

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BROWN COUNTY SHERIFF'S DEPARTMENT	:	
SUPERVISORY EMPLOYEES' ASSOCIATION,	:	
	:	
Complainant,	:	
	:	Case 465
vs.	:	No. 46310 MP-2527
	:	Decision No. 27057-A
BROWN COUNTY (SHERIFF'S DEPARTMENT),	:	
	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 261, P.O. Box 1015, Green Bay, Wisconsin 54305, appearing on behalf of the Brown County Sheriff's Department Supervisory Employees' Association.

Mr. John J. Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut, P.O. Box 23600, Green Bay, Wisconsin 54305-3600, appearing on behalf of Brown County (Sheriff's Department).

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING MOTION TO DISMISS

The Brown County Sheriff's Department Supervisory Employees' Association filed a complaint on September 27, 1991, with the Wisconsin Employment Relations Commission alleging that Brown County (Sheriff's Department) had committed prohibited practices within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act, herein MERA. Brown County (Sheriff's Department), by Counsel, filed a Motion to Dismiss for Lack of Jurisdiction with supporting arguments on October 10, 1991. On October 16, 1991, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. On October 23, 1991, the Complainant, by Counsel, filed a response to the Motion to Dismiss. The Examiner having considered the pleadings and the Motion and the arguments of counsel and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Brown County Sheriff's Department Employees' Association, hereinafter referred to as the Association, is an organization which represents the supervisory employes of the Brown County Sheriff's Department and its address is c/o Mr. Frederick J. Mohr, P.O. Box 1015, 414 East Walnut Street, Suite 261, Green Bay, Wisconsin 54305.

2. Brown County, hereinafter referred to as the County, is a municipal employer and its offices are c/o Mr. Gerald E. Lang, Personnel Director,

P.O. Box 23600, 305 East Walnut Street, Green Bay, Wisconsin 54305-3600.

3. On September 27, 1991, the Association filed a complaint with the Commission asserting that it was the representative of supervisory employes of the County's Sheriff's Department and the County had committed prohibited practices contrary to the provisions of Sec. 111.70(3)(a), Stats.

4. On October 10, 1991, the County filed a Motion to Dismiss for Lack of Jurisdiction on the grounds that supervisory employes are not "municipal employes" within the meaning of Sec. 111.70(1)(i), Stats., and lack standing to file a complaint of prohibited practices under Sec. 111.70(3), Stats.

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

CONCLUSIONS OF LAW

1. The supervisory employes employed by the Brown County Sheriff's Department are not "municipal employes" within the meaning of Sec. 111.70(1)(i), Stats., and therefore are not granted rights guaranteed to municipal employes under Sec. 111.70(2), Stats., and are not afforded the protection to exercise such rights pursuant to Sec. 111.70(3), Stats.

2. The Association filed the instant complaint on behalf of supervisory employes employed by the County wherein it alleged the County violated the provisions of Sec. 111.70(3), Stats., with respect to action taken by the County against such supervisory employes, and as Sec. 111.70(3), Stats. does not apply to such supervisory employes, the complaint fails to allege facts upon which relief could be granted under Sec. 111.70(3), Stats.

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

ORDER 1/

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 orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review 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.

The County's Motion to Dismiss is hereby granted and the instant complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 6th day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Lionel L. Crowley,

Examiner

BROWN COUNTY
(SHERIFF'S DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER
GRANTING MOTION TO DISMISS

In its complaint initiating these proceedings, the Association alleged that it was the representative of supervisory employees and that the County was violating Sec. 111.70(3)(a)5, Stats., with respect to certain conduct concerning these employees. The County filed its Motion to Dismiss for Lack of Jurisdiction on the basis that the supervisory employees have no standing to bring a complaint of prohibited practices under Sec. 111.70(3), Stats.

DISCUSSION

In City of Green Bay, et al., Dec. No. 25868-A (Shaw, 3/89), aff'd by operation of law, Dec. No. 25868-B (WERC, 3/89), it was held that supervisory law enforcement personnel do not have any of the rights guaranteed under Sec. 111.70(2), Stats., and therefore, the provisions of Sec. 111.70(3), Stats., do not apply to complaints involving municipal employers and supervisory employees. Therefore, the instant complaint does not allege facts under which the Association, and/or the law enforcement supervisors it represents, would be entitled to relief under MERA. Consequently, the County's Motion to Dismiss has been granted.

Dated at Madison, Wisconsin this 6th day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Lionel L. Crowley, Examiner