

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
RACINE COUNTY DEPUTY SHERIFF'S :
PROTECTIVE ASSOCIATION, :
:
Complainant, : Case 123
: No. 42946 MP-2279
vs. : Decision No. 26288-A
:
THE COUNTY OF RACINE, :
:
Respondent. :
:

Appearances:

Hanson, Gasiorkiewicz & Weber, S.C., by Mr. Robert K. Weber, Attorney at Law,
514 Wisconsin Avenue, P.O. Box 1875, Racine, Wisconsin 53401-1875,
for the Complainant.

Long & Halsey Associates, Inc., by Mr. William R. Halsey, 8338 Corporate

Drive,

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 3, 1989, the Racine County Deputy Sheriff's Department Association filed a complaint with the Wisconsin Employment Relations Commission in which it alleged that the County of Racine had engaged in prohibited practices contrary to Secs. 111.70(3)(a)1, 4 and 5, Wis. Stats. On January 16, 1990, after attempts at conciliation proved unsuccessful, hearing was set for February 20, 1990, before Examiner David E. Shaw, a member of the Commission's staff. Hearing was subsequently rescheduled and postponed several times at the request of the parties while they attempted to resolve the dispute. The attempts to settle the matter were unsuccessful and hearing in the matter was held May 13, 1991, in Racine, Wisconsin. A stenographic transcript of the hearing was made and provided to the parties by June 3, 1991. The filing of post-hearing briefs was completed by August 21, 1991. The Examiner, having considered the evidence and the arguments of the parties, hereby makes and issues the following

FINDINGS OF FACT

1. The Racine County Deputy Sheriff's Association, hereafter "the Association," or "the Complainant," is a labor organization within the meaning of Sec. 111.70(1)(h), Wis. Stats, and has as its mailing address c/o James Luedtke, 3485 Oak Tree Lane, Racine, Wisconsin 53405.

No. 26288-A

2. The County of Racine, hereafter "the County," or "the Respondent," is a municipal employer within the meaning of Sec. 111.70(1)(j), Wis. Stats., and has its offices located at 730 Wisconsin Avenue, Racine, Wisconsin 53404.

3. The Association and the County have been parties to a series of collective bargaining agreements, the most recent of which expired on December 31, 1991, and by which the County recognized the Association as the sole and exclusive bargaining representative of all regular Deputy Sheriffs in the Racine County Sheriff's Department, excluding the Sheriff, Chief Deputy, Captains, Lieutenants, Planning and Training Officer, Assistant Chief Security Officer, Sergeants, Jail Corporals and civilian employees. The position of Records and Identification Officer has been included in the bargaining unit since at least 1969. For at least the past three two-year contracts, 1986-87, 1988-89 and 1990-91, Section 8.02, Hours of Work, has provided that the Records and Identification Officer, along with seven or eight other specifically named positions, work a forty (40) hour, Monday through Friday week, a standardization which has made the position desirable.

4. On December 12, 1969, then-Sheriff Joseph J. Bessinger published a document entitled "Task Statements and Performance Standards" for the Identification and Records Officer, as follows:

RACINE COUNTY SHERIFF DEPARTMENT

TASK STATEMENTS AND PERFORMANCE STANDARDS

CLASSIFICATION: IDENTIFICATION AND RECORDS OFFICER

| <u>TASKS</u> | | <u>PERFORMANCE STANDARDS</u> |
|----------------------------------|-------|---|
| 1. Science of Fingerprints | 1 | a. Ability to take legible inked fingerprints |
| | 1 | b. Ability to fingerprint the dead. |
| | 1 | c. Ability to recognize patterns and their interpretation. |
| | 1 | d. Understanding of scarred patterns and amputations. |
| | 1 | e. Knowledge of filing sequence. |
| | 1 | f. Thorough knowledge of searching and referencing. |
| | 1 | g. Complete knowledge of finding, powdering and lifting latent impressions. |
| | 1 | h. Ability to chemically develop latent impressions. |
| | 1 | i. Ability to use a fingerprint camera. |
| | . . . | |
| 2. Law Enforcement Photography 2 | a. | Understanding of light and lenses. |
| | 2 | b. Complete knowledge of the mug camera and the speed Graphic camera |

- | | | | |
|----|---|----|--|
| | 2 | c. | Complete understanding of film material |
| | 2 | d. | Complete knowledge of shooting techniques. |
| | 2 | e. | Complete understanding of chemicals, solutions and papers for black and white development. |
| | 2 | f. | Complete understanding of contact and enlargement printing. |
| | 2 | g. | Appreciation of negative and print problems. |
| | 2 | h. | Thorough knowledge of flash photography. |
| | 2 | i. | Understanding identification photographs. |
| | 2 | j. | Understanding of copying procedure. |
| 3. | 3 | a. | Complete knowledge of uniform definitions of Motor Vehicle Accidents. |
| | 3 | b. | Complete knowledge of uniform crime reporting. |
| | 3 | c. | Understanding of use, standardization and limitations of records. |
| | 3 | d. | Ability to accumulate statistical data. |
| | 3 | e. | Filing of data for special studies. |
| | 3 | f. | Complete knowledge of Wisconsin Motor Vehicle Department abbreviations. |

On December 15, 1978, then-Sheriff Leland C. Wittke amended the document by adding "ability to classify fingerprints," and "ability to type 40 words per minute." On April 16, 1982, Sheriff Robert L. Rohner further amended this document by the following additions:

- | | <u>TASKS</u> | | <u>PERFORMANCE STANDARDS</u> |
|----|--------------------------|---|---|
| 4. | Supervision of Employees | 4 | a. Supervises day to day operations of record bureau. |
| | | 4 | b. Assigns tasks to staff. |
| | | 4 | c. Supervises clerical staff in record maintenance. |

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|----|-------------------|---|----|---|
| 5. | Complaint Counter | 5 | a. | Meets and deals with public in regards to complaints and information. |
| 6. | Miscellaneous | 6 | a. | Performs such tasks and assignments as may be assigned by Command. |

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TASKS

PERFORMANCE STANDARDS

- | | | | | |
|----|-------------------------|---|----|--|
| 1. | Science of Fingerprints | 1 | a. | Ability to classify fingerprints |
| | | 1 | b. | Ability to take legible inked fingerprints |
| | | 1 | c. | Ability to fingerprint the dead. |
| | | 1 | d. | Ability to recognize patterns and their interpretation. |
| | | 1 | e. | Understanding of scarred patterns and amputations. |
| | | 1 | f. | Knowledge of filing sequence. |
| | | 1 | g. | Thorough knowledge of searching and referencing. |
| | | 1 | h. | Complete knowledge of finding, powdering and lifting latent impressions. |
| | | 1 | i. | Ability to chemically develop latent impressions. |
| | | 1 | j. | Ability to use a fingerprint camera. |

. . .

- | | | | |
|----|-------------------------------|----|---|
| 2. | Law Enforcement Photography 2 | a. | Understanding of light and lenses. |
| | | 2 | b. Complete knowledge of the mug camera and the speed Graphic camera |
| | | 2 | c. Complete understanding of film material |
| | | 2 | d. Complete knowledge of shooting techniques. |
| | | 2 | e. Complete understanding of chemicals, solutions and papers for black & white and color development. |
| | | 2 | f. Complete understanding of |

- contact and enlargement printing.
 - 2 g. Appreciation of negative and print problems.
 - 2 h. Thorough knowledge of flash photography.
 - 2 i. Understanding identification photographs.
 - 2 j. Understanding of copying procedure.
- 3. Police Records.
 - 3 a. Ability to type 40 words per minute.
 - 3 b. Complete knowledge of uniform definitions of motor vehicle accidents.
 - 3 c. Complete knowledge of uniform crime reporting.
 - 3 d. Understanding of use, standardization and limitations of records.
 - 3 e. Ability to accumulate statistical data.
 - 3 f. Filing of data for special studies.
 - 3 g. Complete knowledge of Wisconsin Motor Vehicle Department abbreviations.

At times, the Records and Identification Officer was utilized to transport prisoners on an as-needed basis.

5. On July 26, 1989, the incumbent Records and Identification Officer, Deputy Jeffrey A. Nehring, submitted the following letter to Sheriff Rohner:

Sheriff Robert L. Rohner
 Racine County Sheriff's Department
 717 Wisconsin Avenue
 Racine, WI 53403

Sheriff Rohner:

I wish for this letter to serve as my notice to resign my rated position and return to the patrol division. I feel that this change is best for both the department and myself.

I do however realize that I will need to wait for a patrol division vacancy to occur before I can be moved. I would request that I be notified of any vacancies in the patrol division.

Respectfully,

Jeffrey A. Nehring /s/
Deputy Jeffrey A. Nehring
Records Bureau Supervisor

6. On September 21, 1989, Atty. Robert K. Weber, attorney for the Association, sent the following letter to Sheriff Rohner and County Personnel Director Ken Adams:

Gentlemen:

In view of our excellent working relationship, I wanted to advise you of the Racine County Deputy Sheriffs Association intent to the rumored civilian replacement of Jeff Nehring in records prior to the necessity of actual litigation.

The Association views the position in question as one that is contractually guaranteed as a law enforcement-bargaining unit position. There are numerous references to the position, including secs. 8.02 and wages. The Association would take whatever action is necessary to make certain that civilians do not fill that position -- grievance, prohibited practice and injunction. Hopefully, this will not become necessary.

As always, in the event the County wishes to bargain over a mid-term contractual change, the Association is willing. In fact, this should be considered a formal demand to bargain over any decision to replace sworn personnel with civilians, if that is the County's intention.

Thank you for your consideration.

Yours very truly,

Robert K. Weber

7. At some time during September, 1989, Sheriff Rohner changed the Records and Identification Officer position to a civilian position, revising the position description to read as follows:

RACINE COUNTY

RECORDS SUPERVISOR
Sheriff's Department

Basic Function:

To supervise the general day-to-day operation of the Records Bureau. To perform responsible and varied clerical and typing work as required.

Duties and Responsibilities:

.Determine work assignments for records staff.

.Work on computer system for the purpose of inputting departmental records and retrieve information as

required.

- .Generate informational reports as requested.
- .Complete Uniform Crime Report as required.
- .Assist the public with complaints and requests received at the counter, by mail or by telephone.
- .Responsible for general records keeping and filing.
- .Supervise staff for quality and quantity of work.
- .Perform such tasks as may be assigned.

Supervision Received:

Receives general supervision from Administrative Lieutenant.

Supervision Exercised:

Supervises Records Room employees.

Qualifications:

- .Experience in records systems
- .Experience and ability in computerized records systems.
- .One year of supervisory experience, preferably in records systems.
- .Ability to prepare and present effective oral and written reports.
- .Ability to communicate effectively with other employees and the general public.
- .Formal education beyond high school preferred.

Or any equivalent combination of training and experience which provides the required knowledge, skill and abilities.

This description has been prepared to assist in properly evaluating various classes of responsibilities, skills, working conditions, etc., present in the classification. It is intended to indicate the kinds of tasks and characteristic levels of work difficulty that will be required of positions that will be given this title. It is not intended as a complete list of specific duties and responsibilities. Nor is it intended to limit or in any way modify the right of any supervisor to assign, direct and control the work of employees under his/her supervision. The use of a particular expression or illustration describing duties shall not be held to exclude other duties not mentioned that are of a similar kind and level of difficulty.

8. Pursuant to the changes noted in Finding of Fact 7, the significant changes in the job consisted of the elimination of law enforcement duties such as finger printing, taking mug shots, taking evidence of the crime scene, and occasionally transporting prisoners. These duties fell to others in the bargaining unit on an as-needed basis.

9. Contemporaneous with the changes noted in Finding of Fact 7, the

County posted the position of Records Supervisor for internal transfer/promotion, with a salary range of \$22,659 - \$30,343. Pursuant to the 1988-89 Collective Bargaining Agreement, the wage for the predecessor represented position was \$2,709.11 per month in 1989 or \$32,509.32 per year. The County hired a civilian as the Records Supervisor in the Department.

10. The parties' 1988-89 Collective Bargaining Agreement contained the following provisions:

ARTICLE I
RECOGNITION

1.01 Racine County recognizes the Association as the sole and exclusive bargaining representative for all regular Deputy Sheriffs in the Sheriff's Department, Racine County, Wisconsin, excluding the Sheriff, Chief Deputy, Captain, Lieutenants, Detective Inspector, Chief Security Officer, Planning and Training Officer, Assistant Security Officer, and Sergeants and all other employees.

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ARTICLE VIII
HOURS OF WORK

. . .

8.02 The following Sheriff's Department Deputies shall not work the standard work shift described above, but shall work a five (5) day week, Monday through Friday, eight (8) hours per day:

Special Investigative Unit
District Attorney, Investigators
Court Officers
Process Servers*
Garage Attendant
Deputy Friendly
Records & I.D. Officer
Conveyance Officers
Consumer Fraud Investigators

. . .
ARTICLE XXXI
GENERAL PROVISIONS

31.01 Racine County will not lay off any member of the bargaining unit as a result of creating positions in the Department which are staffed by non-bargaining unit personnel.

The parties' Agreement also includes a provision for final and binding arbitration of grievances at Article XX, Section 20.05.

11. Article XXXI, Section 31.01, came into being during negotiations for the 1988-1989 collective bargaining agreement in response to the Association demands that no bargaining unit positions be lost as a result of "civilianizing" positions. The County countered with the language which was eventually included. Section 31.01 remained unchanged during the parties' most recent 1990-1991 agreement.

12. The County and the Association have had various discussions over the conversion of certain bargaining unit law enforcement positions to civilian positions for the last twelve years. During negotiations for the parties' 1990-91 Agreement, the parties agreed to "civilianizing" the Dispatch and Radio Operator position and Correctional Clerks.

13. The County has refused and continues to refuse to bargain with the Association over its decision to "civilianize" the Records and Identification Officer position, and the Association has not demanded to bargain the impact of the decision with the County.

14. The civilian employees employed in the Racine County Sheriff's Department are not in the bargaining unit represented by the Association and the Association does not represent said civilian employees for the purpose of collective bargaining.

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

CONCLUSIONS OF LAW

1. Respondent Racine County has no duty to bargain collectively with Racine County Deputy Sheriff's Protective Association within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, with respect to the decision to change the bargaining unit position of Records and Identification Officer to a civilian position of Records Supervisor, since provisions relating to the civilianizing of positions in the Department, and the impact thereof, are included in the collective bargaining agreement existing between the parties. Therefore, Respondent Racine County did not violate Sections 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act by its refusal to bargain over this subject.

2. The Complainant Racine County Deputy Sheriff's Protective Association does not represent the civilian employees in the Racine County Sheriff's Department for the purposes of collective bargaining and, therefore, the Respondent Racine County is not required to bargain collectively with the Respondent Association as to the wages, hours and conditions of employment of said civilian employee in the Records Supervisor position.

3. The Commission will not assert its jurisdiction to determine

whether the Respondent Racine County has violated Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER 1/

That the complaint be, and hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 29th day of January, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

RACINE COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

Complainant Association

The Association maintains that it is not estopped from asserting its collective bargaining rights. It argues that the County misapprehends the legal effect of Article 31.01 because the County has not "created" a civilian job but rather re-labelled and redefined an existing job. Thus, it submits, Article 31.01 is not applicable to, let alone, dispositive of, the dispute at bar.

Citing Commission precedent that waiver of a statutory right to bargain

must be established by clear and unmistakable contract language or bargaining history, the Association alleges that the bargaining history refutes the County's waiver claim because years after Article 31.01 was adopted, the parties bargained the "civilianization" of nine radio operator/dispatch positions. This action, it avers, makes it clear that both parties understood the language to apply exclusively to "newly-created", not then-existing, positions.

According to the Association, to follow the County's argument to its logical conclusion could result in the replacement of every deputy sheriff in the Department merely by civilianizing and renaming each position as vacancies occur. The Association maintains that, pursuant to the recognition clause and Sec. 8.02 of the Agreement, the County must fill the position with a deputy sheriff if it chooses to fill said position at all.

The Association attempts to distinguish Door County 2/ from the instant case, urging the Examiner to find that the decision to civilianize the Records and Identification position related to a mandatory subject of bargaining, and was itself, negotiable. The Association asserts that it demanded to bargain the decision and its impact. It states that the instant case is more analogous to City of Eau Claire, 3/ Brown County, 4/ and City of Green Bay. 5/ The position has been in the bargaining unit since 1969, is a Monday through Friday, forty-hour per week desirable job, and the Association stresses that only two people have held the job. It points out that loss of said position is a loss from the bargaining unit; that the Sheriff candidly admitted that the fundamental reason for the change was to "trim the department..." and to save money. This change, it claims, also increased the workload of other deputies adversely affecting the working conditions of other bargaining unit members.

Unlike in Dane County, there was no arguable emergency and the Association was willing to resolve such problems. Failure to bargain such a decision prior to implementation on the County's part is a per se violation of the duty to bargain in the Association's view.

The Association also claims there are serious impact issues unresolved; e.g., the bargaining unit status of the current position holder, the position's wages, hours, and duties, job tenure rights, and lay-off consequences on the bargaining unit. The County's continuous refusal to bargain the impact of the changeover is a separate violation in its view.

By way of remedy, the Association requests restoration of the status quo, immediate posting of the position and full back pay differential for the successful applicant for the time commencing from the changeover to the filling of the position.

2/ Dec. No. 22681-A (Honeyman, 11/85).

3/ Dec. No. 22795-A (Honeyman, 1/86).

4/ Dec. No. 20857-B (WERC, 7/3/85).

5/ Dec. No. 18731-B (WERC, 6/15/83).

Respondent County

The position of the County is simply that the language of Article 31.01 of the Collective Bargaining Agreement permitted the County to create the civilian position of Records Supervisor. It asserts that the County fulfilled its bargaining duties on this issue when Article 31.01 was inserted into the Collective Bargaining Agreement in response to the Association's request.

The County contends that this language constitutes clear waiver on the Association's part of the right to bargain on this issue.

Noting that the testimony is uncontroverted as to how Article 31.01 was created and that there has been no attempt on the Association's part to delete the language, the County asserts that it was entitled to take the action which it took.

Finally, the County suggests that the Association was not able to fully achieve its goals at the table; and the complaint is an attempt to gain from the Commission rights that do not exist under the Agreement. It requests dismissal of the complaint in its entirety.

DISCUSSION

The parties in their briefs argue about whether the decision to replace the bargaining unit position of Records and Identification Officer with a civilian position of Records Supervisor is a mandatory subject of bargaining. The County argues that even if such a decision is found to be mandatory, the Association has waived its right to further bargain over such a decision and pursuant to Section 31.01 in the Agreement.

While the courts and Commission in previous cases have concluded under some circumstances that the decision to replace a bargaining unit position with a new civilian position is not a mandatory subject of bargaining, 6/ and under other circumstances that it is, 7/ the undersigned assumes for the sake of argument that the facts in the instant case establish that both the decision itself and the impact of said decision are mandatory subjects of bargaining. 8/ The real issue to be addressed is whether the Association waived its right to bargain over said decision.

Generally speaking, a municipal employer has a duty to bargain collectively with the representative of its employees with respect to mandatory

6/ Dane County, Dec. No. 22681-A (Honeyman, 1/88).

7/ Brown County, Dec. No. 20857-B (WERC, 7/85); see also City of Green Bay, Dec. No. 18731-B (WERC, 6/83).

8/ It is unnecessary to decide whether the decision to "civilianize" the Record and Identification Officer position is a mandatory subject of bargaining inasmuch as the Examiner has found that a contractual waiver exists and controls the outcome of this allegation.

subjects of bargaining during the term of an existing collective bargaining agreement, except as to those matters which are embodied in the provisions of said agreement, or where bargaining on such matters has been clearly and unmistakably waived. 9/ Where a collective bargaining agreement exists which expressly addresses a subject, it determines the rights of the parties' and consequences of certain actions, 10/ but determinations as to whether or not a waiver exists are made on a case-by-case basis. 11/

Here, Article XXXI, Section 31.01, of the parties' Agreement expressly provides that the County will not lay off any member of the bargaining unit as a result of creating positions in the Department which are staffed by non-bargaining unit personnel. The provision was included in the 1988-89 Agreement in response to the Association's initial demand that no bargaining unit positions be lost as a result of any attempt at "civilianizing" positions on the County's part. It remained unchanged in the current 1990-1991 agreement. The Association's argument that Section 31.01 only applies to newly-created positions and not to civilianizing existing positions is not persuasive. If the parties were only contemplating the creation of new positions, i.e., additional positions, the protection against layoffs would seemingly be unnecessary. Moreover, the testimony of both Luedtke and the Sheriff indicate that the parties agreed to Section 31.01 in response to the Association's concern over the civilianizing of bargaining unit positions. Because the parties contemplated the County's attempts to "civilianize" various bargaining unit positions and incorporated Section 31.01, which expressly addressed at least part of the Association's concern, i.e., restricting the County's ability to lay off bargaining unit members to accomplish this civilian conversion; it must be concluded that Section 31.01 operates as a contractual waiver to the Association's right to bargain over the decision and its impact. 12/

9/ City of Richland Center, Dec. Nos. 22912-A, B (Schiavoni, 1/86) (WERC, 8/86).

10/ Racine Unified School District, Dec. No. 18848-A (WERC, 6/82); Janesville School District, Dec. No. 15590-A (Davis, 1/78); and City of Richland Center, supra.

11/ Racine Unified School District, Dec. No. 13957-C (WERC, 1/83); City of Richland Center, ibid.

12/ The Association also maintains that the County has refused to bargain over the impact of the decision to civilianize the Records and Identification Officer position. The effect of Section 31.01 as constituting waiver goes to the bargaining of impact, as well as the decision. It is also noted, however, that in his letter dated September 21, 1989, Attorney Weber states, in pertinent part, as follows: "In fact, this should be considered a formal demand to bargain over any decision to replace sworn personnel with civilians, if that is the County's intention." Nowhere in this letter or in any other evidence adduced at hearing is a demand to bargain the impact of such a decision made by the Association. Accordingly, inasmuch as no demand to bargain impact has been made, no violation of Section 111.70(3)(a)1 and 4 would be found in this respect, even absent a waiver. See City of Appleton, Dec. No. 18451-B (WERC, 6/82); and Jt. School District No. 1, City of Green Bay, et al., Dec. No. 16753-B (WERC, 6/81), Aff'd Brown Co. Cir. Ct., 1983.

As to bargaining any impact concerning the wages, hours and conditions of employment of the civilian employe in the Records

Section 31.01 addresses the issue of civilianizing bargaining unit positions and determines the rights of the parties in this regard. It limits the County's right to "civilianize" positions insofar as prohibiting the lay-off of bargaining unit members. This language, as such, is clear and unmistakable waiver of the Association's right to bargain over the "civilianizing" of the Records and Identification Officer position, notwithstanding the County's voluntary bargaining and discussions subsequently with the Association over the "civilianizing" of other positions such as the Dispatch and Radio Operator positions and Correctional Clerk position. Therefore, no violations of Section 111.70(3)(a)1 and 4, occurred when the County refused to bargain with the Association over this position. 13/

Dated at Madison, Wisconsin this 29th day of January, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

Supervisor position, the Association does not represent the civilian employees in the Department since said employees are not in the bargaining unit represented by the Association. Hence, the County has no duty to bargain with the Association in that regard.

- 13/ The complaint also alleged a violation of Sec. 111.70(3)(a)5, Stats. Inasmuch as the parties' Agreement provides for final and binding grievance arbitration and no evidence or argument has been presented regarding the alleged violation, it is not considered.