

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION

Involving Certain Employees of

SAUK COUNTY

Case 158
No. 64965
ME-1149

Decision No. 27107-B

Appearances:

Gordon E. McQuillen, Director of Legal Services, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin, 53713, appearing on behalf of the Wisconsin Professional Police Association/LEER Division.

Todd J. Liebman, Corporation Counsel, Sauk County, West Square Building, 505 Broadway, Baraboo, Wisconsin, 53913, appearing on behalf of Sauk County.

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

On July 13, 2005, the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission by which it sought to clarify an existing unit of the Sauk County Sheriff's Department employees that it represents for the purposes of collective bargaining by including the Jail Programs Administrator. The County opposes inclusion of the Administrator arguing the incumbent is a supervisor and a managerial employee.

A hearing was held on September 7, 2005 and on January 12, 2006 in Baraboo, Wisconsin, before Paul Gordon, Commissioner, with a stenographic record being made available to the parties. Post-hearing briefs were received and the record was closed on May 11, 2006.

No. 27107-B

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Sauk County, herein the County, is a municipal employer with offices at 505 Broadway, Baraboo, Wisconsin. The County has a Sheriff's Department that provides law enforcement services within the County

2. Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, herein the WPPA, is a labor organization with offices at 340 Coyier Lane, Madison, Wisconsin. WPPA serves as the collective bargaining representative of certain employees of the County Sheriff's Department.

3. The County Sheriff's Department operates a jail. In 2003 the County built a new jail, enlarging the existing jail capacity from a 52 bed facility to a 369 bed facility of which 192 beds are available for Huber work release inmates. The larger jail required an increase in jail staff which now includes 55 security deputies (up from 22), 12 clericals (up from one), six security sergeant positions, the Jail Program Administrator and a captain. The sergeants, the Administrator and the captain are currently excluded from the WPPA bargaining unit.

4. The Jail Programs Administrator position was created in December 2004 with the following Position Description which generally describes the Administrator's duties in pertinent part as follows:

Name:	Department: Sheriff
Position Title: Jail Programs Administrator	Pay Grade: 11 FLSA: E
Date: December 2004	Reports To: Captain-Security Division

Purpose of Position The Jail Programs Administrator is a first line of supervision for County Jail and Huber Center deputy security, clerical, program volunteer and contract staff. The position oversees the daily operations of the Security Division for the Sauk County Sheriff's Department and provides input regarding long term Division operational needs.

Essential Duties and Responsibilities

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

- Trains, evaluates, instructs, coaches, supervises and provides daily guidance to all security staff (clerical and security deputies) program presenter volunteers and applicable contract vendor staff.
- Through the direct supervision of and interaction with staff and pre-assignment shift briefings, ensures staff under their command are functioning within the parameters of standard operating procedures, operational interim directives and instructional memo; taking corrective and remedial action as necessary. This includes Sauk County employees, program presenter volunteers and applicable contract vendor staff.
- Functions as the initial and primary resource for inmate custody information and resolves discrepancies in the area of inmate detention authority; determining which inmates are to be held and which inmates are to be released from custody.
- Is the initial and primary authority for inmate custody file management; reviews and approves file updates, approves individual inmate release eligibility, and verifies inmate files on a routine and scheduled basis.
- Assigns and schedules employees to provide appropriate staffing levels and position assignments; maintains complex and comprehensive attendance records and prepares employee performance evaluations.
- Ensures inmates are housed according to their security risk/classification status. And, ensures inmates assigned to trusty status are properly assigned duties which reflect their security risk status.
- Develops and implements inmate special needs protocols to address potential medical, mental health, cognitive limitations and separation/segregation (predatory v. prey inmates) issues and/or needs.
- Develops and implements inmate programming activities.
- Monitors inmate participation program activities. Reviewing the progress, applicability and benefit of all inmate program activities. Ensures programming activities are conducted within budgetary parameters/limitations and the specific program activity is adhering to its intended purpose.
- Conducts routine inspections of all work areas to ensure a secure and clean work environment as it relates to safety issues, maintenance and general housekeeping needs.
- Conducts internal investigations when the need is determined or as assigned by administrative staff.
- Reviews and approves daily activity logs and time cards for payroll purposes. Authorizes vacation, compensatory time, and overtime usage.
- Trains field training officers (FTOs) and supervises, directs and provides guidance to FTOs as FTOs train probationary employees. Assesses/determines the progress of probationary employees during field training and makes job performance recommendations to the Security Division Captain.

- Assesses/determines the progress and participation of non-probationary employees during in-service training activities and makes training recommendations to the Security division captain.
- Develops, drafts and ensures Security staff implement operational policies and procedures. Provides interpretation of policy precepts and may deviate from standard operating procedures when required to do so to address extraordinary conditions and/or mitigating circumstances.
- Investigates and prepares reports on routine as well as extraordinary occurrences.
- Reviews inmate special needs requests, complaints and initiates corrective measures.
- Attends and participates in supervisory and command staff meetings.
- Meets and consults with contract vendors and State Department of Corrections inspectors.
- Maintains a working knowledge of applicable state and federal laws, administrative codes, local ordinances, and recognized standards promulgated by national organizations regarding proper jail operations.
- Completes special projects, reports and assignments as directed by the Captain of Security, Chief Deputy and Sheriff.

Additional Tasks and Responsibilities

While the following tasks are necessary for the work of the unit, they are not an essential part of the purpose of this position and may also be performed by other or in conjunction with other unit members.

- Arranges to have equipment repaired, units refilled and/or the procurement of needed supplies.
- Transports and escorts inmates to and from court and other approved activities.
- May temporarily staff a Security Deputy post, due to unanticipated staff shortages and/or to address extraordinary situations or mitigating circumstances.
- Conducts jail tours and responds to inquiries from the public. Schedules personnel to provide coverage to maintain staffing levels.
- Conducts various contingency plan drills to ensure staff proficiency in critical operational areas of security and emergency management; providing remedial training in contingency requirements as necessary.

. . .

5. The Administrator position was filled by Tiffany Gruber, the current incumbent, effective January 1, 2005. Gruber was previously a County deputy sheriff in the WPPA

bargaining unit. Gruber's regular work hours are 6:30 a.m. to 3:00 p.m. Monday through Friday. Her immediate supervisor is Captain of Security Hafemann.

The Administrator provides daily direction to four Huber/Jail Clerks and assigns them work as needed. She provides the same direction to approximately 11 jail security deputies when serving as their shift supervisor when the two sergeants who normally supervise the jailers are absent. When issues arose between the Clerks as to work distribution, Captain Hafemann directed the Administrator to resolve the matter by meeting with the Clerks - which meeting the Administrator conducted and during which the dispute was resolved.

No grievances have been filed by the Clerks or by jail deputies since the Administrator assumed her position.

Although the Administrator will, if needed, fill in for a Huber Clerk or a jail deputy, she spends a majority of her time performing her various administrative responsibilities and supervising the Clerks.

When a Huber Clerk is to be hired, applicants first take a written test. Those applicants that pass the written test are then interviewed by a panel that consists of two members of the County Board and two individuals with law enforcement credentials from outside the Department. The panel then ranks the applicants. The top three ranked applicants are then interviewed by the Sheriff, two Captains and the Administrator. After considering the views of others on the interview panel, the Sheriff then makes the hiring decision.

Since the Administrator assumed her position, she has not participated in the hiring process as to a Huber Clerk. Three of the four Huber Clerks were hired prior to the date the Administrator assumed her duties on January 1, 2005. The fourth Clerk assumed the Clerk position on February 1, 2005.

The Administrator has independent authority to issue verbal reprimands to the Clerks and jailers (which are recorded and placed in the employee's file) and to immediately remove said employees from duty with pay if circumstances warrant. The Administrator cannot effectively recommend a written reprimand, a suspension without pay, or discharge.

The Administrator does a yearly performance evaluation of the four Huber Clerks. The Administrator signs the evaluations as the "Supervisor". The Administrator's supervisor reviews the evaluations before the Administrator sits down with the employees to discuss the evaluation document. The Administrator's supervisor has not made or suggested any changes in her proposed evaluations. The Administrator's supervisor does not sign the evaluations.

The Administrator is paid a salary of \$41,300, the starting wage rate for Salary Grade 11 employees. She received a \$.77 per hour raise over her deputy sheriff wage rate when she assumed the Administrator position. The salary range for the Huber Clerks is \$13.95 to \$17.00 per hour.

6. The Jail Programs Administrator possesses supervisory authority in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The Jail Programs Administrator is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Jail Programs Administrator shall continue to be excluded from the Sauk County Sheriff's Department bargaining unit referenced in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of October, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

SAUK COUNTY

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

DISCUSSION

WPPA contends that the Jail Programs Administrator, whose position was created effective January 1, 2005 when a security deputy position in the bargaining unit was eliminated, should be included in the WPPA bargaining unit. The County argues that inclusion is not appropriate because the Administrator is a supervisor and a managerial employee. We will first consider whether the Administrator is a supervisor.

Section 111.70(1)(o)1, Stats. defines a supervisor as an individual who:

...has authority, in the interests of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When interpreting this statutory language, we consider the following:

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.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above factors need be present for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01); SOMERSET SCHOOL DISTRICT, DEC. NO. 24968-A (WERC, 3/88).

Under Factor 1, we look first at the Administrator's role in hiring. The record reflects that, as a general matter, when a hiring decision is to be made, applicants first take a written test. Those applicants that pass the written test are then interviewed by a panel that consists of two members of the County Board and two individuals with law enforcement credentials from outside the Department. The panel then ranks the applicants. The top three ranked applicants are then interviewed by the Sheriff, two Captains and an additional supervisor, typically a Sergeant. After considering the views of others on the interview panel, the Sheriff then makes the hiring decision.

Because three of the four Huber Clerks were in their positions when the Administrator assumed her position and the fourth began work one month after the Administrator assumed her new duties, the Administrator has not participated in the hiring of a Huber Clerk since she assumed her position. Thus, there is no evidence of what the Administrator's role in hiring Clerks has been. However, there is evidence as to what the Administrator's role will be and in that regard we find the testimony of the Administrator and Captain Hafemann to be credible albeit somewhat ambiguous. Sorting through the ambiguity, the references in testimony to making a "recommendation" to the Sheriff lead us to conclude that the Administrator will be part of the interview of the top ranked candidates conducted by the Sheriff before the hiring decision is made. Thus, the Administrator will play a significant role in hiring decisions. However, because there is no evidence that the Administrator's recommendation will play a definitive role in the Sheriff's hiring decision, the Administrator does not "effectively recommend" who will be hired.

As to discipline, the Administrator has the independent authority to issue verbal reprimands (which are recorded and placed in the employee's personnel file) and to remove an employee from duty with pay. While the Administrator has been and will be involved in reporting and investigating more serious disciplinary matters, and while the Administrator will have a central role in evaluating certain employees as discussed in the following paragraph, there is no persuasive evidence that she can or has effectively recommended a written reprimand, a suspension without pay, or discharge.

The Administrator does a yearly performance evaluation of the four Huber Clerks. As WPPA notes, her supervisor reviews the evaluations before the Administrator sits down with

the employees to discuss the evaluation document. However, the record also reflects that her supervisor has not made or suggested any changes in her proposed evaluations. The Administrator signs the evaluations as the "Supervisor". The Administrator's supervisor does not sign the evaluations. Given all of the foregoing, we conclude that the Administrator does possess substantial evaluative authority.

There are no "promotions" available to the Huber Clerks and no evidence of any role the Administrator might play in any "transfers", "layoffs" or "recalls."

As to Factors 2 and 6, the record establishes that the Administrator provides daily direction to the Huber Clerks and assigns them work as needed. She provides the same direction to jailers when serving as their shift supervisor (a role she played for four months during the first year of her employment as Administrator). The record establishes that she uses her own judgment when doing so.

Turning to Factor 3, the Administrator regularly supervises the four Huber Clerks and also supervises approximately 11 jailers on those occasions when she is called upon to serve as shift supervisor. As to the Huber Clerks, she is the only direct supervisor of these employees with her supervisor, Captain Hafemann, being available if a serious disciplinary matter arises. When issues arose between the Clerks as to work distribution, Captain Hafemann directed the Administrator to resolve the matter by meeting with the Clerks, a meeting the Administrator conducted and which resulted in the dispute being resolved. No contractual grievances have been filed and the Administrator was uncertain as to whether grievances would be filed with her at the first step of the contractual grievance procedure as the Clerks' "immediate supervisor."

As to Factor 4, the Administrator is paid a salary of \$41,300, the starting wage rate for Salary Grade 11 employees. The salary range for the Huber Clerks is \$13.95 to \$17.00 per hour. Although the record reflects that the Administrator did not receive a significant raise over her deputy sheriff pay when she received the Administrator position and is paid less than the non-bargaining unit positions of Sergeant and Office Administrator, it is nonetheless apparent that she is paid significantly more than the Clerks she supervises. From the record, we conclude that this pay disparity with the Clerks partially reflects her supervisory responsibilities and partially reflects her administrative responsibilities.

Looking at Factors 5 and 6, the record establishes that although the Administrator will, if needed, fill in for a Clerk or a jail deputy, she spends a majority of her time performing her various administrative responsibilities and supervising the Huber Clerks. As to the Huber Clerks, we conclude she is primarily supervising employees as opposed to their activities.

Considering all of the foregoing, we find the supervisory status of the Administrator to present a very close question. As persuasively argued by the WPPA, the County contention that she has the same "authority" as other supervisors within the Department is not particularly telling if the evidence of that "authority" is not specific and/or indicative of supervisory status.

However, on balance, her authority to evaluate the Huber Clerks, her disciplinary authority (albeit limited to recorded verbal reprimands), her day-to-day authority as the Clerks' direct supervisor directing and assigning their work, her authority over jailers when she serves as shift supervisor, and her role in the hiring process (albeit less than an effective recommendation) combine to persuade us that she is a supervisor. In reaching this conclusion, we are strongly influenced by apparent bona fides of the need for additional supervision of jail clerical employees prompted by the increase in the overall number of such employees from one to 12 when the jail expanded.

Having found that the Administrator is a supervisor and excluded from the bargaining unit on that basis, we need not determine whether the Administrator is also a managerial employee.

Dated at Madison, Wisconsin, this 11th day of October, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

