

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
SUPERVISORY OFFICERS RELATIONS DIVISION**

Involving Certain Employees of
EAU CLAIRE COUNTY

Case 222
No. 65978
ME-1184

Decision No. 27296-C

Appearances:

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

Keith R. Zehms, Corporation Counsel, 721 Oxford Avenue, Eau Claire, Wisconsin 54703, appearing on behalf of Eau Claire County.

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

On June 13, 2006, Wisconsin Professional Police Association/Supervisory Officers Relations Division filed a petition with the Wisconsin Employment Relations Commission by which it sought to clarify an existing bargaining unit of Eau Claire County Sheriff's Department supervisory employees by the inclusion therein of the Drug Investigation Specialist (Field Operation) currently included in the Department's bargaining unit of non-supervisory employees represented by Wisconsin Professional Police Association/Law Enforcement Employee Relations Division. The petition contends the Specialist has responsibilities and pay equivalent to other Sergeant positions in the supervisory bargaining unit. The County opposes the petition arguing the incumbent in the position is not a supervisor.

No. 27296-C

A hearing was held on September 6, 2006 in Eau Claire, Wisconsin before Paul Gordon, Commissioner, with a stenographic transcript being made available to the parties. A briefing schedule was set and the record was closed on November 20, 2006.

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

FINDINGS OF FACT

1. Eau Claire County, herein the County, is a municipal employer which maintains a Sheriff's Department and has offices at 721 Oxford Avenue, Eau Claire, Wisconsin.

2. Supervisory Officers Relations Division of the Wisconsin Professional Police Association Eau Claire County Office of Sheriff Supervisory Unit, herein the Association, has offices located at 340 Coyier Lane, Madison, Wisconsin.

3. The County and the Association are parties to a 2005-2006 collective bargaining agreement which contains the following recognition clauses:

The Association and the Employer recognize that this contract covers the Supervisory Bargaining Unit of the Eau Claire County Office of Sheriff consisting of Sergeants.

...

The Employer hereby recognizes and acknowledges that the Association is the exclusive representative in collective bargaining with the Employer for all full-time Sergeants of the Eau Claire County Office of Sheriff on all matters pertaining to wages, hours and working conditions.

4. The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein the Union, represents a bargaining unit of non-supervisory law enforcement employees of the County. The County and Union are parties to a 2005-2006 collective bargaining agreement which contains the following recognition clause:

The Employer hereby recognizes and acknowledges that the Association is the exclusive representative in collective bargaining with the Employer for all full-time and part-time non-supervisory Deputy Sheriffs of the Eau Claire County Sheriff's Office on all matters pertaining to wages, hours, and working conditions.

The position of Drug Investigation Specialist (Field Operations) is currently included in the Union's bargaining unit.

5. The County Sheriff's Department maintains a Drug Enforcement Group which is part of the multi-jurisdictional West Central Drug Task Force (WCDTF) pursuant to an intergovernmental cooperative agreement. The Task Force has law enforcement officers from each participating jurisdiction, whether a city, county, university, etc.

The WCDTF has an oversight committee composed of a member from each of the participating jurisdictions. The Eau Claire County Sheriff is the current Project Director for the WCDTF and reports to the oversight committee. Within the WCDTF there are titles and rank identifying the officers and employees from the various participating jurisdictions. The WCDTF currently includes seven Investigators, one Sergeant, one Acting Sergeant and a part-time Office Associate. The Acting Sergeant, one of the Investigators and the part-time Office Associate are all employees of the County Sheriff's Department.

The position of Acting Sergeant is held by Jeff Wilson, the incumbent County Drug Investigation Specialist (Field Operations). Wilson's position has been temporarily assigned to the WCDTF on a federally-funded basis. Wilson reports to the WCDTF Project Director and to the oversight committee.

6. The position of Drug Investigation Specialist was established in 1987. The current position description reflects the actual duties of the position, and reads, in pertinent part:

TITLE: Drug Investigation Specialist [Field Operations]
DEPARTMENT: Sheriff – Drug Enforcement Group
SUPERVISOR'S TITLE: Captain, Detective

GENERAL DESCRIPTION

Position supervises, coordinates, and directly participates in the drug investigation activities of the Drug Enforcement Group. Position also performs all necessary administrative duties related to and required of the West Central Drug Task force in a back-up capacity or as needed.

SUPERVISION/DIRECTION RECEIVED

Position receives supervision from the Captain, Detective. Receives functional guidance and direction from the oversight board, consisting of member agencies of the West Central Drug Enforcement Group.

SUPERVISION/DIRECTION EXERCISED

None. Provides functional guidance and direction to clerical support staff.

TYPICAL DUTIES (Illustrative Only)

- Directs activities of drug investigation staff; coordinates support services for them; develops informants to facilitate investigations of possible violations of local, state, or federal laws on drug trafficking.
- Coordinates investigations with other law enforcement agencies at the local, state, and federal levels.
- Logs and secures evidence; maintains the chain of evidence required for successful prosecution of drug violations.
- Monitors drug enforcement unit activities to ensure they are in strict compliance with laws, policies, guidelines, and oversight board directive.
- May participate in field during investigations if necessary.
- Reports unit activities on a regular basis to the oversight committee; prepares reports, correspondence, and other records as required or directed.
- Position provides back-up and assistance to other Task Force staff: performs all necessary administrative duties related to and required of the West Central Drug Task force; provides liaison with the United State Attorney, Office of Justice Assistance, the Department of Narcotics Enforcement, and other agencies as needed; prepares reports, grants, and other related documents.
- Performs other related duties as required or assigned.

WORK ENVIRONMENT

Work is cover in nature with supervisory responsibilities and requires extensive contact with individuals using or involved in selling drugs or suspected of doing so. Hours of work vary according to nature of unit activities at a given time and may involve working weekend, holidays, and/or evening hours.

The first incumbent of the position, who now works for the Sheriff's Department as a Sergeant, did not have a caseload or do field operations. He was succeeded in 1991 by Ron Cramer, who is now the current Sheriff. When Cramer occupied the position, he worked as the acting Sergeant for the WCDTF and was paid a Sergeant's wage for his six years in the position. He began taking care of field operations and had a caseload, but did not do the federal reporting, civil forfeitures or prepare the financial ledgers as his predecessor had. At

the direction of the Sheriff and Project Director, those duties were assigned to a different position, also called an acting Sergeant and paid at the Sergeant rate. The current incumbent in the position at issue here, Jeff Wilson, acts much as Cramer did in the position.

7. When WCDTF activities are carried out in a given jurisdiction, the Task Force member from that jurisdiction acts as the lead Investigator, making contact and arrangements with the local law enforcement agencies. The supervisory personnel within those agencies determine what assistance, if any, they will give to the Task Force on any given matter, such as a tactical team for a drug buy. The lead Investigator in that jurisdiction becomes the officer in charge of the Task Force at the scene.

8. Each Investigator is required, within his or her own jurisdiction, to cultivate informants, generate cases, and to contact Wilson to ask for assistance on a particular day when the case is to the point of a drug purchase or search warrant. Wilson then coordinates the services and checks with other members to prioritize what should be done that day. He assists Investigators in the process of developing and executing search warrants.

The federal grants that fund the WCDTF provide for a Task Force Supervisor with the responsibility for a number of specific cooperation and coordination tasks. Wilson is considered responsible for the execution of such tasks, although he himself does not perform all of the activities.

9. Within the Eau Claire County Sheriff's Department, Wilson reports to a Captain. Wilson never fills a Captain (or Department Sergeant) position on a temporary basis.

10. The various law enforcement departments in the WCDTF select their own personnel for the Task Force. Wilson does not have input into these selections. He does have occasion to recommend to the Project Director that a member be returned to his or her department and removed from the Task Force. The Project Director may then contact the member's supervisor in the member's respective jurisdiction to address the matter. There have been two such situations where a member was returned to regular duty by a supervisor from his or her own jurisdiction.

11. If a disciplinary issue arose as to a Task Force member, the WCDTF would refer the matter back to the supervisor of that individual in his or her home jurisdiction for investigation and discipline, if appropriate.

12. The amount of time that a Task Force member devotes to WCDTF activities is controlled by each respective jurisdiction. Wilson has no authority to authorize any overtime.

13. The individual Task Force officers/employees are formally evaluated by their supervisors from their respective jurisdictions.

14. Wilson has no authority to grant or deny time off or to approve vacations for Task Force members. Each officer's/employee's respective jurisdictional department makes those determinations. Wilson lacks authority to deal with any benefit issue regarding Task Force members.

15. The Eau Claire County Sheriff's Department has quarterly supervisory meetings attended by supervisors in the Patrol Division, the Process Sergeant and the Jail Sergeants. Wilson does not attend those meetings.

16. Within the Sheriff's Department, Wilson has not and does not hire, promote or transfer anyone or effectively recommend same.

17. Within the Sheriff's Department, Wilson does not discipline or discharge anyone or effectively recommend same.

18. Wilson does not formally evaluate any employee within the Eau Claire County Sheriff's Department.

19. Sergeants within the County Sheriff's Department direct the work of Department employees who perform patrol, jail and process duties. Such Sergeants monitor and evaluate employee performance, participate in hiring through the committee process, play a role in the discipline of employees, have authority to authorize the use of leave within the confines of the collective bargaining agreements and Department policies, and participate in supervisory meetings. They have the authority and responsibility to assign duties to their staff. They hear grievances on behalf of the Department at a specified step in the contractual grievance process and recommend disposition of such grievances to their superiors.

20. The pay rate of WCDTF members is established by each member's jurisdiction. Wilson is paid at the same rate as Sergeants in the County Sheriff's Department.

21. The Drug Investigation Specialist (Field Operations) does not possess 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 Drug Investigation Specialist (Field Operations) is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is 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 Drug Investigation Specialist (Field Operations) shall continue to be included in the bargaining unit identified in Finding of Fact 4.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of March, 2007.

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

EAU CLAIRE COUNTY

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

The Association, contrary to the County, contends that the Drug Investigation Specialist in the Sheriff's Department is a supervisor and thus should be moved from the non-supervisory unit to the supervisory unit.

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

. . . has authority, in the interest 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 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 alleged supervisor is paid for the employee's skills for the supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether the employee spends a substantial majority of time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

SAUK COUNTY, DEC. NO. 27207-B (WERC, 10/06); CALUMET COUNTY, DEC. NO. 20050-B (WERC, 4/06); 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). The quasi-military organization of a law enforcement department presents unique problems in determining supervisory status of certain employees because officers of higher rank will generally have authority to issue orders to subordinates, regardless of our determination of supervisory status. CITY OF GREEN BAY, DEC. NO. 31417 (WERC, 8/05), CITY OF MADISON, DEC. NO. 11087-A (WERC, 12/72).

As to matters listed in Factor 1, Drug Investigation Specialist Wilson has little, if any, supervisory authority over County employees.

Wilson has no role in hiring or promotions. He is not on the hiring interview committee for the Sheriff's Department and has not promoted a County employee in either the Sheriff's Department or the WCDTF or effectively recommended same.

Wilson has not transferred a County employee or effectively recommended same. He has no authority to impose discipline or effectively recommend discipline in either the Sheriff's Department or the WCDTF. The Association points out that Wilson has played a role in the removal of at least one Investigator from the WCDTF. In that instance, Wilson brought his concerns and observations to the attention of the Project Director, who then contacted the subject individual's jurisdictional supervisor who ultimately made the decision on membership on the WCDTF. In that context, we view Wilson's role as falling short of an effective recommendation for transfer or discipline. Most importantly, unless Wilson's actions affect an employee of the County, such actions are irrelevant to his alleged supervisory status.

Wilson does not formally evaluate any County employee and is not part of the contractual grievance procedure for any County employee.

By contrast, the Sergeants in the supervisory unit do participate in the hiring process, are part of the grievance procedure, can issue some discipline, and actively evaluate the performance of other employees.

As to Factor 2, when coordinating the activities of the two Task Force members who are County employees (an Investigator and a part-time clerical), Wilson may from time to time direct their work.

Wilson has no authority to authorize overtime or approve vacation, sick leave or other related requests of any Task Force member, whether or not a County employee.

Considering Factor 3, Wilson's coordination activity on the WCDTF affects two County employees.

As to Factor 4, Wilson is the highest paid member of the WCDTF, and his pay rate is the same as that of a Sergeant under the contract between the County and the Association. We are satisfied that his pay rate reflects his coordination, communication, record keeping and administrative duties within the Task Force.

As to Factors 5 and 6, it is clear that Wilson, as the acting Sergeant of the WCDTF, spends some time performing coordination/administrative duties that differ from those of the other two County employees in the Task Force.

Considering Factor 7, Wilson does exercise independent judgment when performing his coordination/administrative duties.

Given the foregoing, it is clear that Wilson is not a supervisor. Only two Task Force members are County employees and as to them he exercises no real supervisory authority. Therefore, Drug Investigation Specialist Wilson shall continue to be included in the non-supervisory bargaining unit.

Dated at Madison, Wisconsin, this 27th day of March, 2007.

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

