

¶18 Our Wisconsin Constitution does not delineate what duties belong to the office of sheriff. In 1870, the Wisconsin Supreme Court began to examine what generally recognized duties and functions belonged to the sheriff when the Wisconsin Constitution was adopted. *State ex rel. Kennedy v. Brunst*, 26 Wis. 412, 413, 7 Am. Rep. 84 (1870). Kennedy involved an inspector of the Milwaukee County House of Correction seeking a writ of mandamus to compel the sheriff to deliver all prisoners confined in the county jail (along with all associated paperwork). *Id.* The court concluded that the framers of the Wisconsin Constitution intended the office of sheriff to have “those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the constitution was adopted.” *Id.* at 414.

¶19 Subsequent to Kennedy, the Wisconsin Supreme Court and this court looked at a variety of cases involving the constitutionally protected powers and duties of the office of the sheriff:

In 1920, the Wisconsin Supreme Court upheld the constitutionality of a state statute that prohibited a sheriff from appointing deputies except those certified by the civil service commission. *State ex rel. Milwaukee County v. Buech*, 171 Wis. 474, 482, 177 N.W. 781 (1920). Buech stated that even though sheriffs possessed the power to appoint deputies at common law, it was not a power that gave “character and distinction to the office” of sheriff. *Id.*

In 1982, the Wisconsin Supreme Court held that the legislature could not constitutionally authorize a collective bargaining agreement which deprived the sheriff of his constitutional authority to choose who among his deputies should act as court officer. *WPPA I*, 106 Wis.2d at 313-14, 316 N.W.2d 656.

In 1989, the Wisconsin Court of Appeals held that “the power and duty of the sheriff to execute court-issued arrest warrants to bring before the court a prisoner is attendance upon the court which may not be limited by a collective bargaining agreement.” *Wisconsin Prof'l Police Ass'n/Law Enforcement Employee Relations Div. v. Dane County*, 149 Wis.2d 699, 712, 439 N.W.2d 625 (Ct.App.1989) (*WPPA II*).

In 1992, the Wisconsin Supreme Court stated that a sheriff reassigning a deputy from patrol duty to undercover drug enforcement was constitutionally protected because it implicated both law enforcement and peace preserving functions of the office of sheriff. *Manitowoc County v. Local 986B, AFSCME, AFL-CIO*, 168 Wis.2d 819, 830, 484 N.W.2d 534 (1992) (*per curiam*).

In 1995, the Wisconsin Court of Appeals held that a sheriff had the right to utilize nonbargaining unit law enforcement personnel from other municipalities in anticipation of a public event anticipated to draw thousands of extra people into the county. *Washington County v. Washington County Deputy Sheriff's Ass'n*, 192 Wis.2d 728, 730, 531 N.W.2d 468 (Ct.App.1995).

In 1995, the Wisconsin Supreme Court held that a sheriff could not fire a deputy in violation of a CBA because firing deputies did not give character or distinction to the office of sheriff. *Heitkemper v. Wirsing*, 194 Wis.2d 182, 193, 533 N.W.2d 770 (1995).

In 2006, the Wisconsin Court of Appeals held that a CBA provision impermissibly delegated scheduling authority to the clerk of courts. *Dunn County v. WERC*, 2006 WI App 120, ¶15, 293 Wis.2d 637, 718 N.W.2d 138.

¶20 Finally, in 2007, the Wisconsin Supreme Court undertook a detailed analysis of prior case law concerning the duties of the office of sheriff in *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, 301 Wis.2d 266, 732 N.W.2d 828. *Kocken* involved a sheriff's decision to stop using county employees to prepare meals for the local jail and instead contract with a private food service provider. *Id.*, ¶3. The supreme court noted that the constitutional inquiry is an historical one, but that cases such as *Buech* limited the sheriff's duties to ones that "characterized and distinguished the office." *Kocken*, 301 Wis.2d 266, ¶36, 732 N.W.2d 828. The court went on to expressly approve the following criteria for identifying a sheriff's constitutional powers, rights, and duties: "certain immemorial, principal, and important duties of the sheriff at common law that are peculiar to the office of sheriff and that characterize and distinguish the office are constitutionally protected from legislative interference." *Id.*, ¶39.

¶21 The *Kocken* court also related those powers that are not constitutionally protected: "powers, rights, and duties of the office of sheriff that are 'mundane and commonplace' 'internal management and administrative' duties, even if they are ever-present aspects of the constitutional office, are not accorded constitutional status." *Id.*, ¶42. Finally, the court stressed that "[t]o ignore an analysis of whether the duty at issue is mundane and commonplace and whether it is an internal management and administrative duty is to ignore or misread our case law and to risk over-constitutionalizing the powers of the office of the sheriff, in contravention of the framers' intentions." *Id.*

¶22 In light of its analysis, the supreme court in *Kocken* concluded that hiring and firing personnel to provide food service does not fall within the constitutional powers, rights, and duties of the office of sheriff. *Id.*, ¶72. The court held that the circuit court erred as a matter of law in concluding that the sheriff had constitutionally protected authority to designate a food service provider without limitation by a collective bargaining agreement. *Id.* The court emphasized that "[a]lthough the constitutional powers and prerogatives of the office of sheriff cannot be limited by collective bargaining agreements, if a function is 'not reserved to the sheriff by the Constitution, then the sheriff may be bound by the collective bargaining agreement entered into between the county and the union.'" *Id.*, ¶73 (footnote omitted).