

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
WISCONSIN PROFESSIONAL POLICE :  
ASSOCIATION/LEER DIVISION : Case 210  
Involving Certain Employes of : No. 40692 ME-2800  
MANITOWOC COUNTY : Decision No. 25851  
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Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Gordon McQuillen,  
20 North Carroll Street, Madison, Wisconsin 53703, for WPPA/LEER.  
Mr. Mark Hazelbaker, Corporation Counsel, Manitowoc County Courthouse,  
1010 South Eighth Street, Manitowoc, Wisconsin 54220, for the County.  
Mr. Michael J. Wilson, Staff Representative, P.O. Box 370, Manitowoc,  
Wisconsin 54221-0370, for AFSCME Local 986B.  
Mr. James W. Miller, Staff Representative, 2785 Whippoorwill Drive,  
Green Bay, Wisconsin 54304, for AFSCME Local 986A.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association/LEER Division having, on June 6, 1988, filed a petition with the Wisconsin Employment Relations Commission seeking an election pursuant to Sec. 111.70(4)(d), Stats., in a unit described in the petition as "all regular full-time and regular part-time employees of the Manitowoc County Sheriff's Department excluding supervisory, confidential and managerial personnel;" and the parties thereafter having engaged in unsuccessful efforts to execute a stipulation for said election; and hearing on the petition having been held on August 29, 1988, in Manitowoc, Wisconsin before Examiner Peter G. Davis; and at said hearing, in addition to WPPA/LEER and the County, AFSCME Local 986B appeared as the current collective bargaining representative of the employes in question, and AFSCME Local 986A, the collective bargaining representative of an existing Courthouse unit of County employes was allowed to intervene; and the parties thereafter having submitted written argument, the last of which was received on November 25, 1988; and the Commission having reviewed the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Manitowoc County, herein the County, is a municipal employer having its offices at 1010 South Eighth Street, Manitowoc, Wisconsin; and that among its governmental functions, the County maintains and operates a Sheriff's Department.
2. That Local 986B, AFSCME, AFL-CIO, herein Local 986B, is a labor organization having its principal offices at P.O. Box 370, Manitowoc, Wisconsin; and that Local 986B is the current collective bargaining representative of a bargaining unit of County employes described in the following manner in the 1987-1988 collective bargaining agreement between the County and Local 986B: "the employees of the County Sheriff Department, excluding the positions of Sheriff, Inspector, Deputy Inspector, Training/Jail Administrator, Court/Process Administrator, Communications Administrator, Food Service Manager/Matron, Lieutenant, Sergeant, and temporary employees."
3. That Wisconsin Professional Police Association/LEER Division, herein the WPPA/LEER, is a labor organization having its principal offices at 7 North Pinckney Street, Madison, Wisconsin 53703; and that WPPA/LEER seeks an election in the bargaining unit currently represented by AFSCME Local 986B.
4. That Local 986A, AFSCME, AFL-CIO, herein Local 986A, is a labor organization having its principal offices at P.O. Box 370, Manitowoc, Wisconsin; and that Local 986A is the current collective bargaining representative of a Courthouse unit of certain County employes.

5. That until approximately 1982, all employees in the Sheriff's Department bargaining unit including those in the position of matron, dispatcher and secretary possessed the power of arrest 1/; that since approximately 1982, the incumbent Sheriff has removed the power of arrest from those employees in the positions of matron, dispatcher, and secretary; that those employees who no longer possess the power of arrest have remained in the Sheriff's Department bargaining unit by agreement of the County and Locals 986A and 986B; and that at present, the Sheriff's Department bargaining unit consists of approximately 36 employees who possess the power of arrest and 16 employees who do not.

6. That through its election petition herein, WPPA/LEER seeks an election in the existing bargaining unit or, in the alternative, an election in two separate Sheriff's Department bargaining units, one consisting of those with the power of arrest and the other consisting of those without same; that Local 986B asserts that the existing unit composition is inappropriate under Commission precedent because it mixes employees who possess the power of arrest with those who do not and Local 986B therefore contends that the Commission should not direct the election in the existing unit as sought by WPPA/LEER; that Local 986B further argues that it would be inappropriate for the Commission to establish a separate bargaining Sheriff's Department bargaining unit consisting of those employees who do not possess the power of arrest due to the statutory mandate against fragmentation of bargaining units and due to the presence of the Courthouse unit represented by Local 986A into which the employees who do not possess the power of arrest should be accreted; that Local 986A contends that the Sheriff's Department employees who do not possess the power of arrest should be accreted to its existing Courthouse unit; and that the County urges the Commission to overturn existing precedent and find the existing Sheriff's Department unit to be an appropriate one in which the election sought by WPPA/LEER can be directed.

7. That the employees in the existing Sheriff's Department bargaining unit have: (1) supervision which is separate from that of all other County employees; (2) have a worksite which is separate from that of all other County employees; (3) have hours and working conditions which are generally distinct from those of most other County employees; (4) and have duties and skills which are all uniquely and interdependently directed toward the common purpose of providing law enforcement services to County residents.

8. That the County presently bargains with the following collective bargaining units:

- (1) Highway (85 employees);
- (2) Courthouse (75 employees);
- (3) Sheriff (55 employees);
- (4) Social Service - professional,  
and nonprofessional (60 employees);
- (5) Public Health - professional (12 employees);
- (6) Health Care - professional (15 employees); and
- (7) Health Care - nonprofessional (200 employees);

and that there are approximately 15 para-professional and professional positions which are presently unrepresented.

9. That existing County Courthouse, Social Services and Health Care bargaining units include positions with wages, duties and skills comparable to those of the matron, dispatcher and secretary positions currently included in the Sheriff's Department bargaining unit.

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

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1/ Dispatchers have apparently always been in a County law enforcement unit. Matrons became part of the law enforcement unit in 1981 by agreement of the County and Local 986B, WERC Dec. No. 18947. Secretary positions with the Sheriff's Department were originally included in the Courthouse unit as a result of the 1967 Commission certification of that unit, Dec. No. 8152, and a 1978 Commission unit clarification, Dec. No. 8152-A. Apparently shortly thereafter, the Secretary positions acquired the power of arrest and then became part of the Sheriff's Department unit pursuant to Commission unit clarification, Dec. No. 8152-C.

### CONCLUSIONS OF LAW

1. That the existing bargaining unit represented by Local 986B is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats., because it contains employees who do not possess the power of arrest.

2. That those employees presently included in the Sheriff's Department bargaining unit set forth in Finding of Fact 2 who do not possess the power of arrest do not share a community of interest sufficiently distinct to warrant establishment of a separate Sheriff's Department bargaining unit for said employees given the statutory mandate against establishment of bargaining units which would result in undue fragmentation.

3. That a collective bargaining unit of all employees of the County Sheriff Department who possess the power of arrest, excluding the positions of Sheriff, Inspector, Deputy Inspector, Training/Jail Administrator, Court/Process Administrator, Communications Administrator, Food Service Manager/Matron, Lieutenant, Sergeant, and temporary employees is an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

4. That a question concerning representation within the meaning of Sec. 111.70(4)(d), Stats., has arisen among those municipal employees included in the Sheriff's Department bargaining unit described in Finding of Fact 2 who possess the power of arrest.

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

### DIRECTION OF ELECTION

It is directed that an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five days from the date of this directive, in the collective bargaining unit consisting of all employees of the County Sheriff Department possessing the power of arrest, excluding the positions of Sheriff, Inspector, Deputy Inspector, Training/Jail Administrator, Court/Process Administrator, Communications Administrator, Food Service Manager/Matron, Lieutenant, Sergeant, and temporary employees who were employed by Manitowoc County on January 18, 1989, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by Wisconsin Professional Police Association/LEER Division or by Local 986B, AFSCME, AFL-CIO, or by neither of said labor organizations, for the purpose of collective bargaining with Manitowoc County concerning wages, hours and conditions of employment.

Given under our hands and seal at the City of  
Madison, Wisconsin this 18th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By S. H. Schoenfeld  
S. H. Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Hempe  
A. Henry Hempe, Commissioner

MANITOWOC COUNTY

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

POSITIONS OF THE PARTIES

WPPA/LEER

The WPPA/LEER argues that the existing Sheriff's Department bargaining unit should be permitted to remain intact by the Commission. Applying the criteria the Commission traditionally uses to determine the appropriate bargaining unit, WPPA asserts that it is clear that the Sheriff's Department employees share a community of interest distinct from that of other County employees. Noting that the term "community of interest" is defined neither by statute nor by Commission decision, WPPA asserts that, as stated by the Wisconsin Supreme Court in Arrowhead United Teachers v. WERC, 116 Wis.2d 580 (1984):

"...it appears that the concept involves similar interests among employees who also participate in a shared purpose through their employment."

The WPPA argues that the Sheriff's Department employees clearly share a similar interest and purpose in the departmental effort to provide law enforcement services to the citizens. WPPA contends that each employee in the department is dependent upon the others for the successful performance of their job responsibilities and that this interdependence transcends the fact of whether or not they have the power of arrest. Although WPPA admits that the clerical employees currently included in the Sheriff's Department unit have certain duties and responsibilities akin to those performed by the clerical workers in the existing Courthouse unit, WPPA contends that neither the statute nor prior Commission rulings require that all employees in a bargaining unit have the same skills and duties. WPPA argues that the common purpose and mutual interest of all Sheriff's Department employees should be given greater weight than the diversity of their skills and duties. WPPA also alleges that Sheriff's Department employees have similar hours and working conditions which are separate and distinct from those of other County employees; that they have a supervisor who is separate and distinct from those of all other County employees; and that all Sheriff's Department employees work together in the same building which is separate and distinct from the work place of any other County employees. Given the foregoing, the WPPA contends that the evidence weighs heavily in favor of maintaining the existing department-wide unit. WPPA alleges that the statutory mandate against undue fragmentation also supports maintenance of the existing unit. WPPA lastly argues that bargaining history obviously supports a finding that the existing unit continues to be appropriate.

WPPA argues that nowhere in the Municipal Employment Relations Act is mention made of the power of arrest as being a factor relevant in the determination of the composition of bargaining units. WPPA contends that the only categorical restrictions contained in the statute involve the circumstances under which professional and non-professional or craft and non-craft employees may be mixed. To the extent that existing Commission precedent establishes an additional categorical exclusion (i.e. the power of arrest), the Commission is exercising authority it does not possess. Instead, WPPA asserts that the legislature has directed the Commission to consider the appropriateness of a unit in light of various factors and that, as argued above, application of those factors to this case warrants finding the existing unit to be appropriate. As the statute administered by the Commission does not define "law enforcement service" or "law enforcement personnel" or "law enforcement agencies," the Commission should construe those terms as including all employees who work together toward the common goal of law enforcement. WPPA urges the Commission to conclude that had the legislature intended to provide that possession of the power of arrest was to be determinative in "appropriate" bargaining unit determinations, the legislature would have used words such as "law enforcement officer" "police officer" "peace officer" or "power of arrest." As the legislature has not, the WPPA asserts that the Commission should reasonably conclude that the legislature was more concerned with the rational division of the labor force into manageable bargaining units, than with the unit-wide applicability of matters such as death benefit provisions applicable to "officers" or the particulars of the criminal justice system. Since

the statutes administered by the Commission do not preclude such a result and since both the common knowledge of the legislature about law enforcement agencies and the existence of analogous "mixed" units under the State Employment Labor Relations Act support the legitimacy of "mixed units," WPPA urges the Commission to allow the existing department unit to continue to exist.

To the extent that the Commission's existing precedent reflects a concern about the implications of the right to strike, WPPA argues that it would be contrary to sound public policy for the legislature to isolate deputized officers as the only employees without the right to strike. WPPA urges that such a result would pose a serious threat to public safety because deputies cannot do their job efficiently and safely without dispatchers and secretaries on the job and jailers cannot do their job well without the presence of matrons.

The WPPA also argues that use of the power of arrest as the controlling criterion gives employers too much control over the composition of bargaining units and permits specious and time consuming arguments to delay election proceedings, as has occurred in this case. WPPA notes that County Sheriff's have the power to deputize whomever they wish to make arrests. WPPA contends that in Manitowoc County, the Sheriff has chosen to take away the arrest powers of some employees, principally for financial reasons. Although in this case the power of arrest authority has been utilized for job-related and financial reasons, WPPA asserts that nothing would prevent the political manipulation of bargaining units by an antagonistic employer. WPPA argues that in this case it is AFSCME, not the Sheriff, that is attempting to manipulate the unit's composition for political purposes.

If the Commission is inclined to maintain its general precedent of making the power of arrest the determinative criterion, WPPA asserts that in this case the overwhelming evidence as to community of interest and bargaining history would provide the Commission with a rational basis for deviating from its past precedent. If the Commission continues to apply its existing precedent in all situations, WPPA argues that the Commission is inviting the discord and litigation evident in this case throughout the state in existing "mixed" Sheriff's Department units.

#### THE COUNTY

The County asserts that if the Commission were to apply its existing precedent to the facts of this case, the Commission would conclude that a unit composed of those with the power of arrest is the only appropriate unit in which to hold an election herein. However, the County would prefer to see a different result reached by the Commission. The County agrees with the WPPA that application of traditional criteria by the Commission to the facts of this case would warrant maintenance of the existing department-wide unit. Such a unit would clearly be in the best interest of the citizens of Manitowoc County.

The County contends that the power of arrest criterion which has become determinative under Commission precedent has "no meaning in the real world." The County contends that "the WERC's continued adherence to use of the power of arrest criterion at this point in time is adherence to a distinction which in fact and law is really no difference."

Based upon existing Commission precedent, the County reluctantly concludes that the present bargaining unit must be severed. However, the County would welcome the change in existing law advocated by WPPA.

#### LOCAL 986B

Local 986B asserts that under existing Commission precedent, the existing bargaining unit is not appropriate. Local 986B contends that it has never agreed to the accretion of employees who did not have the power of arrest to the existing Sheriff's Department units. It notes that the dispatchers, matrons and secretaries all had the power of arrest when they were included in the bargaining unit. Local 986 argues that the Commission should direct an election in a "power of arrest" Sheriff's Department unit.

## LOCAL 986A

Local 986A asserts that the only appropriate unit in which an election can be conducted is a bargaining unit consisting of employees with the power of arrest. Local 986A argues that in other cases the Commission has already rejected the same arguments made by WPPA/LEER in this case. Local 986A asserts that if the County and WPPA wish to continue to include the matrons, dispatchers and secretaries in the existing departmental unit, then the Sheriff should give those employees the power of arrest. Absent such action by the Sheriff, Local 986A asserts that the employees who do not possess the power of arrest should be placed in the existing Courthouse unit.

## DISCUSSION

As all parties to this proceeding have acknowledged, the Commission has consistently concluded that it is inappropriate to include employees who do not possess the power of arrest in a bargaining unit of law enforcement personnel. 2/ As we stated in Marinette County, Dec. No. 22102-D (WERC, 7/87):

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

As we continue to be persuaded by the above-quoted rationale, we will not direct an election in the existing Sheriff's Department unit because it contains employees who do not possess the power of arrest.

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2/ 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).

In the alternative, WPPA seeks an election in two separate units of Sheriff Department employees, one unit consisting of those employees with the power of arrest and another consisting of those 16 employees who do not. We have directed the election sought in the power of arrest unit and need not comment further as an election in such a unit is clearly appropriate. However, the request for a separate Departmental unit consisting of those without the power of arrest presents a closer question.

When evaluating the appropriateness of a requested bargaining unit, we consider the following factors:

1. Whether the employees in the unit sought share a 'community of interest' distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. 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.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. 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.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

As to the "community of interest" factor, WPPA persuasively argues that the common focus and interdependence of the efforts of all Sheriff's Department employees provides them with a substantial "community of interest." The employees who lack a power of arrest share in this distinctive "community of interest" when compared to other County employees.

Evaluation of factors relating to supervision and work location are also supportive of WPPA's position. The Sheriff and supervisory employees within the Department supervise only unit employees and the Department is located in a separate secured building in which no other County employees, aside from a Courthouse unit janitor, are regularly assigned to work. As a general matter, Department employees have little interchange or contact with other County employees.

The record as to the matters of comparable skills and duties and comparable wages, hours and conditions of employment is of mixed significance. The five secretary positions share duties and skills similar to employees found in the Courthouse, Social Services and Health Care units. These positions have wages and hours which are comparable to those of secretarial employees in other units, although they are required to wear uniforms. The eight dispatcher positions provide communication services for the Department on a 24 hour basis and have a six day on - three day off work schedule. Their duties and skills are more dissimilar to those of other unit employees than are those of secretarial positions given their role in emergency situations involving law enforcement and fire dispatch services. They wear uniforms and are compensated at a level comparable to certain of the higher paid clerical employees in the Courthouse or Social Services unit. The three matrons work hours which are determined by the meal schedules for all prisoners and by whether a female prisoner is present in jail. As a general matter, matrons spend 20% of their time performing security functions akin to those of the sworn jailer positions and 80% of their time preparing and serving meals to prisoners. Matrons wear uniforms and have a wage rate comparable to the lower paid clerical employees in other units and to the cooks in the Health Care unit.

As to the factor of fragmentation, the County presently bargains with the following units:

- (1) Highway (85 employees);
- (2) Courthouse (75 employees);
- (3) Sheriff (55 employees);
- (4) Social Services professional and nonprofessional (60 employees);
- (5) Public Health - professional (12 employees);
- (6) Health Care - professional (15 employees); and
- (7) Health Care - nonprofessional (200 employees).

There are approximately 15 para-professional and professional positions which are presently unrepresented.

Lastly, as to bargaining history, the matron position became part of the Sheriff's Department unit in 1981 by agreement between AFSCME and the County. The dispatchers have always been in the unit while most if not all of the secretary positions moved from the Courthouse unit to the Sheriff's Department unit through Commission Order in Manitowoc County, Dec. No. 8152-C (WERC, 6/79). Thus, although the positions have been together in the same unit since 1981, there is a history of the Courthouse unit having included Sheriff's Department secretary positions.

Reviewing the foregoing, we conclude that the Department employees who do not possess the "power of arrest" would not constitute an appropriate unit because they do not share a community of interest which is sufficiently distinct from other County employees to overcome our statutory obligation to avoid undue fragmentation of bargaining units. 3/ Thus, we have not directed an election in a separate unsworn Sheriff's Department unit.

As Local 986A did not formalize its interest in including these positions in the Courthouse unit by filing a unit clarification petition, and as the County expressly reserved its right to litigate that issue should the Commission conclude the existing unit is inappropriate, and as the positions could arguably be included in a residual non-professional unit, we reach no conclusions herein as to the appropriate disposition of these positions.

Dated at Madison, Wisconsin this 18th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By S. H. Schoenfeld  
S. H. Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Al Henry Hempe  
Al Henry Hempe, Commissioner

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3/ We reached a similar conclusion in Marinette County, supra; City of Menasha, supra; and Marathon County, supra.