

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

Involving Certain Employees of
MANITOWOC COUNTY

Case 261
No. 47580
ME-3239

Decision No. 27436-C

Appearances:

Attorney Richard Thal, General Counsel, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

Attorney Steven J. Rollins, Corporation Counsel, Manitowoc County Courthouse, 1010 South Eighth Street, Manitowoc, Wisconsin 54220, appearing on behalf of Manitowoc County.

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

On June 1, 1999, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing bargaining unit of employees of Manitowoc County by including therein the newly created position of Huber Jail Sergeant. The County opposed the petition arguing that the Sergeant is a supervisor and that, in any event, sergeants are specifically excluded from the bargaining unit by contract.

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Hearing in the matter was held in Manitowoc, Wisconsin on October 20, 1999, before Examiner Stuart Levitan, a member of the Commission's staff. The parties filed written arguments on February 8, 2000 and by March 1, 2000 waived their right to file reply briefs.

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

FINDINGS OF FACT

1. Manitowoc County, herein the County, is a municipal employer with offices at 1010 South Eighth Street, Manitowoc, Wisconsin. Among its many and varied governmental functions, the County maintains a Sheriff's Department. The County Jail is staffed by Sheriff's Department correctional officers who do not have the power of arrest and who are represented for purposes of collective bargaining by a local unit of the American Federation of State, County and Municipal Employees (AFSCME), which is not a party to this proceeding.

2. The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA, is a labor organization with offices at 340 Coyier Lane, Madison, Wisconsin. At all times material, WPPA has been the exclusive representative of a collective bargaining unit defined in the 1998-1999 contract between WPPA and the County as follows:

... employees possessing the powers of arrest within the Manitowoc County Sheriff Department, excluding the positions of Sheriff, Inspector, Deputy Inspectors, Jail Administrator, Chief Investigator, Narcotics Unit Supervisor, Lieutenants, Sergeants and temporary employees.

3. Pursuant to Wisconsin statutes commonly referred to as the "Huber Law," jail inmates are eligible for work release arrangements. When the County opened its new jail in 1993, it created the position of Huber Officer, included within the bargaining unit identified in Finding of Fact 2. Responsible for the overall coordination of the Huber program, the position's primary duties involved contact with employers, processing paperwork, and responding to inmate requests and needs. At that time, the Huber Officer did not have the authority to assign work or overtime to the correctional officers, conduct evaluations or impose discipline. The authority to perform those supervisory duties was held by the Assistant Jail Administrator. At times the Huber Officer did not receive full cooperation from the correctional officers, and had to personally handle matters which it would have been more efficient for him to delegate.

The job description which the County published for the Huber Officer on January 25, 1993, read, in relevant part, as follows:

PURPOSE OF POSITION:

Directs, supervises, and coordinates all activities of Huber Law program within the county jail, and is also required to assist jail staff as a jailer in the daily operation of the jail.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions:

1. **Coordinates the Huber Law program of the county jail (55%)**
(emphasis added)
2. Maintains security of inmates in the jail (10%)
3. Ensures federal and state rights and privileges are delivered to inmates as mandated (10%)
4. Escorts inmates to and from court and other appointments (10%).
5. Logs and monitors all incoming inmate mail (5%).

B. Non-Essential or Marginal Demands:

1. Books inmates into jail (2%).
2. Finger prints inmates (2%).
3. Takes mug shots of inmates (2%).
4. Releases inmates from jail (2%).
5. Supervises activities of inmates, i.e. cleaning the jail, doing personal laundry (2%).

4. In 1993, there were approximately 50 inmates eligible for Huber participation. By late 1998, that number had more than doubled, and the County came to conclude that the program's operational efficiencies were suffering because the Huber Officer did not have the power to directly supervise correctional officers. When the incumbent Huber Officer approached retirement in late 1998, the County decided to abolish that position and create the position of Huber Sergeant. On November 23, 1998, it published a job description for that position which states in relevant part as follows:

PURPOSE OF POSITION:

Directs, supervises, and coordinates all activities of Huber Law program within the county jail and community. Assists the Juvenile Detention Administrator as needed.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions:

1. **Supervises and directs all jail staff assigned to the Huber program (50%).** (emphasis added)
2. Assists Juvenile Detention Administrator in supervising the operation of the Juvenile Detention Center and assume all duties in his absence (15%).
3. Establishes and updates all Huber Law policies and procedures ensuring compliance with all state and federal regulations (10%).
4. Directs jail staff of appropriate courses of actions when needed, or requested, and administers discipline and reward (10%).
5. Conducts employee evaluations (5%).
6. Assigns prisoner transport as well as the physical transport of persons to and from various facilities to the court and other appointments (3%)
7. Operates necessary telecommunication equipment on a routine basis to maintain efficiency and familiarity (3%).
8. Reviews and assures completion of related incident reports as needed. Completes citation and miscellaneous forms as needed (2%).
9. Performs daily checks of assigned equipment (2%).

B. Non-Essential or Marginal Demands: None

During the Huber Sergeant's normal work hours, the Jail is generally staffed by six correctional officers, a Jail Sergeant and the Huber Sergeant. Huber prisoners completely occupy one of the three floors of the jail and are sometimes confined on other jail floors as well. At least four of the six correctional officers on a shift have direct responsibility for Huber prisoners. When the correctional officers are performing Huber responsibilities, the Huber Sergeant – not the Jail Sergeant – directs the work of the officers.

5. The Huber Sergeant, Mike Shallue, has worked for the County's Sheriff's Department for 33 years, starting as a Patrol Officer in 1967. In 1981 he became a Patrol Sergeant, and served as Assistant Jail Administrator from 1991 to 1993, when he became first shift Jail Sergeant. As a Jail Sergeant, Shallue had, and exercised, the authority to discipline the AFSCME bargaining unit members working as correctional officers. In January 1999, when the then-Huber Officer retired, he posted into his current position.

Shallue works Monday-Friday, 8 a.m. to 4:30 p.m. He is not scheduled to work any holidays, but has worked holidays as a relief Jail Sergeant to supervise shifts in the jail. On about ten occasions in 1999 he also filled in for a supervisor at the County's Juvenile Detention Center. When Shallue was on vacation in 1999, his duties were assumed by Jail Sergeants.

Aside from Shallue, there are no other employees assigned solely and exclusively to the Huber program.

Shallue has the independent authority to issue discipline to correctional officers up to and including suspension, but because he has never had an occasion where a correctional officer has failed to complete an assignment as directed, he has not issued any discipline.

There have not been any new hires that would directly report to the Huber Sergeant, and thus Shallue has not had any involvement in hiring new employees.

Shallue has been doing employee evaluations for about 20 years; although he has not conducted any evaluations in the Huber program to date, he will participate in the evaluations of correctional officers on all three shifts.

He has no direct role in handling grievances, and no grievances have been brought to him by the correctional officers' in the AFSCME bargaining unit.

Like other Sergeants, he is an hourly employee, and receives time and one-half for overtime hours. Shallue's pay level is the same as or greater than other Sergeants excluded from the WPPA unit as supervisors.

As Huber Sergeant he has no direct scheduling responsibilities, but may in certain circumstances authorize overtime, which authority the former Huber Officer lacked.

Shallue spends no more than half his time directing jail staff, and the rest of his time performing Huber program work similar to the correctional officers, such as contacting employers, processing paperwork and Huber program work of transporting prisoners,

6. The Huber Sergeant has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The Huber Sergeant 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.

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

ORDER CLARIFYING BARGAINING UNIT

The Huber Sergeant shall continue to be excluded from the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of May, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MANITOWOC COUNTY

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

POSITIONS OF THE PARTIES

WPPA

In support of its position that the Huber Sergeant is a municipal employee, WPPA asserts that the Huber Sergeant does not supervise any employees, and therefore should not be excluded from the bargaining unit. To be a supervisor, an employee actually has to supervise other employees. The Huber Sergeant primarily supervises an activity rather than employees, and is thus not a supervisor. While correctional officers may receive some direction from the incumbent, those officers at all times are subject to the supervision of their direct supervisor, a Jail Sergeant. Given that the Huber Sergeant has no employees under him, he is a municipal employee.

The Commission has previously found such tasks as making and changing work assignments, serving as a resource person, investigating citizen complaints, assigning overtime, approving vacation and leave to be the supervision of activities rather than of employees. Similarly, the Huber Sergeant primarily supervises the activities of the Huber program, and only occasionally supervises other employees. In his testimony, the incumbent did not describe any time spent supervising another employee. The fact that the incumbent once was a supervisory Jail Sergeant may lead other employees to view him as someone still able to exercise supervisory authority; however, his actual duties include very little supervision of other employees.

The County stated it intended to reorganize the position, but WPPA argues it left the position fundamentally unchanged. It is inaccurate for the job description to indicate that the Huber Sergeant spends 50 percent of his time supervising and directing jail staff assigned to the program. Since the Huber Sergeant's primary duty is coordination of the Huber program – and not the supervision of correctional officers – he should not be excluded from the WPPA bargaining unit.

The County

In support of its position that the Huber Sergeant is a supervisor, the County contends the collective bargaining agreement vests the management of the work and direction of the workforce exclusively with the County, giving it the right to eliminate the Huber Officer

position and to create the Huber Sergeant position. No bargaining unit employee was laid off or reduced in pay, and there is no language in the collective bargaining agreement that prevented this action.

The record clearly establishes that the Huber Sergeant is properly classified as a sergeant, and thus excluded from the bargaining unit by the contractual recognition clause.

WPPA's claim that the duties of the new position are not different from those of the former position is not true. The Huber Sergeant supervises and directs all jail staff assigned to the Huber program, rather than merely coordinating activities. The incumbent can direct compliance from subordinates, and not just solicit assistance. The WPPA's own witness testified that the Huber Sergeant provides more direction than the Huber Officer did. Further, the Huber Sergeant has the authority to discipline, including the ability to suspend. The Huber Officer lacked any authority to discipline. The Huber Sergeant also replaced supervisors from the Juvenile Detention Center, and provides relief for other Jail Sergeants, working as a supervisor on every shift.

The same factors that cause the Huber Sergeant to be properly classified as a sergeant also mean the position is properly classified as supervisory. The incumbent directs and supervises staff, has the authority to administer discipline, has supervised the Juvenile Detention Center, is paid on the same wage scale as the other Sergeants, has provided supervisory relief for other Jail Sergeants, has authority to participate in employee evaluations, can authorize overtime, and has authority from the circuit court judges to exercise independent decision-making over aspects of the Huber program. Accordingly, the Huber Sergeant is a supervisor and should be excluded from the bargaining unit.

DISCUSSION

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, layoff, recall, promote, assign, reward or discipline other employees, or to adjust their grievances or effectively to 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 evaluating claims of supervisory status under Sec. 111.70(1)(o)1, Stats., 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 workforce;
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. WATERTOWN SCHOOL DISTRICT (FOOD SERVICE), DEC. NO. 29694 (WERC, 8/99)

We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an employee to be a supervisor. ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

WPPA has raised two basic legal arguments in support of its contention that the Huber Sergeant is not a supervisor. First, it contends that there are no employees directly under the Huber Sergeant, which it alleges means the position fails to satisfy the threshold requirement of being a supervisor, namely having subordinate employees. Second, it asserts the incumbent primarily supervises the Huber program activities and only occasionally supervises employees.

The correctional officers the County asserts are supervised by the Huber Sergeant are part of an AFSCME bargaining unit – not the power of arrest unit represented by WPPA. However, when determining supervisory status, “it is appropriate to consider an employee’s exercise of supervisory authority over both bargaining unit and non-bargaining unit employees,” WALWORTH COUNTY (SHERIFF’S DEPT.), DEC. NO. 29040 (WERC, 4/97), because supervisory status may be found “based upon the incumbent’s exercise of such authority over non-unit employees.” CITY OF WHITEWATER, DEC. NO. 24254-A (WERC, 2/97). In fact, a finding that an employee is a supervisor “may be based upon the incumbent’s exercise of such authority

over part-time, temporary or even casual employees outside of the bargaining unit” at issue. CITY OF LAKE GENEVA (POLICE DEPARTMENT), DEC. NO. 18507 (WERC, 3/81). Thus, even though the Huber Sergeant’s general responsibilities do not give him authority over WPPA unit employees, if he possesses sufficient supervisory duties and responsibilities over AFSCME correctional officers, he is a supervisor.

When arguing that the Huber Sergeant does not supervise any employees, WPPA relies on the fact that Jail Sergeants supervise the same correctional officers over whom the Huber Sergeant also allegedly has supervisory authority. WPPA contends that it is the Jail Sergeant -- not the Huber Sergeant -- who is the statutory supervisor of the correctional officers on any given shift.

When evaluating this argument, it is important to consider how the County Jail is organized. During the Huber Sergeant’s normal work hours, the Jail is generally staffed by six correctional officers, a Jail Sergeant and the Huber Sergeant. Huber prisoners completely occupy one of the three floors of the Jail and are sometimes confined on other jail floors as well. At least four of the six correctional officers on a shift have direct responsibility for Huber prisoners. When the correctional officers are performing Huber responsibilities, the Huber Sergeant -- not the Jail Sergeant -- directs the work of the officers. In this factual context, we reject the WPPA contention that the Huber Sergeant does not have any employees to supervise. We turn to the question of whether the Huber Sergeant’s supervisory authority is sufficient to exclude him from the WPPA unit as a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.

The Huber Sergeant has substantial disciplinary authority-in contrast to the Huber Officer he replaced. He has not been involved in the hiring, promotion or transfer of employees since assuming his position.

He directs and assigns the correctional officers in the performance of Huber related work and exercises independent judgment when doing so. He can authorize overtime and will evaluate employees.

The Huber Sergeant supervises the Huber related work of 4-6 correctional officers. When doing so, he is viewed by the correctional officers themselves as a supervisor. When the correctional officers are not performing Huber related work, they are supervised by a Jail Sergeant.

The Huber Sergeant’s pay is equal or greater than the pay level of the other Sergeants-all of whom are excluded from the WPPA bargaining unit as supervisors. Thus, we conclude the Huber Sergeant’s pay is primarily a reflection of his supervision of employees.

In light of his authority to discipline, evaluate employees, assign work and authorize overtime, we are satisfied that the Huber Sergeant is primarily supervising employees as opposed to an activity. The Huber Sergeant spends no more than half his time supervising employees and performs a substantial amount of the same Huber related work as is performed by the correctional officers.

Considering all of the foregoing, we are satisfied that the Huber Sergeant's disciplinary authority, independent authority to assign work and authorize overtime, and evaluate correctional officers is sufficient to make him a supervisor. These factors clearly distinguish him from the Huber Officer who was included in the WPPA unit. Therefore, we conclude that the Huber Sergeant should continue to be excluded from the bargaining unit.

Given our result, we need not and do not reach the question of whether the parties' contractual recognition clause provides an independent basis for excluding the Huber Sergeant from the bargaining unit.

Dated at Madison, Wisconsin this 16th day of May, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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