

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

and

THE CITY OF MANITOWOC

Involving Certain Employees of

THE CITY OF MANITOWOC

Case 8

No. 50521 ME-689

Decision No. 7667-C

Appearances:

Mr. Patrick L. Willis, City Attorney, City Hall, P.O. Box 1597, Manitowoc, Wisconsin 54220-1597, for the City.

Mr. Gerald Uglund, Staff Representative, P.O. Box 370, Manitowoc, Wisconsin 54221-0370, and Mr. Michael J. Wilson, Representative at Large, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1003, for AFSCME.

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

Manitowoc City Employees, Local 731, AFSCME, AFL-CIO, hereinafter the Union, filed a petition with the Wisconsin Employment Relations Commission on February 11, 1994, requesting that the Commission clarify a bargaining unit in the City of Manitowoc by including the Building and Grounds Supervisor, the Deputy Building Inspector and the Deputy Treasurer. The City of Manitowoc, hereinafter the City, filed a petition on May 5, 1994 asking that the Secretary to the Director of Public Works and the Secretary to the Police Chief be excluded from the bargaining unit. A hearing was held at the City Hall in Manitowoc on May 31, 1994 before Daniel Nielsen, a hearing examiner on the Commission's staff. Due to the unavailability of the Director of Public Works, the City's request to exclude the Secretary to the Director of Public Works was held in abeyance.

A transcript of the hearing was made, and a transcript was received on June 20, 1994. The parties filed post-hearing briefs, which were exchanged on August 29, 1994. Reply briefs were exchanged on September 21, 1994, whereupon the record was closed. Having considered the matter and being fully advised in the premises, the Commission makes the following

No. 7667-C

FINDINGS OF FACT

1. Manitowoc City Employees, Local 731, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its principal offices c/o Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54221-0370.

2. The City of Manitowoc, hereinafter the City, is a municipal employer having its principal offices at 817 Franklin Street, Manitowoc, Wisconsin 54221-4418.

3. The Union is the exclusive bargaining representative for certain of the City's employes, pursuant to a Certification issued by the Commission on September 6, 1966 after an election in a unit described as:

"all regular full-time and regular part-time office personnel and custodial employes of the City of Manitowoc employed in the City Hall and associated departments, including Sewage Plant, Cemetery and Parks Department, Streets Department, Police Department and Housing Authority, but excluding Department Heads, Supervisors, City Sanitarian, Confidential Secretary, Public Health Nurses, Sewage Plant Operators, Bridge Tenders, Hourly employes in the Street and Cemetery and Park Department, and all other employes of the Municipal Employer. . . ." City of Manitowoc, Dec. No. 7667 (WERC, 9/66).

4. The City and the Union have been parties to a series of collective bargaining agreements covering the employes in the bargaining unit set forth in Finding of Fact 3, the most recent of which is for a term from 1992 through 1994. The current agreement contains the following recognition clause, at Article I: "The Employer recognizes the Union as the exclusive bargaining agent for all employes of the City of Manitowoc City Hall and associated departments, Cemetery and Parks Department and Bridges, as certified by Wisconsin Employment Relations Commission election held on August 30, 1966, with respect to wages, hours and conditions of employment." The "associated departments" whose 83 employes are represented by the Union are Finance, Treasurer, City Clerk, Engineering, Assessor, Fire, Police, Planning, Building Inspection, Health, Museum, Bridges, and Parks and Recreation. The Union also represents 18 employes at the Wastewater Treatment Facility. Forty-one employes at the Fire Department are represented by IAFF Local 368. Fifty-five patrol officers at the Police Department are represented by the LEER Division of the Wisconsin Professional Police Association. Fifty-seven employes in the Department of Public Works and Transit are represented by Teamsters Local 75. There are also separate units of Police supervisors and Fire supervisors.

5. The City operates a Department of Building Inspection. The inspection function is staffed by a Director, a Deputy Director, an Electrical Inspector, a Plumbing Inspector, and a Clerk Typist II. The Deputy Director also serves as the Building Inspector. Wayne Huebner is the Director, and Larry Maloney is the Deputy Director. The Department also houses the custodial and maintenance function for the City. This function is staffed by the Building and Grounds Supervisor, Ralph Kracht, a Maintenance Mechanic, a Maintenance Engineer and four Custodians. The four Custodians are assigned on the basis of one building apiece to the Safety Building, the City Hall, the Education and Arts Center and the Senior Center.

6. The position of Deputy Director of Building Inspection was created in 1980. Larry Maloney has served as the Deputy Director of the Department of Building Inspection since 1989. Maloney is paid on a salary basis, and receives \$35,304 annually. The Plumbing and Electrical Inspectors are paid on an hourly basis, and receive base wages of \$16.19 per hour, or \$33,805 annually, based upon a 2088 hour work year. The Plumbing and Electrical Inspectors receive overtime or compensatory time for hours outside of their normal schedules, but the Deputy Director does not. The current job description for the Deputy is:

DEPUTY DIRECTOR OF BUILDING INSPECTION

GENERAL STATEMENT OF DUTIES: Performs a variety of duties assisting in the administration of the Department of Building Inspection and does related work as required. Performs skilled inspections and administrative work to ensure compliance with building, plumbing, housing, zoning, heating and electrical codes.

DISTINGUISHING FEATURES OF THE CLASS: An employee in this position is responsible for the day-to-day operation of the Building Inspection Department. General supervision responsibility is exercised over all inspectors. The Deputy Director of Building Inspection works under the general direction of the Director of Building Inspection.

EXAMPLES OF WORK: (Illustrative only)

Assists the Director of Building Inspection in the following:

Issues permits for new construction, remodeling and demolition of buildings;

Issues occupancy permits after final inspection;

Inspects foundations, framing, roofs, etc., of both occupied housing and construction in progress to see that requirements of the various codes are met;

CBRF, Day Care, Bed and Breakfast inspections;

Makes recommendations and advises contractors on code compliance;

Receives, investigates and acts to solve complaints from builders,

tenants, landlords and the general public;

Answers telephone inquiries regarding building practices, zoning and related problems;

Keeps a daily log of inspection activities;

Directs the activities of the Department Inspectors;

Enforces floodplain ordinance; airport height limitation ordinance;

Enforces sign ordinance; enforces junk car ordinance;

Inspects taverns, theaters, and carnivals prior to the issuance of a license;

Enforces Housing Code Ordinance;

Inspects licensed apartment houses;

Investigates water diversion, fence, lot line, noise, junk, debris and various other miscellaneous complaints;

Inspects woodburners and solar collectors;

Commercial building pre-purchase, pre-remodel surveys; other various inspections.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

Comprehensive knowledge of the approved methods and materials used in building construction and allied mechanical, electrical and structural work; thorough knowledge of state and local laws governing building construction, use and occupancy, ability to plan, assign, coordinate and supervise work of subordinates inspecting the various and numerous phases of building construction; ability to enforce and interpret regulations firmly and tactfully and to establish and maintain effective working relationships with the contractors, architects, property owners, employees and the public; good judgment and initiative; dependability and thoroughness; good physical condition.

ACCEPTABLE EXPERIENCE AND TRAINING: Considerable experience of progressive responsible nature in building inspection, including plumbing, heating and electrical work, and completion of a standard high school including supplemented by college, vocational or technical training in architecture or structural engineering; or any equivalent combination of experience and training which provided the required knowledge, skills and abilities.

ADDITIONAL REQUIREMENTS: Certification by the State of Wisconsin as required by the Department of Industry, Labor and Human Relations for 1 and 2 family, Commercial construction,

HVAC and Energy.

7. The Deputy Director of Building Inspection directs the operations of the Department in the absence of the Director. The Director receives four weeks of vacation annually. The Deputy plays no role in the supervision of custodial and maintenance employees. The Inspectors schedule and plan work in their specialized areas independently, but may be assigned to special complaints by the Director or the Deputy Director. These special complaints range from 10 to 15 percent of their work load. If an inspection falls outside the area of their expertise, the other Inspectors may come to the Deputy Director for technical advice and guidance. The Deputy Director spends approximately 80 percent of his time performing building inspections, and the balance preparing monthly summary reports for the office and performing administrative functions. The Deputy Director attends all job interviews for Inspectors, maintenance and custodial personnel, and makes recommendations as to which candidate should be selected. The Director also attends all job interviews, and makes the ultimate selection. The Deputy Director has the authority to give informal reprimands to employees, and has done so on two occasions. By City policy, formal discipline in the form of oral warning requires the presence of two persons. The Deputy Director has been involved in an investigation of abuse of office by one employe, and monitored that employe's whereabouts during the workday for about a month. Another individual participated equally in the monitoring of the former employe. Their findings helped form the basis of a threat of discipline against the employe, who ultimately resigned. The Director and the Deputy Director sat in on the initial disciplinary meetings with the employe, although the Deputy Director was not involved in the negotiations that led to the settlement of the discipline and the resignation of the employe. When the Director is available, the Deputy generally plays no role in approving leave time, overtime or schedule changes for other employes.

8. The Deputy Director of Building Inspection is a lead worker who primarily supervises the activity of the office, rather than the employes of the office. Except on those occasions when the Director is absent from the office, the Deputy Director does not have significant independent authority to supervise employes. He does not effectively recommend hiring, promotion, transfer, discipline or discharge of employes.

9. The position of Building and Grounds Supervisor was created in January of 1994. The incumbent supervisor is Ralph Kracht, who was previously the Maintenance Mechanic assigned to the Safety Building. Kracht's immediate supervisor is Wayne Huebner, Director of Building Inspection. Kracht is paid an hourly salary of \$15.95 per hour, the Maintenance Engineer is paid \$13.90 per hour, the Maintenance Mechanic receives \$12.69 per hour, and the Custodians are paid \$11.30 per hour. The current job description for the Building and Grounds Supervisor reads as follows:

BUILDING AND GROUNDS SUPERVISOR

General Statements of Duties: Plans, budgets, organizes and directs

maintenance, repair, and custodial care of various city owned buildings; plans and supervises custodial and maintenance staff; performs skilled work of a varied nature in repairing and maintaining building, fixtures, machinery and electrical equipment.

Distinguishing Features of the Class: The employee in this class trains, supervises,, and directs the activities of the personnel engaged in the maintenance and cleaning of various city buildings and participates in the hiring of such personnel. The employee also recommends building and maintenance projects for budgeting purposes. The employee also repairs and maintains machinery, plumbing, physical structure, wiring and fixtures of city buildings and equipment. The work requires mechanical ability and a high degree of skill in performing tasks in repairing and maintaining facilities, fixtures and equipment. The employee works under the Director of Building Inspection; but is required to exercise independence in supervising and directing the maintenance staff and making budget recommendations for the proper care and upkeep of City buildings. The employee performs some tasks of a Maintenance Mechanic or Maintenance Engineer, but the primary function is the supervision and direction of maintenance staff and overall responsibility to maintain city buildings.

Examples of Work:

- Establishes procedural manual for Custodians;
- Establishes Preventative Maintenance Program;
- Exercises immediate supervision over maintenance and custodial staff;
- Directs the activities of building maintenance and custodial staff;
- Enforces general city policies;
- Issues verbal and written warnings where appropriate.
- Recommends other progressive discipline to Director of Building Inspection where warranted;
 - participates in interview and screening process during hiring and promotion of maintenance and custodial personnel;
 - Prepares evaluations of maintenance and custodial personnel;
 - Prepares maintenance and custodial personnel work schedules, approves schedule changes and directs call-ins where needed;
 - Responsible for training newly hired staff and continuing OSHA mandated training on an annual basis; maintains records and documentation;

Prepares work and leave schedules for maintenance and custodial staff;

Purchases supplies and equipment used in repair, maintenance and custodial work;

Prepares the budget for building maintenance, repair and custodial care of City Hall, Education and Arts Center, Senior Center; and other buildings as directed;

Repairs and maintains machinery, plumbing, physical structure, and electrical wiring and fixtures of various city owned buildings;

Repairs and replaces gauges, valves, pressure regulators, and other plumbing equipment using plumbers tools;

Repairs counters, cabinets, benches, tables, partitions, and other wooden structures, using saws, braces, bits and other carpenters tools;

Replaces and repairs brick and plaster walls using trowels;

Observes mechanical devices in operation and listens to their sounds to locate causes of trouble;

Installs special functional and structural parts in devices using hand tools;

Assemble and repairs office equipment such as desks, tables, shelves and furniture;

Cleans, maintains and repairs boilers and replaces parts as needed;

Prepares and paints external surfaces as well as internal walls, floor ceilings, furniture and equipment.

Performs carpentry, plumbing, electrical, masonry and mechanical work on new construction and maintenance repair work on existing buildings, facilities, and equipment;

Lifting, moving of heavy items by using good judgment and mechanical assistance.

Performs related supervisory, managerial, maintenance and mechanical tasks as well.

Required Knowledge, Skills and Abilities: Ability to plan and supervise maintenance and custodial staff, evaluate buildings and recommend and prioritize maintenance and repair projects, enforce performance standards, and establish training programs.

Thorough knowledge of common hand tools used in building and equipment maintenance work; thorough knowledge of the carpentry, painting, plumbing and electrical trades; skill in the use of tools, mechanical ability; ability to establish and maintain effective working relationships with other employees; ability to work from sketches or blueprints; resourcefulness and ingenuity; good physical condition.

Acceptable Experience and Training. Considerable experience in skilled and semiskilled building and equipment maintenance work;

ability to supervise personnel; experience and knowledge of building budgets; strong background in OSHA training, M.S.D.S. record keeping and similar supervisory experience; completion of a standard high school course, preferably supplemented by technical trade courses; or any equivalent combination of experience or training which provide the required knowledge, skills and abilities. Computer skills helpful.

Additional Requirements: Considerable experience with low pressure and hot water boilers having a capacity of 1,000 MBH or larger.

10. The Building and Grounds Supervisor is the first step in the contractual grievance procedure for custodial and maintenance employees. He processed four grievances from the creation of his position on January 1, 1994 through May 31, 1994, the date of hearing. One was resolved on the basis of a recommendation he made to the Union and to Wayne Huebner once it had passed his step of the grievance procedure. He denied the other three grievances. The Building and Grounds Supervisor directs the work of the maintenance employees, and co-directs the daily activities of custodial employees, together with the administrator in charge of the buildings to which they are assigned. Much of the daily work of custodians follows a set routine. However, the Building and Grounds Supervisor has the authority to reassign employees to other tasks and other hours, or to require overtime, if the demands of the work or absences of other employees dictate and has done so on several occasions. He had not performed any employee evaluations as of the date of the hearing in this matter, but was advised during his job interview that evaluations would be his responsibility. At the time of the hearing in this matter, the Building and Grounds Supervisor was developing an evaluation form for maintenance and custodial employees. The Building and Grounds Supervisor has the authority to authorize leave time for custodial and maintenance employees, and does so without the approval or review of the Director. Requests for time off are coordinated with the administrator in charge of the building to which the employee is assigned. In one case, the Building and Grounds Supervisor suspected that an employee was abusing sick leave, and unilaterally required the employee to provide a doctor's slip for an absence. The Building and Grounds Supervisor does not perform a significant amount of custodial or maintenance work himself.

11. The Building and Grounds Supervisor primarily supervises the custodial and maintenance employees of the City. The Building and Grounds Supervisor has substantial authority as to hiring, promotion, transfer, discipline or discharge of employees, and as to the direction and assignment of the work force. He exercises substantial independent judgment and discretion in the supervision of custodial and maintenance employees.

12. The City operates a Finance Department/Treasurer's Office. The previously separate functions and positions of Finance Director and Treasurer were combined in a single Finance Director/Treasurer position presently held by Michael Easker. Jennifer Hudon is the Deputy Finance Director/Treasurer. The Finance Department is located on the third floor of the City Hall, and houses Easker and Deborah Kumbalek, the Clerk/Accountant. The Treasurer's office is on the

lobby level of the City Hall, and houses Hudon, Account Clerk Kay Drida, and a seasonal clerk. Account Clerk Dorothy Neff is a 0.75 FTE employe who is shared by the Finance Department and the Treasurer's office. Sharon McConnell is an employe who primarily performs payroll work of the Finance Department, but is housed within the Treasurer's office because of space considerations, and assists there at the customer window on an as-needed basis.

13. Jennifer Hudon was hired as the Deputy Finance Director/Treasurer when the presently unrepresented position was created upon the retirement of Deputy Treasurer Audrey Schmitz in November of 1991. The position of Deputy Treasurer was included in the bargaining unit represented by the Union. Schmitz was paid \$11.46 per hour at retirement in 1991. The 1994 hourly rate for Schmitz's job would have been \$12.90 per hour, given 4% increases for the bargaining unit in 1992, 1993 and 1994. Hudon is paid \$2,501 per month, on a salaried basis, or \$14.37 per hour, based on a 2,088 hour work year. The job description for the position of Deputy Finance Director/Treasurer reads:

DEPUTY FINANCE DIRECTOR/TREASURER

GENERAL STATEMENT OF DUTIES: Under the general supervision of the Finance Director, the Deputy Finance Director/Treasurer is responsible for the day-to-day operation of the Treasurer's office including supervision, direction and assignment of other personnel.

DISTINGUISHING FEATURES OF THE CLASS: This employe assists and performs various duties within the Finance office, performing a variety of responsible accounting and clerical tasks and the maintenance of related records. The work is performed under the guidelines set by state statutes and city ordinances and are executed accordingly. The work is performed under the general supervision of the Finance Director. The employe in this class exercises supervision over other personnel.

EXAMPLES OF WORK:

Responsible for direct supervision of collection of all city revenues, including property taxes, electric and water bills, dog and cat licenses, special assessments, all other city department revenues, parking meter revenues, and fines from Municipal Court.

Calculate the portions of property taxes collected each month due state, county, Lakeshore Technical College and Board of Education and prepare vouchers and correspondence to go with payments.

Do daily reconciliation of collections with receipts and deposits.

Balance cash and collections daily and deposit receipts intact in approved depositories. Maintain accurate, detailed records of receipts, disbursements, deposits, daily bank balances, tax roll collections and court fines. File report with state each month for their share of forfeitures and jail assessments to County Treasurer. Make daily bank deposits for City and Manitowoc Public Utilities.

Prepare monthly bank reconciliations.

Settle dog licenses collections twice a year with County Treasurer. Settle with State Treasurer quarterly on birth certificate copies for the Health Department. Keep a monthly record of all cemetery lots sold. Send list of park fees due City each month to five mobile home parks.

Distribute proper share of interest on investments monthly to MPU. Keep a card file on all repurchase investments, state investments and T-notes for City and MPU. Transfer monies from various accounts for investments to meet claims and payroll.

Add and sign all claim and payroll checks. Sort payroll checks according to department and distribute. County parking meter money each week. Operate register, answer customer's questions in person and by phone, do tax checks for various realtors, banks, and mortgage companies. Make copies of tax bills for property owners, banks and realtors.

Provide direct supervision over subordinate employees including the authority to make recommendations on hiring, performance, reviews and disciplinary action.

Assist Finance Director/Treasurer with preparation of Annual Budget.

Help to coordinate all City and Manitowoc Public Utility borrowing activities.

Provide strategies and recommendations on various activities, such as the City's financial structure, investment policies and data processing needs.

Substitute for and assume all statutory requirements of Finance Director/Treasurer in his absence.

Keep abreast of current trends and developments by reading pertinent publications and attending professional conference.

Provide confidential assistance to Finance Director/Treasurer on various financial and personnel related activities of the City.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

Good knowledge of accounting and bookkeeping practices; good knowledge of office terminology, procedure and equipment and good business arithmetic; ability to follow complex oral and written directions; ability to make decisions in accordance with the laws, regulations and established procedures; ability to plan and supervise the work of others; good judgment, tact, courtesy, integrity; and good physical condition.

ACCEPTABLE EXPERIENCE AND TRAINING:

Position requires minimum 2 year degree in accounting, finance or related field, experience in municipal government or financial services or equivalent combination of education and experience.

14. Jennifer Hudon has independently performed formal evaluations of Kay Drida and Dorothy Neff. Hudon also independently recruited, interviewed and hired two seasonal clerks for the Treasurer's office. No other positions have been filled in the Treasurer's office since the creation of the position of Deputy Finance Director/Treasurer. The bargaining unit positions in the office are subject to a contractual posting procedure when they fall vacant. Hudon schedules employees to work the cashier's window in the Treasurer's office, including taking McConnell from her normal duties if necessary, and approves leave time for Neff, Drida, and the seasonal clerk. Prior to the creation of the position of Deputy Finance Director/Treasurer, evaluations, hiring and leave approval for the workers in the Treasurer's office were handled directly by Easker, as Finance Director/Treasurer.

15. The Deputy Finance Director/Treasurer has the independent authority to effectively recommend the hiring and discipline of employees, and has the authority to direct and assign the work force in the Treasurer's office.

16. The City operates a Police Department employing, among others, 55 patrolmen represented by LEER Division of the Wisconsin Professional Police Association and 3 supervisory officers represented by the Manitowoc Professional Police Association, Local No. 20. The Department employs 5.5 FTE clerical employees in the Records Bureau, who are represented by the Union. The Department is located across the street from City Hall in a building that also houses the Fire Department. Richard Brey has been the Chief of Police since 1991. Carol Peterson is a Secretary III. She has been the Secretary to the Chief of Police since 1980. Peterson is included in

the Union bargaining unit. Peterson's job description reads:

SECRETARY III

GENERAL STATEMENT OF DUTIES: Performs supervisory and difficult secretarial and clerical tasks; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: The duties of this position are both secretarial and administrative. The work is performed under general supervision of a department head, who frequently is not available for consultation when problems or unusual situations arise. The work in this class requires the ability to take and transcribe dictation. The prescribed procedures and methods. While the title of this class should be used on all office, personnel and payroll records, working titles may be used when signing letters or otherwise communicating with the public. Employees in this class may be deputized to make legal actions effective for the office to which assigned.

EXAMPLES OF WORK: (Illustrate Only)

Supervises and directs subordinate personnel in the performance of their duties;
Takes and transcribes dictation of letters, memoranda, complaints, reports and other related materials;
Prepares replies to correspondence in accordance with established procedures;
Files and indexes correspondence, memoranda, reports, cards, etc., alphabetically, numerically or according to other predetermined classifications;
Explains policies, programs and operations of assigned department;
Maintains an inventory and orders office supplies, stationary and forms as required;
Answers, screens and refers incoming calls to appropriate personnel;
Arranges appointments and keeps appointment calendars;
Prepares monthly personnel and administrative reports;
Attends in-service training meetings;
Maintains employee files and is responsible for personnel functions;
Location codes and enters accident reports into computer system;
Check & correct traffic accidents according to DOT standards
Notifies various boards and commissions of meetings;
Issues a variety of permits, receiving and recording all monies;
Assists in the preparation of budget and annual reports;
Checks invoices, contracts and agreements for conformity;
Interviews applicants and hires all summer employees;

Receives complaints and dispatches emergency requests;
Prepares Police Department payroll.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

Thorough knowledge of office terminology, procedures and equipment, and of business arithmetic and English; good knowledge of elementary bookkeeping; ability to plan and supervise the work of others; ability to maintain complex clerical records and prepare reports from such records; ability to make decisions in accordance with laws, ordinances, regulations and established policies; ability to get along well with others; dependability and good judgment; tact and courtesy, good physical condition, knowledge of basic computer skills.

ACCEPTABLE EXPERIENCE AND TRAINING: Considerable experience in secretarial work, which shall have involved taking and transcribing dictation and completion of a standard high school course, with business school training highly desirable; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

17. Peterson prepares 80 to 90% of Brey's correspondence. As part of his duties as Chief, Brey investigates and prepares reports on allegations of misconduct by police officers. Brey issues between three and four written warnings to employes per year. Approximately twice per year, he will issue letters of suspension to officers for misconduct. Again approximately twice per year, Brey will prepare written statements for the City Attorney's office, explaining the background of grievances filed by members of the Department. Brey has also submitted written comments to the City Attorney on necessary changes in labor contracts and his reaction to union bargaining proposals. These reports and items of correspondence are dictated on tape and then typed by Carol Peterson as Brey's secretary. When recommendations are made to the Police and Fire Commission on promotions, Brey prepares a report which he generally types himself. Brey has typed approximately one-third of the promotion recommendations prepared by Brey during his three years as Chief. Brey maintains the confidential personnel files of the Department in a locked file in his office. Brey, the Deputy Police Chief and Peterson are the only ones with a key to his confidential files.

18. As part of her duties, Peterson administers the payroll for the Department, checking and processing timecards, notifying the payroll department of increases in pay rates, impending anniversary dates, and the like. On one occasion, Peterson raised a question as to the propriety of an overtime claim, which led to a grievance by the employe involved. On other occasions, she has raised questions regarding overtime claims. Peterson also proofreads the drafts of labor agreements involving the Department for accuracy after they are prepared by the City Attorney's office.

19. There are currently two confidential clerical employes in the City of Manitowoc work force -- the Secretary to the Mayor and the Secretary to the City Attorney. In addition, the Deputy City Clerk has been excluded from the bargaining unit on the basis of her attendance at, and

responsibility for minutes of, closed meetings of the City Council.

20. The duties of the Secretary III in the Police Department, which involve preparing correspondence and reports concerning discipline, promotions and bargaining proposals, give her sufficient access to, knowledge of and involvement in confidential matters relating to labor relations so as to render her a confidential employe.

21. The occupants of the positions of Buildings and Grounds Supervisor and Deputy Finance Director/Treasurer possess supervisory responsibilities in sufficient combination and degree to make them supervisory employes.

22. The occupant of the position of Deputy Director of Building Inspection does not possess supervisory responsibilities in sufficient combination and degree to make him a supervisory employe.

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

CONCLUSIONS OF LAW

1. The occupant of the position of Secretary III in the City of Manitowoc Police Department is not a supervisor within the meaning of Sec. 111.70(1)(o), Stats., but is a confidential 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.

2. The occupant of the position of Building and Grounds Supervisor in the City of Manitowoc is a supervisor within the meaning of Sec. 111.70(1)(o), Stats. and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. The occupant of the position of Deputy Finance Director/Treasurer in the City of Manitowoc is a supervisor within the meaning of Sec. 111.70(1)(o), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

4. The occupant of the position of Deputy Director of Building Inspection in the City of Manitowoc is not a supervisor within the meaning of Sec. 111.70(1)(o), Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the

Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

1. The positions of Secretary III in the Police Department, Deputy Finance Director/Treasurer, and Supervisor of Buildings and Grounds are excluded from the bargaining unit described in Finding of Fact 3.

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.

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.

(Footnote continued on page 16)

2. The position of Deputy Director of Building Inspection is included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of April, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ (Continued)

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.

...

(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.

City of Manitowoc

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

In its petition, the Union seeks to include the positions of Building and Grounds Supervisor, Deputy Director of Building Inspection, and Deputy Finance Director/Treasurer in the City Hall bargaining unit. The City opposes the petition, asserting that all three are supervisors. The City's petition seeks the exclusion of the Police Chief's Secretary as a confidential or supervisory employe. The Union argues that the Secretary should remain in the bargaining unit, and that any confidential work is de minimis and can easily be performed by the existing confidential secretaries in the Mayor's and City Attorney's offices.

I. Supervisory Status

The familiar test of supervisory status requires a review of the following factors:

- a. The authority to recommend effectively the hiring, promotion, transfer, discipline, or discharge of employes;
- b. The authority to direct and assign the work force;
- c. The number of employes supervised, and the number of other persons exercising greater, similar, or lesser authority over the same employes;
- d. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;
- e. Whether the supervisor is primarily supervising an activity or primarily supervising employes;
- f. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;
- g. The amount of independent judgment and discretion exercised in the supervision of employes. 2/

2/ Rock County (Health Care Center), Dec. No. 8243-M (WERC, 6/94).

The weight accorded to each of these criteria varies, depending upon the facts of the case, and the presence or absence of one or more of the indicia of supervisory status is not determinative. 3/
Deputy Director of Building Inspection

The Union contends the Deputy Director of Building Inspection is not a supervisory employe. The Union argues that creation of the new Building and Grounds Supervisor position removes some of the supervisory burden which previously fell on the Director of Building Inspection and eliminates any prior operational need for the Deputy to be excluded from the unit.

The Union asserts the Deputy is now supervising an activity not employes. It argues the Director's consultation with the Deputy as to hiring and discipline is not essential and that other non-unit personnel can fill the consultation role if necessary. Given the absence of any substantial independent authority, the Union contends the Deputy is not a supervisor.

The City argues the Deputy has been and continues to be a supervisory employe. The Deputy participates in all hiring and disciplinary decisions within the Building Inspection Department. He has the authority to independently issue verbal warnings and has done so. His pay reflects his supervisory role and he is not eligible for overtime. He is the only individual available to supervise employes in the field and has monitored employe misconduct when serving in that capacity. In the Director's absence, he is responsible for running the Department and, even when the Director is present, exercises assignment authority. Given the foregoing, the City urges the Commission to find the Deputy to be a supervisor.

The position of Deputy Director of Building Inspection has been excluded from the bargaining unit since it was created in 1980. However, the record reveals that the supervisory functions of the position are not sufficient to warrant exclusion as a supervisor. The only time that the Deputy Director performs an independent supervisory role is when the Director is absent from the office for an extended time. All decisions concerning evaluation, hiring and discipline are reserved to the Director. While the Deputy Director sits in on hiring interviews and disciplinary sessions, we conclude the Deputy Director does not possess effective authority to recommend action in these areas. Rather he is present for his technical expertise or as a witness.

It appears from the record that the Deputy Director may have exercised somewhat greater supervisory authority before the creation of the position of Buildings and Grounds Supervisor in January of 1994. However, as discussed below, the creation of that position removed custodial and maintenance personnel from the direction of the Deputy, leaving two Inspectors who for the most part work independently, and one clerical employe. Given the small number of employes in the inspection function, the fact that the Deputy spends the vast majority of his time performing his duties as Building Inspector, and the direct and regular involvement of the Director in assigning

3/ Taylor County, Dec. No. 27360 (WERC, 8/92).

work, evaluating employes, hiring, approving leave time, and other supervisory functions, and the absence of any role in evaluations and grievance processing, we conclude that the Deputy's supervisory responsibilities are not sufficient to exclude him from the unit. His role is that of a lead worker, rather than a supervisor, and he is therefore a municipal employe within the meaning of the Act.

Building and Grounds Supervisor

The Union asserts the Building and Grounds Supervisor is not a supervisory employe. It contends his supervisory duties are de minimis (approving leave requests, authorizing overtime, assigning work) and argues he is primarily supervising an activity rather than employes.

The City contends the Building and Grounds Supervisor is a supervisory employe who should continue to be excluded from the unit. It notes that his job description explicitly references his supervisory responsibilities including his independent authority to issue verbal and written warnings, his participation in hiring, and his evaluation duties. The City cites the Supervisor's role as the first step in the contractual grievance procedure, his ability to change employe work hours and locations, the limited amount of unit work he performs, and his authority as to leave requests as providing further support for his supervisory status.

The City argues it created the Supervisor position for the express purpose of providing direct supervision for the custodial and maintenance employes and that the record fully supports the supervisory status of the position.

The position of Buildings and Grounds Supervisor was created in January of 1994 for the purpose of providing direct supervision to four full-time custodial and two full-time maintenance employes. The incumbent was advised during his interview that he would be responsible for supervising employes, and in the five months between his start and the hearing, has acted as the first step of the grievance procedure for four grievances, has been responsible for reviewing and approving leave requests, has reassigned personnel to cover absences, has assigned work to maintenance and custodial personnel, and has worked on developing a formal evaluation procedure for maintenance and custodial employes. The Buildings and Grounds Supervisor spends almost none of his time actually performing custodial or maintenance work, and the Director of the Department of Building Inspection does not play an active role in the day to day supervision of custodial and maintenance employes.

Although the Supervisor has not yet formally disciplined any employe, he has worked with employes to resolve performance issues which could produce discipline if a successful resolution is not reached. His job description gives him independent authority to issue verbal and written reprimands and to recommend other discipline. Although no employes have been hired in his five months on the job, the job description gives him a significant role in hiring.

On the record of this case, it is clear that the occupant of the position of Building and Grounds Supervisor is a supervisory employe, and is not therefore a municipal employe within the meaning of the Act.

Deputy Finance Director/Treasurer

The Union contends the Deputy Finance Director/Treasurer is a lead worker who supervises an activity and performs a substantial amount of the same work performed by the small number of employes she allegedly supervises. The Union asserts the Finance Director/Treasurer is fully

capable of supervising the employes in question and that the Treasurer's occasional absences do not provide a basis for excluding the Deputy. The Union asserts the Deputy's hiring role is limited to non-unit employes and her disciplinary authority is minimal. Thus, the Union asks that the Deputy be added to the unit.

The City argues the Deputy position was created in 1991 to provide direct supervision to employes whose work location is separate from the Finance Director's. The City asserts the Deputy's supervisory authority was previously exercised by the City Comptroller, a supervisory position which has been eliminated.

The City contends the Deputy possesses and has exercised substantial authority to hire and discipline and to direct the work force. The City argues that the Deputy is the primary supervisor in the Department, with the Finance Director performing managerial functions. The City urges the Commission to reject the Union's request that the position be included in the unit.

The Deputy City Treasurer was included in the bargaining unit through a unit clarification petition in 1974 (City of Manitowoc, Dec. No. 12403 (WERC, 1/74). At the time of that decision, the Treasurer's office was independent of the City's Finance Department, and was staffed by the City Treasurer, a Deputy, a full-time cashier and a part-time cashier, all of whom worked in the same office. Since that time, the positions of City Treasurer and Finance Director have been combined, with the Finance Director/Treasurer maintaining his office in the Finance Department on the third floor of City Hall, and the Treasurer's office remaining at the lobby level.

When the Deputy Treasurer retired in 1991, the City created the position of Deputy Finance Director/Treasurer and excluded it from the bargaining unit. The Deputy is stationed in the Treasurer's Office, and supervises the work of the office. The Deputy has written evaluations of the two employes who primarily work in the Treasurer's office without the involvement of the Finance Director, is responsible for scheduling them, approving leave time and overtime, and has significant disciplinary authority over them. The Deputy has also hired two seasonal clerks without the involvement of the Finance Director, 4/ and will be significantly involved in any unit employe

4/ Hiring of non-unit employes is relevant to the question of supervisory status. Jackson

hiring decisions. While the Deputy is a working supervisor who does not spend the majority of her time supervising, she does perform those supervisory functions that need be performed in the Treasurer's office without the direct involvement or prior approval of the Finance Director/Treasurer. For these reasons, we are persuaded that the Deputy Finance Director/Treasurer's position possesses sufficient indicia of supervisory status to be excluded from the bargaining unit.

Secretary III (Police Chief's Secretary)

The Union contends the three existing confidential City employes are sufficient to meet the Police Chief's needs. It argues the Chief has so testified and that it would not be unduly disruptive to have the Chief's dictation walked across a single street for transcription. The Union alleges the crossing of a street is no more momentous than walking up a flight of stairs, an inconvenience found insufficient to warrant confidential status in Lincoln County, Dec. No. 20687-F (WERC, 7/94). The availability of twice a day courier service between City Hall and the Police Department further diminishes any claim of undue disruption, argues the Union.

The Union further contends that there is no substantial support for the City's claim that the Secretary is a supervisory employe.

Given the foregoing, the Union urges the Commission to reject the City's attempt to exclude the Police Secretary from the Unit.

The City asserts the Police Chief generates a substantial amount of confidential work by virtue of his managerial/supervisory role over employes in three bargaining units and his role in the collective bargaining process. The City contends existing Commission precedent makes it clear that department heads with significant numbers of employes and an active role in collective bargaining are entitled to have a confidential secretary, particularly where the other confidential employes are located elsewhere. The City further contends the workload of the currently excluded confidential employes would not allow them to absorb the Chief's confidential work.

The City also asserts the Secretary possesses significant supervisory authority over the Department's clerical employes.

Given the foregoing, the City asks that the Secretary be excluded from the unit.

With respect to the supervisory status of this position, the record does not support the City's position. Although the incumbent receives leave requests from other clerical employes and sometimes distributes work among them, approval or disapproval of leave requests remains at the Chief's discretion, and the distribution of work is not a prominent or unique feature of the Secretary's work. Clerical employes also distribute work among themselves, if some are busy and others are not, and the employes of the Record Bureau generally self-assign work, in terms of knowing what must be done and performing the work without additional direction. She may alert the Chief to work performance deficiencies among the clerical staff, but he is the one who is responsible for counseling employes. On the record, we find that the supervisory duties of the Secretary III are minimal, and do not warrant her exclusion from the bargaining unit. Of greater substance is the City's claim of confidential status for this position.

In order for an employe to be held confidential, that employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. Confidential information is that which is not available to the bargaining representative or its agents, and which deals with the employer's strategy or position in collective bargaining, contract administration, litigation or similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer. 5/ In reviewing an allegation of confidential status, the Commission is mindful of the need to balance the statutory right of employes to engage in concerted activity with the right of employers to conduct labor relations through employes whose interests are aligned with management. 6/ In striking this balance, the Commission looks to, among other things, the amount of confidential work to be performed in the Department, the number of existing and available confidential employes, and the degree of disruption that would be caused to the employer's operation if confidential work is rerouted to existing confidential staff outside of the Department. 7/

The Chief of Police administers, in whole or in part, three labor agreements covering patrol officers represented by WPPA, police supervisors represented in their own local, and general employes represented by AFSCME. Given the number of contracts covering the Police Department and the number of employes within the Department, we find that the Chief has significant labor relations responsibilities. Further, from the record evidence, we find that confidential labor relations matters, including investigations of alleged misconduct, grievance responses, disciplinary notices, promotional recommendations to the Police and Fire Commission, and comments on bargaining positions, form a small but regular portion of the correspondence generated by the Chief.

Thus the critical question is whether the confidential clerical work for the Police Department can be performed by one of the three existing confidential employes housed in the City Hall across the street, without unduly disrupting the employer's operation. There is nothing in the record to indicate the current workloads of the confidential secretaries to the Mayor and City Attorney, nor

5/ Dane County, Dec. No. 22976-C (WERC, 9/88); Village of Saukville, Dec. No. 26170 (WERC, 9/89) at page 6.

6/ City of Seymour, Dec. No. 28112 (WERC, 7/94) at page 6.

7/ City of Seymour, supra, at pages 7-8; City of Greenfield, Dec. No. 26423 (WERC, 4/90) at page 8.

the Deputy City Clerk. The City administers seven contracts covering approximately 250 employees. Three of those contracts and approximately one quarter of those represented employees are in the Police Department. The concentration of bargaining, grievance and other confidential work in the Police Department, weighed against the number of confidential employees available in the separate City Hall for the balance of the City's

confidential work, persuades us that the addition of a confidential secretary in the Police Department does not result in an "inordinately large number" of confidential employees. We further conclude the transfer of confidential work from the Police Department to the City Hall would be unduly disruptive of the employer's operation given the amount of the work and the separate location of the other confidential employees. 8/

Dated at Madison, Wisconsin, this 4th day of April, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

8/ The separate location and, to a lesser extent, the volume of work distinguish this case from Lincoln County (Sheriff's Department), Dec. No. 20687-F (WERC, 7/94). See City of Greenfield, supra, where separate location was sufficient to establish undue disruption.