

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WALWORTH COUNTY (SHERIFF'S DEPT.)
Involving Certain Employes of
WALWORTH COUNTY (SHERIFF'S DEPT.)

Case 130
No. 52850 ME-783
Decision No. 29040

Appearances:

Gimbel, Reilly, Guerin & Brown, Attorneys at Law, by Mr. Richard E. Reilly,
2400 Milwaukee Center, 111 East Kilbourn Avenue, Milwaukee,
Wisconsin 53202, appearing on behalf of the Walworth County Deputy
Sheriffs' Association.

vonBriesen, Purtell & Roper, S.C., Attorneys at Law, by Mr. James R. Korom, Suite 700,
411 East Wisconsin Avenue, Milwaukee, WI 53202-4470, appearing on behalf of
Walworth County.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Walworth County filed a petition on June 30, 1995, requesting that the Wisconsin Employment Relations Commission clarify an existing collective bargaining unit consisting of law enforcement personnel represented by the Walworth County Deputy Sheriff's Association by excluding from that unit six positions of shift sergeant, one position of sergeant/telecommunications, one position of sergeant/training and planning, and one position of court officer. Four days of hearing into the matter were held in Elkhorn, Wisconsin, on October 25, 1995, December 4, 1995, February 6, 1996, and March 8, 1996 before Examiner Karen J. Mawhinney, a member of the Commission's staff. Transcripts of the proceedings were prepared and both parties filed initial and reply briefs, the last of which was received on June 26, 1996. The Commission, having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Walworth County, herein the County, is a municipal employer, having its offices at P.O. Box 1001, Elkhorn, Wisconsin 53121. Among its functions, the County maintains and operates a Sheriff's Department.

2. The Walworth County Deputy Sheriffs' Association, herein the Association or Union, is a voluntarily recognized representative of a collective bargaining unit described in the most recent contract between the County and the Association as: ". . . all regular Deputy Sheriffs in the Sheriff's Department, excluding the Sheriff, Undersheriff, Captain, Lieutenant and all other employees."

3. The County has petitioned the Commission to clarify the bargaining unit by excluding from it six shift sergeants, a court officer, and a sergeant/telecommunications as supervisors. The County seeks to exclude the sergeant/training and planning as a managerial employe or a supervisor. The Association contends none of the positions are supervisory or managerial.

4. The incumbents in the shift sergeant positions are: Thomas Hausner and Walter Plote on day shifts, Richard Gauger and Roger Farnsworth on night shifts, and Timothy Schiefelbein and Larry Hilbelink on the late shifts, or third shifts. Plote has been a sergeant for 18 years, Hausner for 5 years, Farnsworth for 8 years, Gauger for 15 years, Schiefelbein for 6 years, and Hilbelink for 13 years. All of them were patrol officers before becoming sergeants. The incumbent in the position of court officer for the last 6 years is Brian Schmieden, who is a deputy and not a sergeant in rank. The incumbent in the sergeant/telecommunications position is Allen Zimmerman, who has held that position for 16 years, although the position was called "chief dispatcher" until three years ago. The incumbent of the sergeant/training and planning is Jay Maritz, who has held that position for 6 years.

Even though one of the positions is not a sergeant, the group will be referred to herein as "sergeants" where certain matters apply to all of the positions, with exceptions noted by the name of the incumbent or the position.

5. Higher ranked personnel in the Department include four lieutenants, one captain in charge of the jail, the Undersheriff and the Sheriff. The incumbent lieutenants are David Graves, Roy Stetter, David Starks, and Phil Holder. The incumbent Undersheriff is Uwe Niemetscheck, and the incumbent Sheriff is Dean McKenzie. Lieutenant Graves is in charge of the patrol division and supervises all six shift sergeants. Lieutenant Stetter is in charge of the Administrative division as well as the Process/Communications division, and he supervises the court officer (Schmieden) and the sergeant/telecommunications (Zimmerman). Undersheriff Niemetscheck supervises the sergeant/training and planning (Maritz). The incumbent captain is John Reiff, who is the only sworn officer in the Jail and Huber division. The positions in the Jail division (lieutenant, sergeants, corporals and correction officers) are all held by civilian non-sworn personnel, who are in a separate bargaining unit represented by a different union. During the hearing, some of the incumbents changed -- the Undersheriff retired, Lieutenant Graves became Undersheriff, Sergeant Schiefelbein became a lieutenant -- but the names used as the hearing started will be used throughout this decision, since all of the transcript refers to the incumbents before such changes took place.

6. Authority to hire: The sergeants -- with the exception of the sergeant/telecommunications (Zimmerman) -- have no authority to hire employes and they do not make effective recommendations for hiring employes in the Department. As is true for deputies, sergeants' opinions regarding prospective employes may be solicited or volunteered from time to

time. In one instance when Lieutenant Graves was absent, Sergeant Gauger replaced him and sat in on a panel with the Undersheriff to interview applicants. After the first day of the hearing in this matter, which was October 25, 1995, the Department attempted to change the hiring procedure in order to involve sergeants in the hiring process. On November 7, 1995, Lieutenant Stetter approached Sergeant Plote with a rough draft of a hiring procedure and asked Sergeant Plote to review it and put it in the proper format. Lieutenant Stetter's memo made a reference to having patrol sergeants sit in with the Undersheriff on initial interviews for hiring deputies. Sergeant Plote gave a rough draft back to Lieutenant Stetter the following day, on November 8, 1995. At the time of the last day in the hearing in this matter, March 8, 1996, no change in the hiring procedure had taken place. Sergeant Plote's draft was still on his desk, waiting for the personnel manager or the Sheriff to respond as to who would sit on the boards that interview applicants.

In early 1996, before the third day of hearing in this matter, Sergeant Hausner sat in on an initial interview of three candidates applying for the position of deputy. Sergeant Hausner was directed by Lieutenant Graves to sit in on the interview, and it was the first time he had done so.

The sergeant/telecommunications, Zimmerman, sits on a panel to interview dispatchers along with Lieutenant Stetter, and they try to agree on a candidate they would recommend to the Undersheriff or Sheriff. Their recommendations are generally followed. They have had disagreements about candidates but ultimately reach a consensus on a candidate.

Deputy Robert Wierenga, who has been with the Department for 19 years and is the president of the Association, has been asked informally in the past by a former lieutenant, Gerald Watson, and the Undersheriff for his opinion of several potential applicants.

7. Authority to promote: Sergeants have no regular or formal role in promotions and do not make effective recommendations regarding promotions. Sergeants, as well as deputies, have been informally asked for their opinions about a promotion, and they feel free to give such opinions even when not asked. Sergeants may not even know who is up for a promotion. Some of the sergeants have never been asked for their recommendations. Sergeant Hilbelink recommended several deputies for sergeant because he wanted some input as to the employees with whom he would work. He once recommended that two deputies -- Schiefelbein and Maritz (before they were promoted to sergeant) -- be promoted to the position of lieutenant, which they were not. On three or four occasions, Sergeant Gauger has volunteered his opinions regarding officers up for promotions, although his recommendations were not solicited and he was not certain his input was even appreciated. Deputy Wierenga has been asked informally about his opinion of individuals up for promotion, and has made recommendations in several instances. Under the County's civil service ordinance, an employee's work record is given credit for approximately ten percent of factors considered in promotions, and sergeants help develop that work record.

8. Authority to transfer: The sergeants have no authority to transfer deputies from one unit to another or from one shift to another. There are two areas that deputies may volunteer to transfer into -- the drug unit and the court security area. The decision to make transfers is the domain of the Sheriff and the Undersheriff.

Deputies volunteering to work court security sign up on a list for consideration to be transferred to that duty. Departmental policy states that the Sheriff is to make the designation of who is a court security officer, but in practice, the court officer, Deputy Schmieden, as well as Lieutenant Graves and Lieutenant Stetter, discuss the list and decide which deputy is to be transferred. Lieutenant Stetter has both accepted and rejected Deputy Schmieden's recommendations at different times, and Lieutenant Graves and Lieutenant Stetter make a selection which the Undersheriff or Sheriff may overrule. Lieutenant Graves would make the decision on the transfer if he and Lieutenant Stetter did not agree. Of the three deputies currently working court security duty, one was picked by the Undersheriff, one was picked by Lieutenant Graves and the Undersheriff, and the third was picked by a consensus decision among Lieutenant Graves, Lieutenant Stetter and Deputy Schmieden.

Deputy Schmieden and Lieutenant Stetter jointly made a decision to transfer one deputy out of the court security duty after Deputy Schmieden brought certain facts to Lieutenant Stetter's attention. The Sheriff advised the day shift sergeants to not assign a certain deputy who had problems remaining alert in court.

Deputy Wierenga opposed transferring a deputy out of patrol and into court security. His recommendation was followed, but on a second occasion his recommendation was not followed. One sergeant voiced his concern to Lieutenant Graves over losing a deputy being transferred to court security, and Lieutenant Graves passed that information on to the Undersheriff.

9. Authority to discipline and discharge: With the exception of Sergeant Zimmerman, sergeants are not generally involved in the disciplinary process and do not generally make recommendations regarding discipline. All disciplinary measures, even oral or written reprimands, are strictly within the domain of the Undersheriff and the Sheriff. Sergeants have the authority to give deputies direction and to correct routine matters. By written procedure, they have the authority to give both oral and written reprimands and suspensions with or without pay, but they do not exercise such authority and some of the sergeants were not even aware that such a procedure existed. The Sheriff can initiate or recommend discipline but that discipline has to be handled through the County Personnel Committee or civil service.

Sergeants Plote, Hausner, and Gauger have never recommended discipline. Sergeant Plote has made investigations and submitted factual reports to the administration regarding problems with deputies. Anyone in the Department can initiate an investigation into a matter he or she sees as wrongdoing. Shift sergeants may tell deputies that they are doing something incorrectly, but these kinds of corrections and guidance are not oral reprimands. Sergeant Schiefelbein was asked his opinion about discipline of a deputy by Lieutenant Watson in an informal setting, and the Sergeant's recommendation was followed. Sergeant Farnsworth would call a lieutenant if a question of discipline came up, but he had never called one about a disciplinary matter.

Sergeant Farnsworth reported to Lieutenant Watson that a deputy had been tardy. The first time the deputy was tardy, Sergeant Farnsworth had the deputy take it off his overtime. But the second and third times, Sergeant Farnsworth left a memo for Lieutenant Watson and took no further action.

Sergeants have the authority to send a deputy home with pay if a deputy came to work under the influence of alcohol or drugs. Not even the Sheriff has the authority to suspend an employe without pay, as this authority is reserved to a committee of the County Board, contrary to the disciplinary policy in effect in the Department.

Sergeant Hausner wrote up an incident in which a deputy refused his order, and requested an investigation into the matter. Sergeant Hausner was involved as a witness against that deputy. When Lieutenant Watson (retired at the time of the hearing) asked Sergeant Hausner if he would be satisfied with a letter as a disciplinary measure, Sergeant Hausner told Watson that a letter was not sufficient but that it was not his position to recommend discipline. The deputy involved received discipline but not from Hausner.

Sergeants Hausner and Schiefelbein documented sick leave usage for one deputy and forwarded the information to Lieutenant Watson. The Undersheriff asked that deputy for an explanation of why disciplinary action should not be taken. The record does not disclose whether disciplinary action was taken. When Lieutenant Graves was a sergeant, he would pass along to higher supervision such matters as tardiness and let a lieutenant know that he thought it ought to be addressed.

Lieutenant Graves has the responsibility to recommend disciplinary action, after getting facts from the sergeants. Lieutenant Graves usually talks with the Undersheriff and Sheriff about disciplinary matters, and either the Undersheriff or Sheriff make a decision on whether to discipline someone or what level of discipline to impose. Lieutenant Graves makes an independent judgment after listening to both sides, and he tries not to give the sergeant's side of the story any more weight than the deputy's side.

Lieutenant Graves wants the sergeants to make him aware of any minor problems that deputies have had, even where sergeants have handled the matter on an informal basis. The gripes, complaints, criticisms and conflicts that deputies may have are to be handled by sergeants first, but if the deputies are not happy with the sergeants' resolution of such matters, they go to see Lieutenant Graves.

Deputy Schmieden investigated an allegation that a court security officer was sleeping on the job and presented the facts to the Undersheriff and Lieutenant Stetter. He made no

recommendation about what action should be taken against that individual. An assistant district attorney also made a complaint about that same officer, and Deputy Schmieden sat in with Lieutenant Watson and the Undersheriff in a meeting, but Schmieden had no input. Lieutenant Stetter transferred the deputy back to patrol duties.

Sergeant/telecommunications Zimmerman has given oral reprimands to dispatchers and once recommended to Lieutenant Stetter that an employe be disciplined. Sergeant Zimmerman wrote a letter of reprimand to a telecommunications operator in 1993, which was a negotiated settlement of a grievance.

If a citizen makes a complaint against an officer, the shift sergeant or officer-in-charge accepts that complaint on a form which is forwarded to the Sheriff. The Sheriff and Undersheriff review those complaints, and the Sheriff has the sole discretion to assign someone to investigate the complaints.

Anyone in the Department could ask that an investigation be conducted if he or she knew of potential misconduct. Deputy Wierenga had two occasions where he reported improper activities, knowing that it could lead to discipline. Both deputies and sergeants may be called upon to testify against an employe of the Department in misconduct cases.

10. Authority to direct and assign the work force: Deputies pick their shifts by seniority, a feature of the labor contract. A schedule is made out for a year in advance with the number of officers on each shift. If a shift sergeant wants more manpower on a shift, he may request it from Lieutenant Graves, who then asks the Sheriff and Undersheriff to transfer deputies. Sergeants assign deputies on their shifts to patrol certain sections of the County or other duties as needed, such as desk duty or transporting prisoners. They assign deputies to the squad cars, although some senior deputies are assigned a regular squad on a daily basis.

The labor contract spells out a procedure for deputies to be called in on overtime. If a shift sergeant needs additional manpower for a problem or emergency, he has to contact the Sheriff or Undersheriff who can authorize it. The shift sergeant may also contact Lieutenant Graves or one of the other lieutenants if Lieutenant Graves is not available. If none of the lieutenants, the Undersheriff or Sheriff were available, the shift sergeant would take it upon himself to call in the extra manpower.

If an investigator or detective is needed, the shift sergeant or in-charge officer are to call Lieutenant Starks first, who then determines whether an investigator or detective is to be called and, if so, which employe should then be called.

The Undersheriff established a policy under which sergeants generally may allow one officer off on vacation or overtime for every four or five deputies scheduled in on a shift. The sergeants may determine within those guidelines how many can be off, given the activity going on

in the Department at that time. Shift sergeants sign approval for deputies' requests of vacation time and time off for overtime, and such requests are also to be signed by the lieutenants or the Undersheriff before deputies get final approval or pay for vacation. A deputy may go directly to the lieutenant for a request for time off, but when that happened after Lieutenant Graves took over the patrol division, Lieutenant Graves sent the deputy back to the shift sergeant.

Deputies have to complete their paperwork and daily reports before leaving their shift, and the sergeant on the following shift may have to sign their "dailies" if they were on overtime at the time they completed the task. Sergeants have more discretion about holding a deputy over on overtime to finish a job than calling in someone on overtime, because the labor contract has a procedure for calling in people for overtime. Shift sergeants review daily time slips turned in by deputies and check them to make sure the times are correct. Anyone spending more than eight hours a shift has to document the reason. If the sergeants see that deputies are spending too much time doing certain tasks, they may suggest ways to use their time more efficiently. Overtime authorizations by sergeants have been questioned by lieutenants, but the sergeants' recommendations on these issues usually stand.

Shift sergeants have no contact with deputies who are not on their own shifts, except to pass information on to the next shift sergeant. Shift sergeants give direction to deputies, show them the proper way of handling certain matters and doing certain tasks. As deputies come in off the road, shift sergeants will remind them to file reports, lock up evidence, and see that their tasks and duties have been completed. Sergeants Plote and Hausner had a dispute over the assignment of a deputy to desk duty -- they disagreed on whether his desk duty should be permanent or whether he should be in the regular rotation for patrol. Lieutenant Graves told them to work this dispute out between themselves.

When deputies serve as officers-in-charge due to the absence of a shift sergeant, they can perform all the same functions that a sergeant can perform. In-charge officers usually prefer to wait for a sergeant to approve a vacation request but they may approve it if necessary. Deputy Schmieden signs time cards and approves overtime for the three deputies assigned to court security, which also have to be approved by Lieutenant Stetter. Deputy Schmieden assigns deputies to individual courts by leaving them a piece of paper telling them who goes to which court. He may make changes in those assignments depending on daily circumstances. The three deputies have staggered hours to provide for court coverage later in the day, and Deputy Schmieden usually leaves before any of them are done for the day. If the three deputies are not all on duty and Deputy Schmieden needs more help, he calls a shift sergeant to have a patrol deputy come to help out.

Sergeant/telecommunications Zimmerman schedules the telecommunicators or dispatchers on particular shifts and grants or denies their leave, overtime or vacation requests. He may call in employees if short handed. Lieutenant Stetter has to also approve of all the time slips. When Sergeant Zimmerman is absent, the dispatchers do not seek out shift sergeants for approval of overtime or other matters.

Sergeant/training and planning Maritz signs time sheets and leave and overtime requests for the DARE officer during the nine-month school year. The DARE officer's office is next to Sergeant Maritz's office. The time sheets go to the Undersheriff for final approval. Sergeant Maritz does not schedule the DARE officer and does not necessarily know when that officer will work nights for parent meetings and graduations. When school is not in session, the DARE officer reports to the patrol division and a shift sergeant signs his time sheets and assigns him patrol duties.

The Undersheriff determines when a deputy would be paid for off-duty hours for mandatory training. Sergeants may make recommendations that certain deputies receive training in areas that the sergeants want covered, such as accident investigations. The Undersheriff grants or denies requests for training.

11. Number of employes supervised: The number of deputies on any shift varies, according to the number of employes off work for various reasons. However, 5 deputies is generally the minimum the Department will have on a shift, in order to have one deputy for each quadrant of the County and one in the building where the Department is located. There are 12 deputies assigned to the day shift, but because of absences or paid time off on average four or five deputies are actually working. On the second shift, there are 18 deputies assigned with an average of 6 to 13 deputies working. There are about 14 to 16 deputies assigned to the third shift with about 8 to 13 deputies working on the average.

The shift sergeants work the same 5-2, 5-2, 5-3 schedule as deputies. There are two sergeants assigned to each shift, and they typically overlap each other with both of them working the same shift about two days a week. There are occasions when neither shift sergeant is on a shift and a deputy is appointed in-charge. There are about 100 to 200 hours per month covered by officers-in-charge.

The court officer, Deputy Schmieden, oversees three deputies that attend court and provide security and two non-sworn correction officers that work in a temporary holding facility at the courthouse, which is a few miles away from the new Law Enforcement Center that houses the Sheriff's Department and new jail. Deputy Schmieden has not been assigned to be the immediate supervisor of the non-sworn correction officers, and he received a letter before the last day of the hearing in the matter stating that Captain Reiff was their supervisor.

Sergeant Zimmerman, the sergeant/telecommunications, oversees 13 full-time and three part-time dispatchers or telecommunicators who are non-sworn civilian employes and belong to the AFSCME bargaining unit.

Sergeant Maritz, the sergeant/training and planning, works alone.

12. Level of pay of positions at issue: By the terms of the labor contract, the shift sergeants receive 10 percent more pay than deputies. Sergeants receive overtime, while lieutenants do not except when working on holidays. The court officer, sergeant/ telecommunications, sergeant/planning and training, the photo and computer specialist, the process specialist and detectives receive 8.5 percent more pay than deputies on the hourly wage although they work different hours during the year than the shift sergeants, and their yearly pay, excluding overtime, is about the same as the shift sergeants. Deputies serving as officers-in-charge receive the sergeants' pay rate when acting in that capacity. Sergeants do not replace lieutenants when lieutenants are absent, but detectives sit in for lieutenants and receive the higher pay for that duty. Labor contracts have maintained the various wage rate relationships for these positions for many years.

13. Supervision of activities vs. supervision of employes: The shift sergeants come to work earlier than deputies to review the schedule, see what manpower is available, what problems need attention, etc. They are expected to come in 15 minutes earlier than the deputies and stay 15 minutes later, mainly for exchanging information between the shifts, and they receive compensatory time for the extra half hour. They conduct a briefing session with deputies during the first 10 or 15 minutes of the deputies' shifts, telling them their areas of patrol, and updating them on any new items of interest. After that, the shift sergeants monitor the radio traffic between deputies on the road and the dispatchers. Shift sergeants may go to crime scenes and supervise the crime scene. They may go to scenes of serious or fatal accidents, bring cameras and take photographs. Patrol deputies may be specially trained to be accident investigators and accident reconstruction specialists, or deal with truck inspections, but not all of them are trained in all things.

Sergeant Plote is assigned as the accreditation officer, an administrative type of duty. At the direction of the Sheriff, Undersheriff or superior officer, he writes policies, procedures, directives and orders. Only the Sheriff can authorize and implement policies. The Department has Directives/Procedure/Orders (DPO's) for the day-to-day operation. Lieutenant Graves has sole authority to issue DPO's for the Patrol division and must sign them. Sergeant Plote helps division heads, such as Lieutenant Stetter, with directives and procedures as a courtesy to them. Sergeant Plote finds resource and research materials to help draft directives and procedures and present them to the Sheriff or Undersheriff for approval. The Sheriff makes many changes on the drafts.

Sergeant Farnsworth maintains radar units and radios, is in charge of the County Fair tent, and covers Sergeant Gauger in the field training officer's program. He keeps records of equipment assigned to the Patrol division. He takes care of breath testing devices. He spends quite a bit of his time keeping track of equipment and making sure it is functional. He trains deputies on how to use computer equipment and run their reports on the computer.

Sergeant Gauger is the field training sergeant and has to keep track of a lot of paperwork for that function, although Lieutenant Graves is the field training coordinator and individual patrol deputies do the actual field training of new officers. Sergeant Gauger also trains the Swat team, both in-house and out on the range.

Sergeant Hausner is the national president of the National Association of Field Training Officers, which involves patrol, corrections, communications and apprenticeship training (called FTO). As the FTO supervisor, Sergeant Hausner has to review new officers' training with a field training officer. Sergeant Hausner has a lot of administrative and clerical type of work. He has ordered lights for squad cars, checked hours used by officers for transports to the jail, and spends little time on road patrol since going on a day shift.

Sergeant Hilbelink has several activities or projects involving the Department and the County. He has worked at the County Fair tent, assisted with a bicycle program, and takes deaf and retarded children to the Milwaukee Zoo. Some of these activities are done while on duty, some while off duty.

Sergeant Schiefelbein has been assigned duties regarding highway safety, and Lieutenant Graves is trying to get him approved by the County Board to be a deputy coordinator of the highway safety program. He is a primary supervisor for field training officer work. He is involved with the diving team, the Swat team, and the shooting range. He is called in on the dive team as a team member, not as a sergeant in charge, unless Lieutenant Starks is not present. He is third in command on the Swat team, with Lieutenant Graves first in command and Sergeant Gauger second.

Deputy Schmieden processes all traffic and ordinance citations, written warnings, vehicle defects, and prepares criminal complaints in criminal traffic matters. He may negotiate settlements on citations. He spends a lot of his time taking prisoners to court or appearing in court as a court security officer in one particular judge's court. He takes money to the bank, makes a deposit for the Treasurer's office, takes bond money to the Clerk of Court's office, and distributes some paperwork at various offices, such as the District Attorney's office. He also is on the snowmobile patrol for the Department and is a certified snowmobile safety instructor. He teaches bicycle safety and is on the emergency response team as a hostage negotiator.

Sergeant Zimmerman is the 911 committee coordinator. He deals with communications vendors, such as the telephone company and radio maintenance personnel. He makes sure that in-house files are running and everything is on line, and that alarm companies have alarms in County buildings. He deals with the Zoning Department and town clerks to see that property numbers, boundaries, fire response districts, and rescue squad response districts are up to date, and changes resulting from annexations of villages or cities are entered into the computer.

Sergeants or officers-in-charge receive citizen complaints, gather information and make a report which is forwarded to the Undersheriff or Sheriff. Sergeants also receive workers' compensation forms from officers. Sergeants may work at the front desk of the Law Enforcement Center, where the public enters, and they also have a separate office. Sergeants are also assigned to crowd control details at events such as the Ku Klux Klan rally in Elkhorn in 1995. About 185 officers from the area around Walworth County were on hand to help with crowd control. Sergeants were assigned to specific areas and had several officers with them. Lieutenant Graves assigned the personnel and the sergeants were put in charge to see that the functions and duties were carried out.

14. Amount of time spent supervising employes: The amount of time spent at headquarters versus time spent on the road or in a patrol car varies from sergeant to sergeant -- with Sergeants Plote and Schiefelbein representing the extremes. Sergeant Plote spends nearly all of his time at headquarters and Sergeant Schiefelbein spends less than one quarter of his time at headquarters and the rest of the time on the road, usually performing routine patrol work that includes hands-on law enforcement activities. The other shift sergeants fall somewhere in between those two extremes. Some deputies spend as much or even more time at headquarters as Schiefelbein does. All the

officers (including sergeants) break down their reporting of time in different ways, some with more detail than others. The numbers showing hours spent in headquarters or outside are not determinative of the type of work done.

Sergeant Plote directs the deputies on his shift for about an hour in the morning and an hour at the end of the day but the rest of the day, the deputies function on their own unless they have a problem and call in for assistance. Sergeant Plote seldom goes out on patrol to check on deputies. He monitors the radio traffic and is aware of what assignments he has given deputies in the morning.

Sergeants on the day shift normally spend more time at headquarters, because of certain activities that take place only in the daytime, such as prisoner transports to and from the courthouse or hospitals and doctors, banking duties, and bond hearings on weekends.

Sergeant Schiefelbein spends about 70 percent of his time actively involved in patrol or law enforcement duties. He spends about 15 minutes supervising deputies, during the briefing sessions. He has other clerical and administrative functions.

Sergeant Hilbelink generally stays in the office for an hour or two and then goes out in a patrol car for the rest of his shift, coming back a little early to review reports. While in a patrol car, Sergeant Hilbelink remains available to help back up other deputies. He may wait for a tow truck, or go with the coroner to make a death notification, but he does not normally write traffic tickets. If he responds to a scene, he maintains control until a deputy relieves him. He tries to help his shift run smoothly without getting tied up in the paperwork.

Sergeant Hausner, who recently switched shifts with Sergeant Hilbelink and was on the day shift when he testified in this hearing, has very little supervision or direction of employees. The largest part of his job has become administrative or clerical work.

Sergeant Farnsworth's clerical duties -- such as computer records, keeping records for the training division, court records for personnel, shift logs, shift assignments -- could take an hour or two a day. After the paperwork is done, Sergeant Farnsworth goes out on the road. He performs some active law enforcement functions, making arrests or working traffic patrol, but remains available to help all the deputies on the shift.

Deputy Schmieden spends almost no time in supervision of court security officers. His main function is to assign them to particular courts and change those assignments as needed. This involves only a few minutes of the day.

Sergeant/telecommunications Zimmerman works independently from the dispatchers unless there is a problem. His office is next to the communications center and he monitors the radio traffic while working. He spends about 40 percent of his time on the telephone, another 50 percent on the

computer.

Sergeant Maritz spends no time supervising employees as he has no one to supervise.

15. Independent judgment in supervision of employees: Sergeants previously evaluated deputies and there are departmental plans to do so again in the future. At the time of the hearing in this matter, the sergeants had not done any performance evaluations for several years.

When they evaluated deputies in the past, sergeants sat down with the deputies and had them sign the forms which were then given to lieutenants. The evaluations were supposed to be done on a quarterly basis. The former evaluation process involved generic reporting as to whether deputies were doing their jobs in accordance with shift averages for citations, warnings, appearances, handling calls, etc. The sergeants used computer records to develop efficiency rates and numerical averages. Sergeant Schiefelbein tried to make a judgment of performance, weighing the deputies' special assignments. Employees could request a hearing on an evaluation before Lieutenant Graves, who would make the final decision on whether the evaluation would stand or not. Lieutenants could ask sergeants to document reasons for evaluating employees low or high.

The sergeants' evaluations were not always taken at face value. Sergeant Schiefelbein was told by Lieutenant Watson to modify something on an evaluation. Lieutenant Graves would check on a deputy's reports to see if a sergeant's evaluation of that deputy were true or not.

Deputy Schmieden gave some court security officers evaluations in 1993 and then gave them to the Undersheriff. The Undersheriff refused to put the evaluations in the personnel files and told Deputy Schmieden that no employees could be as good as Schmieden had rated the court security officers.

Evaluations were discontinued in the Department, partly because the Undersheriff did not like to do them, and employees in the Department felt that the evaluation system was not handled fairly. Some employees were not getting evaluated at all, some lieutenants refused to do them, and eventually, the Undersheriff put a stop to all evaluations. The Department plans to have performance evaluations done twice a year in the future.

Sergeants may be asked for their opinions on probationary officers, and there is a regular evaluation process for new officers in the field training program.

Grievances filed by deputies or sergeants go first to the four lieutenants with a copy to the Undersheriff. No one is allowed to answer a grievance without consulting the Undersheriff. Sergeants may listen to deputies' complaints and try to deal with them, but not as a step in the grievance procedure.

Sergeant/telecommunications Zimmerman is the first step in the grievance procedure with the dispatchers under the AFSCME labor contract. He makes a recommendation regarding grievances to Lieutenant Stetter, who consults with the Undersheriff before making a final determination. Sergeant Zimmerman also gets complaints from deputies about telecommunicators

and vice versa, and he tries to mediate between these personnel.

The lieutenants retain final authority over many matters, including overtime, vacation requests, problems with directives or procedures, but the Undersheriff may override some of those decisions. Sergeant Schiefelbein once disapproved of an overtime slip and was overridden by the Undersheriff.

Sergeants have the authority to issue orders to deputies to do job functions within the guidelines, policies, and procedures established. Sergeants exercise independent judgment to help deputies become better officers, to work out minor disputes between them, and to see that policies and directives are being followed. Sergeants exercise independent judgment in law enforcement matters, such as determining whether to continue a high speed chase. Sergeants exercise little or no independent judgment over personnel in labor relations matters or major personnel decisions.

16. Sergeant Maritz, the sergeant/training and planning, coordinates the training functions of the Department. He formulates a budget of about \$48,000 per year for training, mainly the costs for training programs, travel and meals, and then administers the training budget. He prepares his training budget by soliciting suggestions from deputies and then gives his proposal to the Undersheriff. At the request of the Undersheriff, Sergeant Maritz appears before the law enforcement committee of the County Board to justify his proposed training budget. Departmental personnel request training from their sergeant or lieutenant and the Undersheriff has the final approval or disapproval for sending personnel to training programs. Sergeant Maritz has no special influence in those decisions but will provide the Undersheriff with input where appropriate.

Maritz successfully pushed for the inclusion of a mandatory ethics component in the Department's training program.

Sergeant Maritz sets up the schedule for range qualifications, instructors and the shooting league. He maintains training records and assesses programs. He helped move the Department from an older building to a new facility. He hired the mover, made sure that phones and computers were hooked up, and communicated with the contractors of the new building. He handles special projects for the Undersheriff, such as manpower studies and central records studies.

Sergeant Maritz administers the DARE grant, which is about \$23,000 to \$28,000 per year, and works with the DARE officer to see that he has materials he needs for the program. The DARE grant has outlines of how the money is to be spent.

17. The shift sergeants (incumbents Hausner, Plote, Gauger, Farnsworth, Schiefelbein, and Hilbelink) and the court officer (incumbent Schmieden) do not possess supervisory duties and responsibilities in sufficient combination and degree to be found to be supervisors.

The sergeant/telecommunications (incumbent Zimmerman) does possess supervisory duties and responsibilities in sufficient combination and degree to be found to be a supervisor.

The sergeant/training and planning does have sufficient participation in the formulation, determination or implementation of management policy and authority to commit the County's financial resources to be deemed a managerial employe.

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

CONCLUSIONS OF LAW

1. The six shift sergeants and the court officer are not supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

2. The sergeant/telecommunications is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is therefore not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. The sergeant/training and planning is a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(Continued)

The shift sergeants and the court officer shall continue to be included in the bargaining unit represented by the Association. The sergeant/telecommunications and the sergeant/training and planning shall be excluded from the bargaining unit represented by the Association.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Commissioner Paul A. Hahn did not participate.

1/ (Continued)

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(Continued)

1/ (Continued)

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

WALWORTH COUNTY

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

The County has petitioned us to exclude nine positions from the bargaining unit represented by the Association -- six shift sergeants, one sergeant/training and planning, one court officer who is a deputy, and one sergeant/telecommunications. The County has asked that these nine positions be excluded as supervisors and that one of them, the sergeant/training and planning, be found to be managerial.

POSITIONS OF THE PARTIES:

The County:

The County first submits that the ratio of supervisory to non-supervisory employees results in a ratio of 1:17 in the Patrol Division, with only three supervisors currently excluded from the bargaining unit -- the Sheriff, the Undersheriff, and the lieutenant in charge of that division. Adding the six shift sergeants would change the ratio to 1:5, which is well within the level of acceptable ratios normally considered by the WERC in past cases. The County relies heavily on shift sergeants to run their shifts effectively, and there are no other non-union supervisors who exercise daily oversight responsibilities in the Patrol Division.

The County asserts that it has shown that the sergeants' loyalties are divided, and that tension exists when the sergeants try to balance their responsibilities to management with their loyalty to their fellow Union members. Sergeants have been reluctant to conduct regular performance evaluations or to make specific recommendations regarding discipline to avoid being put in the middle. While the sergeants' job descriptions and the Department's discipline policy authorize them to take disciplinary action, they have been careful not to take disciplinary action but rather to report the facts in a neutral way. The sergeants' own Union dues pay an attorney who must attack and discredit them when they do take sides.

The duties of shift sergeants are not the same as deputies. After they conduct roll call and make work assignments, they remain at the Department to coordinate their shift responsibilities or perform special projects. When they go out on the road, they are assigned a special sergeant's car and they are not assigned to a specific area of patrol. They oversee the law enforcement activities of their subordinates, give them advice, or take other corrective action where the performance of subordinates is not appropriate. Despite the parties' dispute over the amount of time sergeants are engaged in routine patrol versus administrative and supervisory duties, the sergeants spend far more time than employees they supervise performing non-patrol and administrative functions, most of which are directly related to their supervisory responsibilities.

The sergeants sign and approve the daily reports of deputies, sign their time cards and pass them to the lieutenant whose review is a rubber stamp of the decision of the sergeants. They decide whether or not to call in additional personnel, and their requests that someone be called in are rarely refused by a lieutenant. Sergeants are also responsible for oversight of the Field Training Officer and probationary employees under that FTO program on their shifts.

The County submits that the sergeants are authorized to issue oral or written warnings and to take more serious disciplinary measures. The sergeants first bring the facts to the attention of their supervisors because they believe something was wrong and something should be done about certain matters. Sergeant Hausner verbally told a lieutenant that he wanted a deputy disciplined more severely than the lieutenant had suggested. Sergeant Plote recommended that an employee be given some time off and that employee received a one-day suspension. Sergeant Farnsworth recommended that an employee receive a verbal or written warning and that employee was given a written reprimand. Sergeants Hausner and Schiefelbein analyzed the sick leave usage of an employee and reported it.

The County contends that examples of discretionary acts involving the exercise of supervisory authority are the "attaboy" letters. Sergeants provide input into the promotion process through memos or personal conversations with higher management. The Union has played games with the distinction between formal and informal input. Sergeants have formal obligations to issue or recommend significant discipline on their own authority, but they ask that this authority be ignored because informally they try not to make those decisions. Yet they informally provide input into the hiring and promotion decisions and ask that this informal input be ignored because of no formal involvement in the process.

The sergeants historically conducted performance evaluations of their subordinates and exercised independent judgment and discretion to complete the evaluation form based on personal observations, the County claims. While the evaluations were suspended for about 18 months, the sergeants are expected to do them in the future. The sergeants also deal with day-to-day grievances and try to resolve problems on their shifts. If the sergeants were removed from the bargaining unit, the County could assign them the responsibility of being the first step in the grievance procedure. Moreover, the County asserts that the only reason sergeants are paid more than deputies is for their supervisory skills and responsibilities.

The County points out many examples of supervisory responsibility in the testimony of the shift sergeants. Sergeant Plote confirmed that sergeants are paid more because they supervise shifts, assign personnel, etc. Sergeant Hilbelink considers himself part of the management team. Sergeant Hausner is reluctant to recommend discipline because he is in the same unit as the people he supervises. Sergeant Schiefelbein is part of the team that decides whether probationary employees will be moved to the next level of training or be removed. Sergeant Farnsworth believes that he is a supervisor, that his deputies think so too, and that "he chews people out" when the need

arises. Sergeant Gauger noted that the sergeants provide a leadership role, much as sergeants in the military do.

The County argues that there is no serious debate between the parties concerning whether or not Sergeant/telecommunications Zimmerman is a supervisor under applicable law. He is involved in the hiring process, he has sole discretion to call employees in to work or to authorize overtime, he has issued oral and written reprimands himself, he is the first step in the grievance procedure covering the telecommunicators, etc. While the court officer (Deputy Schmieden) is not a sergeant, he has three court security officers assigned to him. He assigns them to various courts, checks on them, evaluates them, and has the authority to transfer them back to patrol, approve their overtime, vacation and other time off. Sergeant/training and planning Maritz is both supervisory and managerial, the County contends. He has overall responsibility for the training/planning division and is responsible for oversight of the DARE program and the DARE officer. His responsibility over finances and programs is significant, and he handles \$43,000 for the training budget and \$25,000 for the DARE grant. He has substantial discretion to develop his budget and work directly with the County Board to finalize it.

The Association:

The Association asserts that none of the persons whom the County wants removed from the Association has the authority to effectively recommend hiring, firing, transfer, discipline or discharge. Sergeant Gauger sat in on a hiring interview only once because Lieutenant Graves was unavailable. He testified that discipline is the bailiwick of the Sheriff and Undersheriff and it would be overstepping his authority to become involved. Sergeant Hausner was never involved in the hiring process until late January 1996 when he was ordered to sit in on one interview. Sergeant Maritz has no one else in his division and no one to supervise -- therefore, he has no involvement with hiring, firing, promotions or transfers. Sergeant Plote stated he is not involved with hiring or promotion and never recommends any discipline. Sergeant Schiefelbein testified that he has no input at all into hiring or promotion. Deputy Schmieden is not involved in hiring, and was involved in a transfer only in the sense that when he asked the Undersheriff for an additional court security officer, the Undersheriff asked him who he wanted and the Undersheriff ultimately transferred that individual. Sergeant Zimmerman supervises civilian dispatchers and has no supervisory power, control or responsibility over any deputies. His involvement with hiring is limited to conducting joint interviews with Lieutenant Stetter who has overridden his opinion on occasion. He recalled recommending disciplinary action only once in 17 years.

The sergeants have authority to give verbal discipline regarding routine matters such as appearance, failure to complete reports properly and similar issues, and they may send a deputy home if he or she were intoxicated. Their authority as to routine and obvious matters does not constitute the authority to discipline personnel pursuant to statute, Department policy or case law. That authority lies with the Sheriff, Undersheriff and lieutenants.

The Association notes that the sergeants have been involved informally in hiring or promotion to the extent that they gave their opinions on candidates. However, this informal pooling of information is not limited to them in their positions as supervisors. Deputy Wierenga testified that in his 19 years on the force, he often has been asked his opinion of candidates. Wierenga has investigated and reported wrongdoing by fellow officers. The sergeants have no formal authority to hire, promote, transfer, discipline or discharge, and their informal authority is no greater than that of a deputy such as Wierenga.

Regarding the authority to direct and assign the work force, the Association notes that the sergeants play with the hands they are dealt. The contract dictates who has seniority and which shift they work. The only control the sergeants have is to send deputies to different areas of the County or to pull them off the road for duties such as transporting prisoners or guard duty. Their decisions are controlled by policies and procedures established by the Sheriff, Undersheriff and lieutenants. Deputy Schmieden assigns court security officers to specific courtrooms, but those assignments are directed by the needs of the courts. Sergeant Zimmerman has no authority over any deputy and his ability to direct and assign the work force is limited to the civilian dispatchers. He does not create the daily schedule and spends little time supervising the dispatchers because they need little supervision. Sergeant Maritz does not direct or assign work to anyone.

The Association notes that the number of persons supervised depends upon the shift and duties performed. Sergeant Maritz supervises no one, Deputy Schmieden is in charge of three court security officers, and Sergeant Zimmerman supervises 16 dispatchers. The shift sergeants may be commanding as few as five and as many as 18 persons, depending on the shift, vacations, and other facts. The Sheriff, Undersheriff and lieutenants all have greater authority than the sergeants, who have no authority to make any final decisions. The pay scale was established by contract many years ago and no one who testified could explain why. While the County attempts to show that the sergeants are paid more because they are supervisors, other persons such as detectives, process specialists and photo computer specialists are also paid more than deputies.

The Association argues that the sergeants are supervising activities and not individuals. Their daily routine -- roll call, shift assignments, reviewing daily reports, monitoring radio calls, etc. -- reflects their supervising activities. They make sure the job gets done and delegate the work, but they do not exercise control over how that work is done. Their other work leaves them little time to supervise individuals. Sergeants Plote and Hausner spend little time on the road because they are dealing with administrative paperwork, citizen complaints, process serving, bail hearings, and matters occurring during the day. Sergeants Farnsworth and Gauger regularly go out on routine traffic patrol, but both have administrative, clerical and court duties. The night shift Sergeants Hilbelink and Schiefelbein spend the most time on patrol, presumably because they do not have the administrative, clerical and court duties which the day and PM shift sergeants have. It cannot be disputed that Sergeant Maritz spends a substantial majority of his time working and not supervising. Deputy Schmieden spends little time supervising, as he has his own court officer duties. Sergeant Zimmerman's dispatchers function by themselves unless there is a problem, and after Zimmerman leaves for the day, the other sergeants have little or no contact with the dispatchers.

The Association does not deny that the sergeants exercise judgment every day. They decide how many deputies go to which quadrant of the County, whether to update computer records or do clerical filing, whether and who to pull off patrol and assign to prisoner transport, whether to investigate an alleged wrongdoing by a co-worker. The Association submits that all of these decisions are made within the confines of the Department's policies and procedures. Many similar decisions -- whether to issue a citation or warning to a speeder -- are made every day by patrol officers.

According to the Association, Sergeant Maritz is not a managerial employe. He has no involvement with policy but is involved with the training budget. The disbursement of the DARE grant money is controlled by the grant proposal submitted jointly by the Sheriff's Department and the school district, and Sergeant Maritz has no discretion on DARE spending. He has more discretion on the training budget, and his duty is to create and prepare a proposed training budget for the Undersheriff's review and approval. He cannot allocate funds from one area to another and does not have final approval over the budget.

In Reply:

The County:

The County asserts that the Association mischaracterizes the disciplinary authority of the sergeants, as the record reflects that they have been granted broad authority by department policy to issue disciplinary actions, including oral and written warnings, suspensions with or without pay. Exhibit 18 contains examples of disciplinary actions issued by them or recommended by them.

The Union's brief does not even address the concerns of divided loyalties of the sergeants. A core argument raised by the County is that retention of the sergeants in the same bargaining unit as the deputies creates a conflict of interest in the exercise of their authority and responsibility to issue disciplinary decisions pursuant to policy. The Association's failure to address this argument reveals the power of this argument, states the County.

The County also notes that the Association suggests that all decisions of the sergeants are directed and controlled by Department policies and they have no true discretion. The County argues that it would be an odd law enforcement agency that would grant unfettered discretion to employes without developing some policy to guide them. Discretionary authority within policy is obvious in the policies submitted into evidence in this case. The policy and procedure for taking citizen complaints shows that supervisory officers with the rank of sergeant and above have the discretion to determine whether to immediately suspend a member of the Department with pay to protect the interests of the community or the Department. The County contends that the Association has ignored the paramilitary nature of the Department. The key in such paramilitary organizations is not who has final authority, but rather who is making the day-to-day decisions, which is the sergeants here.

The County disputes the Association's assertion that the extra pay for sergeants was

established by contract many years ago and no one could explain why. Based on the record, there is no other conclusion than that this extra pay is for the sergeants' responsibilities as supervisors. The Association then contends that Sergeants Plote and Hausner are not supervising because they spend little time on the road but that the other four shift sergeants are not supervisors because they are out on the road a lot. The Association cannot have it both ways. The sergeants themselves state that while many employees follow directions and go about their business with a minimum of supervision, other employees do not. The County should not be penalized because its work force follows policies and training given to them by supervisors.

Finally, the County takes issue with cases cited by the Association. It notes that the case involving the Milwaukee County Sheriff's Department involves an organization significantly larger than that found in Walworth County. At the other end of the spectrum, the Association tries to rely on cases involving very small departments, such as the Town of Brookfield, the City of Delavan, the Village of Maple Bluff, where sergeants can remain in the unit because there are so few employees working on any shift.

The Association:

In its reply brief, the Association takes issue with the cases cited by the County and notes that the chart attached to the County's brief is not an exhaustive study of the cases in which the issue has been addressed by the WERC. The County's chart of six cases in 16 years finding supervisory status is not overwhelming authority where at least five cases during the same time span found no supervisory status under similar facts.

The Association urges the Commission to disregard the changes that the County implemented during the pendency of this matter. At the first hearing, it was revealed that the official document entitled Walworth County Sheriff's Department Table of Organization dated December 31, 1994, was changed by the County in preparation for the hearing in this matter. This document was not part of the official records of the County. Then, soon after the first day of hearing, Sergeant Plote was given a new policy or procedure to draft to alter the duties and responsibilities of the sergeants.

The County's discussion of the ratio of supervisory to non-supervisory personnel is flawed, as nothing in the record suggests that the current ratio is not workable. The County presented no evidence that excluding the sergeants from the Association would do anything to improve the Department. The Association does not deny that sergeants are needed to run the three shifts effectively, but asserts that this fact does not warrant the conclusion that the sergeants are supervisors.

The Association asserts that the sergeants' loyalties are not divided and there is no tension between them and the deputies. If that were true, sergeants would never investigate complaints against deputies, would not report the results of their investigations to the lieutenants, the Undersheriff or Sheriff, and would not put themselves in a position where they might have to testify

against a fellow union member. But they do all of those things here. The fact that deputies perceive the sergeants to be supervisors does not mean that they are supervisors under the applicable law, as they may supervise activities rather than people.

The County skews and misinterprets the facts, the Association submits. The sergeants commonly give job training, advice or corrective action to subordinates on the road. That is not indicative of supervisory activity, and any experienced law enforcement officer would share information and policy with a less experienced officer. None of the administrative functions cited by the County are supervisory -- such as taking citizen complaints, process serving, bail hearings, front desk duty, and clerical work. The functions that the sergeants serve in authorizing daily reports, time slips, vacations and overtime requests are insufficient to make them supervisors.

The Association finds it almost incredible that the County refers to the sergeants' authority to impose discipline and/or investigate complaints which might lead to discipline as a common duty. The County argues that reporting an incident to a lieutenant or the Undersheriff or Sheriff implies that the sergeant wants something to be done. As Sergeant Gauger testified, discipline is the bailiwick of the Sheriff and Undersheriff. The County is also wrong when it argues that only the sergeants have the power to trigger disciplinary action by bringing something to the Sheriff's attention.

The County misstates the record regarding evaluations, the Association notes, when the County claims that the sergeants asked to be relieved of the obligation due to their "discomfort about evaluating fellow union members." There is no support in the record for this comment in the County's brief. The County states that if the sergeants were removed from the bargaining unit, the County could assign them the responsibility of acting as the first step in the grievance process. That argument ignores the fact that the grievance procedure is bargained and set forth in the contract, and the County has no authority to appoint a first step contrary to the contract.

The Association objects to the County's spin on the testimony of the six shift sergeants. Both the Association and the County quoted Sergeant Gauger's analogy of the Department to the military. It is doubtful that a military organization such as the U.S. Army would consider sergeants to be supervisory personnel under the factors applicable here.

DISCUSSION:

Supervisory Status - General Considerations:

A supervisor is defined in Section 111.70(1)(o)1, Stats., as follows:

. . . any 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 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.

Historically, we have considered the following factors in determining if an employee is a supervisor under Sec. 111.70(1)(o)1, Stats.

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 skill 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. 2/

Not all of the above factors need to be present for a position to be found supervisory. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. 3/

The quasi-military organization of police and fire departments presents unique problems in determining supervisory status of certain employees. 4/ Officers of higher rank will generally have the authority to issue orders to subordinates, regardless of our determination of supervisory status. Therefore, it is appropriate to consider the present case in light of our prior decisions regarding

2/ Town of Brookfield, Dec. No. 26426 (WERC, 4/90).

3/ City Firefighters Union v. City of Madison, 48 Wis.2d 262 (1970); City of Two Rivers, Dec. No. 21959-A (WERC, 2/91).

4/ City of Madison, Dec. No. 11087-A (WERC, 12/72).

protective services. The size of the force or department is not particularly relevant -- it is the authority held and exercised that is more important, and our conclusions are not based on considerations of big departments versus small departments.

In past cases where we found officers such as sergeants or lieutenants to be supervisors, it was because those people demonstrated a high level of supervisory responsibility. For example, the sergeants we have previously found to be supervisors had the authority to independently issue verbal and written reprimands and to effectively recommend more severe forms of discipline, to consistently participate in hiring decisions, to conduct meaningful performance evaluations and to call in additional personnel; 5/ to issue oral or written reprimands, or impose a day's suspension pursuant to written policies; 6/ to serve as the first

step in contractual grievance process, to participate in hiring decisions, to effectively recommend written reprimands, to designate shift commanders, and to conduct meaningful performance evaluations; 7/ and to independently change work schedules, to participate in hiring decisions, to make or effectively recommend oral and/or written disciplinary notices, to conduct performance evaluations, and to do work substantially distinct from patrol officers. 8/

To the contrary, where we have found sergeants and lieutenants to be non-supervisory, those officers displayed few of the factors noted above. For example, we found sergeants to be non-supervisory where they had no role in the hiring decisions or transfer decisions, could not recommend promotions, conducted evaluations which were only preliminary, and shared many work features with those whom they oversaw. 9/ A lieutenant who had the authority to call in replacements, change work schedules, and approve days off, but who performed the same duties as patrol officers, had no role in grievance adjustments, did not conduct written evaluations, and was often the only officer on duty was not a supervisor. 10/ Another lieutenant whose disciplinary role was limited to preparing reports of wrongdoing by lower ranking officers, who made only routine assignments as shift commander and directed deputies and sergeants at accident scenes was not a supervisor. 11/ We even found a chief deputy in command of a department on a regular basis to be

5/ Sauk County, Dec. No. 17201-A (WERC, 6/87).

6/ Dane County, Dec. No. 21406 (WERC, 2/84).

7/ City of St. Francis, Dec. No. 24473 (WERC, 4/87).

8/ LaCrosse County, Dec. No. 19539 (WERC, 4/82).

9/ Milwaukee County, Dec. No. 74855 (WERC, 10/87).

10/ City of Kiel, Dec. No. 11370-A (WERC, 3/85).

11/ Portage County, Dec. No. 19798-A (WERC, 2/93).

nonsupervisory because he did not make any notable supervisory decisions. 12/

Also, we note that 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. 13/

Shift Sergeants:

The shift sergeants clearly have no significant authority to hire or effectively recommend the hiring of employees. The County's belated attempt to draft a policy to involve the sergeants in the hiring process after the first day of hearing perhaps best illustrates the weakness of the County's case. The record shows only that Sergeant Gauger sat in once on a hiring interview when Lieutenant Graves was gone and that Sergeant Hausner was ordered to sit in recently.

The shift sergeants have no significant role in promotions or transfers. They sometimes give their opinions on promotions, but those opinions are not necessarily sought by the Department's management and do not constitute effective recommendation. The only person significantly involved in transfers is Deputy Schmieden, who will be discussed separately below.

While written policy gives the shift sergeants the authority to issue written or oral reprimands and suspensions with or without pay, such policy is of little significance where the sergeants do not in fact ever do so and some sergeants were not even aware that such a policy existed. The record is clear that the sergeants investigate and report, but they do not make recommendations regarding discipline, and the testimony and exhibits clearly show that they are careful to not recommend discipline. The lieutenants recommend discipline, and Lieutenant Graves noted that he would not give a sergeant's side of the story any more weight than a deputy's side of the story. The sergeants understand that discipline is beyond their authority and are not about to intrude into the domain of the Undersheriff and the Sheriff. It is possible for disciplinary authority to be in existence and not be used because there are no incidents where discipline is warranted. However, the record shows that the opposite is true here -- there are many instances where discipline has been necessary and imposed -- just not by the sergeants.

The shift sergeants certainly have the authority to give directions and assign tasks to deputies. They do not schedule them on shifts but assign geographical sections of the County to those scheduled on their shifts. They may also pull deputies to transport prisoners or perform other tasks as needed. They also sign the deputies' daily reports and authorize their overtime, as well as vacation and leave requests.

12/ Menominee County, Dec. Nos. 23352 - 23355 (WERC, 3/86).

13/ City of Lake Geneva, Dec. No. 18507 (WERC, 3/81).

The ratio of supervisors to employees also favors the County's position. The County will continue to have a small number of supervisory personnel if the sergeants are kept in the bargaining unit. However, the ratio of supervisors to employees is a factor that is never dispositive in determining whether employees have sufficient supervisory authority or exercise it in such a manner as to be excluded from a bargaining unit.

The record discloses that the level of pay for the disputed employees has been set by a labor contract and the greater pay for sergeants has been in place for a couple of decades. We are satisfied this level of pay has some relationship to the additional responsibilities borne by sergeants, including the direction of deputies' work.

The record does not convince us that the shift sergeants are primarily supervising employees or that they spend a substantial amount of time supervising employees. The shift sergeants have many extra functions and duties not assigned to patrol deputies, which the sergeants characterize as administrative and clerical functions. Their time spent supervising employees is basically limited to the briefing session where they assign work, and the time when deputies come in back off duty and fill out forms and paperwork. When sergeants direct deputies or investigators at an accident or crime scene, they are supervising an activity, not employees in a labor relations sense. 14/ When sergeants give direction or correction to less

14/ Portage County, Dec. No. 19798-A (WERC, 2/93).

experienced officers, they are acting like lead workers. The sergeants' responsibilities to take citizen complaints and accept worker compensation claim forms are basically administrative tasks. Neither of these functions involve supervision of personnel.

The record shows that the amount of independent judgment exercised in the supervision of employees is slight, since the sergeants have little actual authority.

The fact that sergeants previously filled out performance evaluations and the Department plans to have them do so in the future is not persuasive. Deputy Schmieden's testimony that the Undersheriff refused to put very good evaluations in personnel files indicates to us that the deputy and sergeants made preliminary do evaluations which may be easily overridden by the Department's management.

The sergeants do exercise discretion and independent judgment in matters of handling policies and law enforcement activities, such as deciding whether to continue in a high speed chase or not. However, they do not exercise independent judgment in supervising deputies, and the record is replete with instances where they pass simple matters such as tardiness on to higher ranked officers.

In sum, we find that the shift sergeants function as lead workers but not as supervisors in the labor relations sense that would exclude them from the bargaining unit. As lead workers, they have some responsibility for the direction and assignment of work and approval of employee leave requests. However, from our careful review of the record, we are persuaded that the Sheriff and Undersheriff have not given the sergeants any significant authority in hiring, disciplining or evaluating employees. 15/ Until the Sheriff and Undersheriff chose to provide the sergeants with meaningful authority in at least some of these key areas, these employees are not supervisors. Therefore, we have ordered that they continue to be included in the bargaining unit represented by the Association.

Court Officer:

The court officer, Deputy Schmieden, has fewer indicia of supervisory authority than the shift sergeants. His main supervisory function is to assign deputies to a specific court. Deputy Schmieden's involvement in transfers is limited to providing input to Lieutenant Graves and Lieutenant Stetter when they decide who will get the transfer to a court security job. Otherwise the record is devoid of any evidence of supervisory responsibility.

Given the foregoing, the court officer is not a supervisory employee and shall continue to be included in the bargaining unit.

15/ We think it noteworthy that neither the Sheriff nor the Undersheriff testified at the hearing.

Sergeant/telecommunications:

The sergeant/telecommunications, Sergeant Zimmerman, has much more involvement in major labor relations decisions than any of the other sergeants. While his supervision is limited to employees in a different bargaining unit, we have previously rejected arguments that supervisory status must rest upon a finding that a particular position occupies such status vis-a-vis bargaining unit employees. A finding that a position is supervisory may be based upon the incumbent's exercise of such authority over part-time, temporary or even casual employees outside of the bargaining unit.

Unlike the other sergeants, Sergeant Zimmerman is significantly involved in hiring and disciplining employees. He is the first step in the grievance procedure under the AFSCME contract. While he does not spend a majority of his time supervising employees and has not had occasions to invoke much discipline, he has significantly more discretion and authority in these areas than the other sergeants.

Based on the record that shows that Sergeant Zimmerman has involvement in major labor relations decisions such as hiring, discipline, and the adjustment of grievances, we find that his position is supervisory in nature and will exclude it from the bargaining unit.

Managerial Status:

In Kewaunee County v. WERC, 141 Wis.2d 347, 353-356 (1987), the Court set out the following as to managerial status:

A two-fold analysis is used to determine whether an employee is "managerial" within the meaning of sec. 111.70(1)(i). Under the first test, a court determines whether the employee participates in the formulation, determination, and implementation of management policy. *Eau Claire*, 122 Wis. 2d at 367-68, 362 N.W.2d at 431. It is undisputed that Reimer is not a managerial employee under this test. Under the second test, a court determines whether the employee possesses effective authority to commit the employer's resources. *Id.* This authority is defined as the power to establish an original budget or to allocate funds for differing program purposes under such a budget. *Id.* However, the power to make ministerial expenditures is not a factor. *Id.*

In *Eau Claire*, the issue was whether the managerial exception to MERA involving an employee's authority to commit the

16/ See City of Lake Geneva, Dec. No. 18507 (WERC, 3/81).

employer's resources was applicable, in light of the requirement that the county board approve a departmental budget before its implementation. *Id.* at 368-69, 362 N.W.2d at 432. We concluded that the ability to prepare and submit an original budget to the board was sufficient authority to commit the county's resources because a contrary finding would have rendered the second test of the managerial analysis meaningless. *Id.*

The county's reliance on *Eau Claire* is misplaced. *Eau Claire* did not define what budgetary duties an employee must possess to establish that he or she has effective authority to commit an employer's resources. That issue was not raised. Rather, in *Eau Claire* we addressed whether the authority to expend an employer's resources may exist even though ultimate authority to appropriate the funds lies with the board. The language of the decision should not be read as equating the ministerial task of reducing a budget to writing and submitting it to the county board with the authority to prepare an original budget. The two concepts differ in substance if not in form.

Here, the commission determined that preparing and submitting a budget to the county board, standing alone, did not establish managerial status under sec. 111.70(1)(i). In making this determination, the commission refined the meaning of "effective authority to commit an employer's resources" under the managerial test defining the term "original budget" described in *Eau Claire*. The commission noted that to be considered managerial, an employee's budget preparing duties must necessarily involve the authority to determine "the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the system by which the services will be provided, including the use of outside contractors."

The commission's interpretation of sec. 111.70(1)(i) is reasonable and consistent with the purposes of MERA, which is to permit municipal employees desiring an opportunity to collectively bargain with the municipal employer. For an employee's budgetary duties to constitute effective authority to commit an employer's resources, the employee must possess the discretionary power to determine the type and level of services to be provided and the manner and means by which those services will be delivered.

Formulating a budget, as opposed to merely submitting a budget, involves determining the services required, the number of persons necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services. Consequently, to possess effective authority to commit an employer's

resources, an employee preparing a budget must possess the authority to effectively recommend the amount and the manner in which funds will be expended in support of each of the services provided. This distinction is consistent with the purposes of MERA because it effectively distinguishes those employees who possess managerial interests from those who do not. *See Eau Claire*, 122 Wis.2d at 367-68, 362 N.W.2d at 431.

Whether Maritz is a managerial employe turns on an evaluation of his planning and budgetary responsibilities. From our review of those responsibilities, on balance, we are persuaded that Maritz's influence on the content and scope of the Department's training is of sufficient magnitude to qualify him as a managerial employe under Kewaunee. In this regard, we think it particularly noteworthy that Maritz appears before the County Board committee as to the training portion of the budget and that he successfully pushed for the inclusion of a mandatory ethics component in the Department's training program.

Given our conclusion, we need not and do not resolve Maritz's alleged supervisory status.

Conclusion:

Of the nine employes the County has sought to exclude from the bargaining unit, we find that two should be excluded. Zimmerman, the sergeant/telecommunications is a supervisor and must be excluded from the bargaining unit. Maritz, the sergeant/training and planning, is a managerial employe and is also excluded from the unit. The six shift sergeants and one court officer are not supervisors and will continue to be included in the bargaining.

Dated at Madison, Wisconsin, this 11th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Commissioner Paul A. Hahn did not participate.