and lieutenants from that unit as supervisory employees; and Milwaukee Deputy Sheriff's Association having, on July 28, 1986, filed a petition requesting the Commission to clarify the existing non-supervisory law enforcement unit by including in that unit twelve lieutenants and one communications supervisor; and these matters having been consolidated for hearing before Examiner Christopher Honeyman, a member of the Commission's staff; and the Examiner having conducted a pre-hearing conference on July 22, 1986, and having conducted hearing on September 19, October 27, November 7 and December 19, 1986; and briefs having been filed until March 17, 1987; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, 1/ makes and issues the following

FINDINGS OF FACT

1. That Milwaukee Deputy Sheriff's Supervisors Association, herein referred to as the Supervisors, is a labor organization and has its offices at 7435 West Jackson Drive, West Allis, Wisconsin 53219.

2. That Milwaukee County, herein the County or Employer, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and has its principal offices at the Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233.

1/ Because the issues raised in the unit clarification petitions have either been settled or are resolved in this decision as part of our determination of the positions to be included in the supervisory unit and thus of the individuals eligible to vote, we have dismissed said petitions by separate Order.

3. That Milwaukee Deputy Sheriff's Association, herein the Deputies, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and has its offices at 3060 East Stonefield Drive, Oak Creek, Wisconsin 53154.

4. That the Supervisors' Association claims to represent the supervisory law enforcement personnel of the County's Sheriff's Department for the purpose of negotiations with the County, and the Supervisors' Association has requested that the Commission conduct an election among said personnel pursuant to Section 111.70(8) of the Municipal Employment Relations Act and Chapter ERB 17, Wisconsin Administrative Code, in order to determine whether said supervisory personnel desire to be so represented.

5. That during the course of the proceeding the parties agreed that all lieutenants, including Robert Nolan, are appropriately included in a supervisory unit as are the positions of Communications Supervisor and Director of Internal Affairs; and that the parties further agreed that the position of Deputy Inspector would be excluded from the supervisory unit.

6. That the County and the Deputies' Association have been parties to a series of collective bargaining agreements covering wages, hours and conditions of employment of all deputy sheriffs I, deputy sheriffs II and deputy sheriffs sergeants in the employ of the Sheriff's Department.

7. That the County maintains that the Department's 42 sergeants are supervisors within the meaning of MERA and belong in the supervisory voting group; that the Deputies' Association contends that the sergeants are not supervisors and belong in the bargaining unit represented by the Deputies' Association; and that the Supervisors' Association takes no position with respect to the sergeants' status.

8. That the County maintains that the Departments four captains are managerial employees within the meaning of MERA and should therefore be excluded from the supervisory voting group; and that the Supervisors' Association maintains that the captains are supervisory employees and thus eligible to vote in said election.

9. That each captain: heads one of the four bureaus of the Sheriff's Department; prepares a budget for his bureau; has some authority to change allocations of money from one program purpose to another within his bureau budget; meets weekly with the Sheriff, inspector and deputy inspector to discuss and formulate policy; meets with the Policy Committee of the County Board and makes recommendations to that committee; and exercises sufficient discretion in budget and policy formulation and implementation so as to warrant a conclusion that they are managerial employees.

10. That sergeants have little or no role in the hiring or transfer of employees; that sergeants cannot effectively recommend discipline above the level of a written warning; that sergeants function in a wide variety of functional settings including both instances in which the sergeant's entire working time is spent performing tasks also performed by deputies, and settings in which the sergeant assigns and checks deputies' work but does not perform work similar to deputies; that sergeants' independent judgment in work assignments and checking of work performance is often limited by seniority and other provisions in the collective bargaining agreement and by a comprehensive departmental manual; that sergeants evaluate employees, but evaluations adverse to employees are routinely re-evaluated by lieutenants and captains; that sergeants' pay is set by collective bargaining; that sergeants cannot effectively recommend promotions; that sergeants in some units can authorize overtime and change schedules; that sergeants are often reassigned from one unit to another; and that sergeants do not exercise sufficient independence of judgment in the exercise of any authority they possess to hire, promote, transfer, discipline, discharge, assign work and adjust the grievances of employees to warrant a finding that they are supervisory employees.

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

CONCLUSIONS OF LAW

1. That all of the captains in the employ of the Milwaukee County Sheriff's Department are managerial employees within the meaning of the Municipal Employment Relations Act, and thus are not appropriately included in a bargaining unit of supervisory law enforcement personnel pursuant to Sec. 111.70(8), Stats.

2. That sergeants of the Milwaukee County Sheriff's Department are not supervisory employees within the meaning of Sec. 111.70(1)(o), Stats., and thus are not appropriately included in a bargaining unit of supervisory law enforcement personnel pursuant to Sec. 111.70(8), Stats.

3. That all regular full-time and regular part-time supervisory law enforcement personnel of the Milwaukee County Sheriff's Department, excluding non-supervisory law enforcement personnel, managerial, confidential, executive and temporary employees and elected officials, constitutes an appropriate supervisory collective bargaining unit within the meaning of Sec. 111.70(8), Stats.

4. That a question of representation presently exists among the supervisory employees of Milwaukee County in the collective bargaining unit described in Conclusion of Law 3.

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

DIRECTION OF ELECTION

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Directive among all regular full-time and regular part-time supervisory law enforcement personnel of the Milwaukee County Sheriff's Department, excluding non-supervisory law enforcement personnel, managerial, confidential, executive and temporary employees and elected officials, who were employed on October 7, 1987, except such supervisory employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such supervisory employees desire to be represented by the Milwaukee Deputy Sheriff's Supervisors Association for the purposes of negotiating with Milwaukee County with respect to wages, hours and conditions of employment or desire no representation.

Given under our hands and seal at the City of
Madison, Wisconsin this 7th day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

MILWAUKEE COUNTY

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

The three petitions which initially comprised this proceeding raised the following issues. The County contended that the Director of Internal Affairs, John Tobiasz, was a managerial and/or confidential employee and should be excluded from the supervisory unit; the Supervisors' Association argued to the contrary. The County and Supervisors' Association contended that the Communications Supervisor, Thomas Piotrowski, was a supervisor; the Deputies' Association contended that he should be in the non-supervisory unit. The County contended that the Deputy Inspector, Ronald Bollhoffer, was an executive and/or managerial employee; the Supervisors' Association contended that he belonged in the supervisory unit. The County contended that the four captains were managerial employees; both unions contended that the captains belonged in the supervisory unit. The County contended that 42 sergeants were supervisors and belonged in the supervisory unit; the Deputies' Association contended that the sergeants should remain in the non-supervisory unit; the Supervisors' Association took no position. The Deputies' Association contended that the 11 lieutenants were not supervisors and should be included in the non-supervisory unit; the County and Supervisors' Association contended that the lieutenants are supervisors. And finally, the County contended, contrary to both unions, that the specific lieutenant position number 618.0-10 held by Robert Nolan is a confidential position and should be excluded from either bargaining unit.

During the course of the hearing the parties reached agreements on all of the aforesaid issues except the managerial versus supervisory status of the four captains, and the supervisory versus non-supervisory status of the 42 sergeants. In this regard the parties agreed that all lieutenants, including Robert Nolan, were appropriately included in a supervisory unit as are the positions of Communications Supervisor and Director of Internal Affairs. The parties further agreed that Deputy Inspector would be excluded as a managerial or executive employee.

Captains

In making a determination if a position is managerial, we consider the extent to which the employee participates in the formulation, determination and implementation of management policy, and the degree to which the employee possesses effective authority to commit the employer's resources. We have found a position to be managerial if the employee participates in a significant manner in the formulation, determination and implementation of management policy, or if the employee has authority to establish an original budget or to allocate funds for differing purposes from such a budget, other than ministerial authority. 2/

The structure of the Milwaukee County Sheriff's Department is that the Sheriff presides over an inspector and a deputy inspector, below whom serve 4 captains, 12 lieutenants, 42 sergeants, about 360 deputies, and about 130 non-sworn "civilian" employees.

Each of the captains heads a bureau; all have the same authority, and their bureaus are as follows:

1. Detention Services, i.e. the County jail, which has 96 officers.
2. Traffic/Institutions, which has 65 officers.
3. Process/Courts, which has 100 officers.

2/ City of Milwaukee, 71 Wis. 2d 709 (1976); Eau Claire County v. WERC, 122 Wis. 2d 363 (Ct. App. 1984); Kewaunee County v. WERC ___ Wis. 2d ___ (Ct. App. 1987) No. 86-1600; City of Sparta (Police Department), Dec. No. 18799-A (WERC, 12/86).

4. Support Services, which has the remainder of the sworn positions. (The civilian functions are divided among these four bureaus also).

The record shows that each of the captains prepares a budget for his bureau, which is then amalgamated into the departmental budget, which in turn goes through the Sheriff to the County Board. Captains are expected to live within their budget means, and have some authority to change allocations of money from one program purpose to another within their departmental budget. They can recommend changing those allocations outside a specific budget line. The captains' role in policy formulation mainly occurs via weekly meetings between the four captains, the Sheriff, inspector and deputy inspector. The record indicates that virtually all policy matters are addressed at these meetings, and that the captains' participation in policy formulation is primarily as part of this group rather than individually. The captains also appear before the Policy Committee of the County Board, and thereby make policy recommendations on the Sheriff's behalf to the County Board. Captains can reallocate duties and sector boundaries within their bureaus, and can redeploy employees to some extent; these decisions have budgetary implications since such changes can affect the allocation of funds between different purposes identified in the budget. Captains serve as the highest official within a clearly separate subdivision of the Department and, unlike lieutenants, are included in the County's executive compensation plan, which in the County's terms includes only senior managers.

We find that the authority given to captains is substantial, and that captains have sufficient discretion in budget formulation as well as other policy formulation and implementation to establish managerial status.

Sergeants

Because this complex record demonstrates some differences among the 42 sergeants of the Department depending on their assignment, it is as well to review the standards by which we determine supervisory status. Utilizing the statutory definition of a supervisory employee found at Sec. 111.70(1)(0)1, Stats., we consider the following indicia of supervisory status:

1. The authority to recommend effectively the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the workforce.
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 or her skill, or for his or her 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 or she spends a substantial majority of his or her time in supervising employees.
7. The amount of independent judgement exercised in the supervision of employees.

Not all of the factors which we consider in determining supervisory status need be present, but if a sufficient number of the factors appear to a sufficient degree in any given position, we will find the employee to be a supervisor. 3/

3/ See, for example, Juneau County, Dec. No. 18728-B, 1/87.

The number of functional units within the Department to which various sergeants are assigned is large, and the complex mixture of tasks to be performed creates, as noted, some differences in the work lives of different sergeants. Most of the factors noted above, however, are common to all sergeants except those who work alone or as part of a cooperative team.

Sergeants have little or no role in hiring and transfer. The record evidence supports a determination that with respect to discipline and discharge, sergeants have made investigations and recommendations concerning misconduct, but that above the level of a written warning, sergeants authority is limited and their recommendations have often not been followed. There is record evidence that in the case of severe discipline, lieutenants and/or captains routinely re-evaluate the situation. With respect to written warnings, the record establishes that sergeants' authority has diminished over the years as the Sheriff has moved to consolidate disciplinary procedures. At present, some sergeants appear to believe they have authority to issue written warnings, while others believe the contrary. Sergeants do not have a role in promotions as such, but the sergeants evaluate deputies on a standard County form, and these evaluations are used to determine whether or not a deputy in the first few years will receive pay range increases. While there is evidence that sergeants' recommendations have often been upheld in this respect when the evaluation is positive, lieutenants and captains have reversed sergeants' negative recommendations. Sergeants' pay is set by contract, and is the same for all sergeants regardless of function.

Certain changes have taken place in the administrative structure, functions and sub-units of the Department during the recent past. During the 1970's, the Department began assuming responsibility for security at the Milwaukee airport; the baseball stadium; and the County institutions. These functions added both personnel and certain additional duties. In addition, a new title, that of Deputy II, was added during the 1970's. This title is used for employees who perform special functions in the Bureau of Operations, and also for detectives. It is not argued by any party here to be a supervisory rank.

Until the current Sheriff's appointment, no employee above the rank of sergeant wore a uniform; higher rank employees now do wear uniforms, but these are different in style from the uniform shared (except for rank insignia) between sergeants and deputies.

Each of the Department's units generally has at least one sergeant; exceptions are the Children's Court Center, Administrative Services Section, Canine Drug Unit, Civil Writs Unit and a few others. In addition, certain units function only part-time on an as-needed basis, with personnel drawn from other groupings. Among these are the explosive ordnance disposal unit, major occurrence unit, mounted patrol unit, stadium security unit, S.W.A.T. unit and water safety patrol unit. In any of these settings an experienced deputy may be in charge of a sergeant, and the record demonstrates that sergeants within these units function as technicians rather than in a supervisory capacity.

There is evidence that sergeants often change assignments (Sergeant Misko, as an extreme example, served in seven different units in less than four years) although in some cases assignments are of long duration. There are numerous functional units to which sergeants are assigned, and the differences between these units 4/ deserve consideration.

The number of employees working with a sergeant varies substantially from one unit to the next. In the witness protection unit, for example, there is one sergeant and three deputies; in the transit/parks security unit, two sergeants and twelve deputies; in the drug enforcement unit, one lieutenant, one sergeant and four deputies; but at the other end of the scale is the sergeant in the bailiff

4/ Because different witnesses' accounts of the numbers of personnel assigned to each unit differed materially, an amended organization chart (Employer's Exhibit 1, Amended) was solicited, and received on August 12, 1987. We have received that exhibit and the parties' subsequent correspondence with respect thereto into the record. We rely on the numbers shown on this exhibit where the record contains conflicts.

services unit on the day shift, who works with 61 deputies; or the two second-shift sergeants in the jail, who between them work with about 30 deputies. Examples of sergeants who do not oversee anyone include the executive security sergeant, who splits with one deputy (in a cooperative fashion) the duty of providing security for the County Executive; and a public information officer, who works alone. The public information officer has held that function since before he was a sergeant, and the executive security sergeant has held his current job since 1970.

Many of the sergeants do similar work to that of the deputies. This varies greatly from one unit to the next; in several units sergeants do almost no work similar to that of deputies, but in the airport security unit virtually all the work is similar, while in the traffic unit and certain others, sergeants spend about 40 or 50 percent of their time doing work similar to that of deputies. While most deputies get their day-to-day work assignments and direction from sergeants, the record establishes that the sergeants are generally following well-established routines rather than making decisions requiring independent judgment. It appears that, on the whole, the Department has accommodated the sergeants' functions during the many years sergeants have been in the deputies' bargaining unit, to a present status with limited actual authority. Examples in the record of exercise of discretion are few, and there is no evidence that sergeants' roles have expanded over the years. 5/ With respect to discipline of employees, in fact, there is record evidence to the effect that sergeants' authority has decreased somewhat as higher ranks have exercised closer supervision and review of relatively minor discipline such as warnings.

Finally, we note the evidence that sergeants have often been reassigned to different units. This demonstrates that giving great weight to the admittedly high ratio of deputies to sergeants in a few of the units would ignore the overall use of sergeants as largely interchangeable, and would lead to splitting the rank of sergeant between supervisor and non-supervisor in the absence of any conclusive evidence of authority in those units to mandate such a step. We conclude, for these reasons, that the authority given sergeants in work assignments is largely routine, that the sergeants' evaluations of employees do not show a consistent pattern of being treated as final, that sergeants share many features of work and working conditions with deputies, and that the record shows virtually no evidence that sergeants exercise authority over any of the more major labor relations decisions such as hiring, firing, promotion, transfer or discipline above the level of a warning. On balance, therefore, we find that the sergeants do not possess the customary indicia of supervisory status in sufficient combination and degree to warrant finding them supervisors.

Dated at Madison, Wisconsin this 7th day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

5/ Cf. City of St. Francis (Police Department), Dec. No. 24473 (WERC, 5/87).

1. The first part of the document is a list of the names of the persons who were present at the meeting.

2. The second part of the document is a list of the names of the persons who were present at the meeting.