

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	
	:	
MANITOWOC COUNTY COURTHOUSE EMPLOYEES,	:	
LOCAL 986-A, AFL-CIO and	:	Case 6
MANITOWOC COUNTY	:	No. 42735 ME-353
	:	Decision No. 8152-J
Involving Certain Employes of	:	
	:	
MANITOWOC COUNTY	:	
	:	

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54221-0370, appearing on behalf of Manitowoc County Courthouse Employees, Local 986-A.

Mr. Mark Hazelbaker, Corporation Counsel, Manitowoc County, 1010 South Eighth Street, P.O. Box 2000, Manitowoc, Wisconsin 54221-2000, appearing on behalf of Manitowoc County.

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

Manitowoc County Courthouse Employees, Local 986-A (hereinafter the Union), having filed a petition with the Wisconsin Employment Relations Commission (hereinafter Commission) on August 25, 1989, to clarify a bargaining unit of municipal employes of Manitowoc County (hereinafter County) by including the positions of Child Support Coordinator, Child Support Assistant, Records Management Aide in the Clerk of Court Office, the Deputy Register in Probate and the Payroll Clerk in the Comptroller office; and on October 10, 1989, the Commission by Examiner James W. Engmann, a member of the Commission's staff, having scheduled hearing on said petition for November 30, 1989; and the County having filed a petition with the Commission on November 2, 1989, to clarify the same bargaining unit by excluding the position of Payroll Supervisor; and the two petitions having been consolidated for hearing in a notice issued on November 14, 1989, by the Examiner; and hearing on said petitions having been held on November 30 and December 20, 1989; and at hearing the parties having stipulated to the exclusion of the position of Child Support Coordinator as a supervisory and managerial employe and to the inclusion of the position of Child Support Assistant as a municipal employe; and the Union having moved at hearing to amend its petition by adding the inclusion of the position of Jury Commission Secretary, which motion was granted without objection; and the parties having filed or waived the filing of briefs and reply briefs, the last of which was received on May 10, 1990; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Manitowoc County Courthouse Employees, Local 986-A (hereinafter Union) is a labor organization; and that the Union has a mailing address of P.O. Box 370, Manitowoc, Wisconsin 54221-0370.

2. That Manitowoc County (hereinafter County) is a municipal employer; and that the County has its offices at 1010 South Eighth Street, P.O. Box 2000, Manitowoc, Wisconsin 54221-2000.

3. That in Manitowoc County, Dec. No. 8152 (WERC, 9/67), the Commission certified the Union as the exclusive bargaining representative of certain employes of the County in the following collective bargaining unit:

All employes employed by Manitowoc County in the following departments: County Nurse Clericals, Clerk of Court, Register of Deeds, Veterans Service, Treasurer, Tax Listing, University of Wisconsin Manitowoc County Center Custodians, County Clerk, Courthouse Custodians, District Attorney, County Courts and University Extension Office and Sheriff Department Clerk, but excluding supervisors, department heads, elected and appointed officials.

4. That on August 25, 1989, the Union filed with the Commission a petition to clarify the bargaining unit of employes of Manitowoc County set forth in Finding of Fact 3 by including the positions of Child Support Coordinator, Child Support Assistant, Records Management Aide in the Clerk of Court Office, the Deputy Register in Probate and the Payroll Clerk in the Comptroller office; that on November 2, 1989, the County filed with the Commission a petition to clarify the bargaining unit set forth in Finding of

Fact 3 by excluding the position of Payroll Supervisor; that at hearing the Union and the County stipulated to the exclusion of the position of Child Support Coordinator as a supervisory and managerial employe and to the inclusion of the position of Child Support Assistant as a municipal employe; that at hearing the Union moved to amend its petition by adding the inclusion of the position of Jury Commission Secretary; that said motion was without objection by the County and was granted by the Examiner; that on brief the County stated that no basis existed for excluding the position of Jury Commission Secretary and further stated that the Union's petition to include said position should be granted; that the Union seeks to include the positions of Records Management Aide in the Clerk of Court Office, the Deputy Register in Probate and the Payroll Clerk in the Comptroller Office on the basis that the occupants of said positions are municipal employes; that the County opposes said inclusion on the basis that the occupants of said positions are casual and temporary employes; that the County seeks to exclude the position of Payroll Supervisor from the bargaining unit on the basis that the occupant of said position is a confidential employe; and that the Union opposes said exclusion on the basis that the occupant of said position is a municipal employe.

5. That Bonnie Poellmann started work as a Records Management Aide in the Clerk of Courts office on January 16, 1980; that she was laid off on March 2, 1984; that she was rehired on June 12, 1984; that for the remainder of 1984, she worked an average of 12.5 hours per week; that she worked an average of 13.1 hours per week during 1985, working every week except March 16 to April 30, 1985; that in 1986 she worked an average of 6.9 hours per week; that she worked an average of 12.2 hours per week in 1987, working every week except February 5, to March 18, 1987; that in 1988 she worked an average of 13.5 hours per week; that up to and including the week of October 10, 1989, she had worked 460.5 hours in 1989, although she did no work from March 13 through April 16, 1989; that prior to 1984 or 1985, Poellmann was called in to work when the Clerk of Courts Office had special needs, such as to fill in when someone was on vacation or maternity leave; that from 1984 to 1985 through March 1989, she worked in the Family Unit in the Clerk of Courts Office; that in April 1989 she began working on the implementation of the Child Support Data System (CSDS), a state-wide computer network for processing child support payments; that beginning in 1987 the County relied upon her to and she did in fact work frequently and regularly; that the County never promised Poellmann ongoing employment as a Records Management Aide in the Clerk of Courts Office; that the County did not employ her in response to an unusual or temporary situation or for a special job; that she had a reasonable expectation of continued employment; that Poellmann was supervised by Joan Huffmann, Clerk of Circuit Courts, who also supervised the other employes of the Clerk of Courts Office; that when she worked in the Family Unit, she performed regularly-occurring duties involving the processing of paperwork and child support payments in family, juvenile and paternity cases; that when she worked on CSDS, she relieved other employes in the office so they could work on implementing CSDS; that she also worked on implementing CSDS; that she was paid \$7.02 an hour, equal to pay grade 1 of the bargaining unit pay scale; that she did not receive any other benefits; that she shares a commonality of supervision and a similarity of duties, responsibilities, wages and working conditions with bargaining unit employes; that her employment as a Records Management Aide in the Clerk of Courts Office was frequent and regular; that as Records Management Aide she was neither a casual nor a temporary employe; and that in November 1989 Poellmann accepted the position of Secretary of the Jury Commission.

6. That Mary Kiley was hired as a Records Management Aide in the Clerk of Courts Office on March 27, 1989; that from that date until September 24, 1989, she worked an average of 20 hours per week; that during the week of September 25, 1989, she worked eight hours; that at that time her employment was terminated; that Donna Johnejack was hired as a Records Management Aide to replace Kiley; that Johnejack worked 20 hours per week from the time she was hired until she quit in December, 1989; that from March 27 to December, 1989, the person in this position was employed frequently and regularly; that at the time of the hiring of Kiley and Johnejack, the Clerk of Courts told each of them that the job would last six months minus one day because the County wished to insure that they not become permanent employes as defined in the agreement with the Union; that this position of Records Management Aide was created for the transition to CSDS; that this position will continue to be needed until CSDS is implemented; that there is a 50 per cent chance CSDS will be implemented by December 1990; that even after it is implemented, the County will need more employe hours to devote to the result of implementing CSDS; that there is no definite termination date for the position; that this position is also supervised by Clerk of Courts Huffmann, who also supervises the other employes in the Clerk of Courts Office; that the employe in this position performs regularly occurring duties of the office; that the employe in this position was paid \$7.02 an hour, equal to pay grade 1 of the bargaining unit pay scale; that the employe in this position did not receive other benefits; that the employe in this position shared a commonality of supervision and a similarity of duties, responsibilities, wages and working conditions with bargaining unit members; and that the employe in this position is employed on a frequent and regular basis.

7. That the County is going to combine the two Records Management Aide positions into one position; that the employe hired to fill said position will

work four to six hours a day; that such employment is frequent and regular; that the County has not established a date certain to abolish this position; that the position of Records Management aide is neither casual nor temporary; and that, therefore, the position of Records Management Aide is a regular part-time position.

8. That Carol Spiering began work for the County on April 23, 1984; that she was hired by the Register in Probate; that when she works in the Register in Probate Office, she is a Deputy Register in Probate; that she also works as a Payroll Clerk in the Comptroller Office; that at times she has also worked as a Clerk/Typist in other offices; that in 1987 she worked 375.5 hours in the Register in Probate Office, 111 hours in the Comptroller Office and 52 hours in miscellaneous offices for a total of 538.5 hours; that in 1988 she worked 485.5 hours in the Register in Probate Office, 280.5 hours in the Comptroller Office and 15.5 hours in miscellaneous offices for a total of 781.5 hours; that through October 1989, she had worked 595 hours in the Register in Probate Office, 210.25 hours in the Comptroller's Office and 83 hours in miscellaneous offices for a total of 888.25 hours; and that by the end of 1989, she would have worked over 950 hours for the County in 1989.

9. That when Spiering is working in the Register in Probate Office, her supervisor is Joanna Manka, the Register in Probate, who also supervises the other employes in the Register in Probate Office; that as a Deputy Register in Probate, who certifies papers, keeps court records, types, acts as receptionist and answers the telephone; that these are regular duties in the office; that she is paid \$7.02 an hour, equal to pay grade 1 of the bargaining unit pay scale; that she went in to the Wisconsin Retirement System effective July 1, 1988; that she does not receive other benefits; that she works in the Register in Probate Office when someone in that office goes on vacation or is otherwise absent; that she also works in that office whenever the Register in Probate determines that she is needed; that the need for her services has been frequent and regular; that she has some right to reject work made available to her by the County; that she has a reasonable expectation of continued employment; that as the Deputy Register in Probate, she is neither a casual nor a temporary employe; and that, therefore, she is a regular part-time employe.

10. That since at least 1987 Spiering has also worked as a Payroll Clerk in the Comptroller's Office; that the position runs from the beginning of January through mid-February; that during that time, she does bookkeeping, works on keyboards, enters time cards, works with insurance and does end-of-the year reports; that in February 1989, the head of the Payroll Department asked Spiering if she would work in 1990; that she has a reasonable expectation of returning to this seasonal work; that as a Payroll Clerk she shares a commonality of supervision and similarity of duties and responsibilities with bargaining unit members in the Comptroller's Office; that she is paid \$7.02 an hour, equal to pay grade 1 of the bargaining unit pay scale; that she receives no other benefits, other than her enrollment in the Wisconsin Retirement System noted above; that from January through mid-February her employment is frequent and regular; and that as a Payroll Clerk she is neither a casual nor a temporary employe but rather is a regular part-time employe.

11. That Peggy Bessert is the Payroll Supervisor; that as a Payroll Supervisor, Bessert supervises and coordinates all payroll activities for the County; that said supervision and coordination of the payroll activities of the County accounts for the vast majority of her time; that she works in the Comptroller's Office; that the Comptroller, Todd Ruckelberg, is her supervisor and is excluded from the bargaining unit; that the Accountant, Rita Klein, also works in the Comptroller's office and is excluded from the unit; that the Comptroller's Office is in the Courthouse near the Human Resources Office; that the Director of Human Resources is Beth Huber, who is excluded from the bargaining unit; that Diane Schmidt is the assistant Director of Human Resources; that she is excluded from the bargaining unit as a confidential employe; that two secretaries in the Department of Human Resources are excluded as confidential employes; that on occasion Bessert works with the Department of Human Resources; that she has provided the Department with the costs of proposals the County was considering making in collective bargaining or grievance resolution; that she has knowledge of some of the County's positions in collective bargaining and some of the County's proposals for resolution of grievances prior to their being proposed to the Union; that Bessert is the only person on staff who has the knowledge and ability to access certain types of costing information from the computer; that she does not sit in on actual bargaining sessions; that she is not involved in the planning of bargaining strategy; that she has access to personnel files and other confidential files in the Department of Human Resources; and that she has significant access to, knowledge of and participation in matters related to labor relations.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the occupants of the position of Records Management Aide are neither casual nor temporary employes but are regular part-time employes.

2. That the occupant of the positions of Deputy Register in Probate and Payroll Clerk in the Comptroller's Office is neither a casual nor a temporary employe but is a regular part-time employe.

3. That the occupant of the position of Payroll Supervisor is a confidential employe and, therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

1. That the positions of Records Management Aide, Deputy Register in Probate and Payroll Clerk in the Comptroller's Office are included in the bargaining unit set forth in Finding of Fact 3.

(See Footnote 1/ on Page 5)

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.

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.

2. That the position of Payroll Supervisor is excluded from the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 9th day of November,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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

BACKGROUND

Initially the Union petitioned for the inclusion of five positions: Child Support Coordinator, Child Support Assistant, Records Management Aide, Deputy Register in Probate and Payroll Clerk. The County then petitioned for the exclusion of the position of Payroll Supervisor. Both petitions were consolidated for hearing. At hearing the parties stipulated to the exclusion of the Child Support Coordinator as a supervisory and managerial employe, and to the inclusion of the Child Support Assistant as a municipal employe. At hearing the Union amended its petition to add the inclusion of the position of Jury Commission Secretary. On brief, the County agreed to the inclusion of the Jury Commission Secretary. The County opposes the inclusion of the Records Management Aide, Deputy Register in Probate and Payroll Clerk as casual and temporary employes. The County seeks the exclusion of the Payroll Supervisor as a confidential employe.

POSITION OF THE PARTIES

A. Union

As to the Record Management Aide position, the Union argues that the rotation of employes every six months to perform regular on-going bargaining work does not disenfranchise the rights of municipal employes; that this is work that has to be done; that a limitation of the length of employment for an individual employe is not necessarily determinant of the question of regular employment; and that the Commission has held that an employer's representation as to what type of position was created will not be given deference.

As to the positions of Deputy Register in Probate and Payroll Clerk in the Comptroller's Offices, both held by Carol Spiering, the Union argues that the work is both regularly scheduled and on an as needed basis; that there is an expectation of continued employment; that an employer's reluctance to guarantee work is insufficient ground to find an employe lacks a reasonable expectation of continued employment; that some flexibility of hours does not automatically determine that an employe is a casual employe; that even under circumstances where employes were found to be able to reject work, the Commission has still included the positions in the bargaining unit; and that the performance of work on a consistent basis is evidence of regular part-time employment.

As to the Payroll Supervisor position, the Union argues that in order for an employe to be considered a confidential employe, said employe must have access to, have knowledge of or participate in confidential matters relating to labor relations; that the fact an employe may occasionally be assigned confidential duties is not a basis for exclusion from the unit; that the question of sufficient duties of a confidential nature is important in determining whether or not an employe is a confidential employe; that the vestiture of some confidential duties is not necessarily sufficient to establish that an employe is a confidential employe; that the Commission has consistently found that a de minimus amount of time spent on confidential matters are not grounds for concluding that employes involved therein should be excluded from the unit as confidential employes; that confidential information deals with the employer's strategy in labor relations and is information not available to the bargaining agent; that the mere fact that an employe has access to payroll or personnel files records is not a basis for concluding that such an employe is confidential within the meaning of MERA; that the record clearly indicates that the incumbent has no knowledge whatsoever of the County's strategy in personnel or labor relations matters; that she knows nothing and is under no pressure to divulge anything not otherwise available to the Union and the public; and that the County has at its disposal the Administrative Coordinator, the Director of Human Resources, the Assistant Director of Human Resources, the Comptroller, Accountant, several secretaries, in addition to other supervisory employes, to handle whatever de minimus confidential duties are handled by the Payroll Supervisor.

B. County

As to the Records Management Aide position, the County argues that there is no evidence in the record establishing that any of the Records Management Aides were promised ongoing employment; that without proof of a permanent employment commitment, there is insufficient evidence to find that the Records Management Aide positions are permanent part-time positions; that the fact that no promise of ongoing employment was made should be given controlling weight; that where an employe has no legitimate expectation of permanent, ongoing employment, that employe lacks a community of interest with the regular, permanent staff who are members of the bargaining unit; and that the Unions' petition to accrete the position of Records Management Aide to the unit should be denied.

As to the positions of Deputy Register in Probate and Payroll Clerk in the Comptroller's Office, the County argues that the incumbent has been hired on an ad hoc basis during the past five years; that she works occasionally as extra help in the Register in Probate Office; that she works in payroll during January and at other busy times; that her work in these departments is sporadic and not regular; that while she is a participant in the Wisconsin Retirement System, her eligibility was based substantially on past service, not on any assurance of continued service; that she has no guarantee of future work in the Payroll office; that at most the Union showed that there is a pattern of her working to replace staff in the Register in Probate office during vacations; that duties even in that office are not seasonal, regular or planned but casual and ad hoc; that no one has told her she had a permanent position doing any of the work; that all the work was occasional, sporadic and casual; and that, because the Union has not shown any permanent commitment to employing her in a regular part-time position with the County, the Union's petition should be denied.

As to the Payroll Supervisor, the County argues that the record shows that the position should be excluded as a confidential employee; that the Payroll Coordinator has access to information concerning the County's positions on grievances and labor negotiations; that she gains access to this information of necessity because no one else in the County can particularly access the information she has; that the County has the right to expect that she not have divided loyalties; and, that therefore, she should be excluded from the unit.

Specifically, the County argues that the Payroll Supervisor has significant exposure to confidential information in her duties; that she uses her familiarity with the payroll database to provide the Human Resource Department with the cost of collective bargaining and grievance settlement proposals; that the record shows that on several occasions she had prior knowledge of management positions in collective bargaining and grievance resolution; that the question is not whether the payroll information she manages is confidential information but whether she is privy to confidential grievance and contract negotiation proposals for the purpose of furnishing cost estimates and opinions on the merits of those proposals; that the record shows that she sees County labor relations proposals which have not yet been shown to the Union for the purpose of providing estimates of their cost or workability; that because she is a member of the bargaining unit, management refrains from leaving with her the confidential information to which is exposed; that she has routine access to all files of the Human Resources Department, including while negotiations are underway; and that the Commission has held that access to confidential files sustains a finding of confidential status in tandem with other indicia.

The County also argues that the Payroll Supervisor's exposure to confidential information is substantial and ongoing; that she spends about ten per cent of her time providing information to the Human Resources Department; that even if her exposure to confidential information is de minimus, it would be unacceptably disruptive of the County's operations to require another confidential employe to access these data; that even if the record shows that the County possessed a large number of confidential employes, the Payroll Supervisor should be excluded because it would be impossible for another confidential employe to access the information she controls; that it would be disruptive of the County's operations to require it to train someone else in acquisition of the information that the Payroll Supervisor possesses as that function is elaborate enough to require the services of a full-time person; and that the record shows that excluding the Payroll Supervisor would allow the County to legitimize and regularize her participation in labor relations necessary to efficient operations of the County.

DISCUSSION

Standards for Decision

The County argues that the positions of Records Management Aide, Deputy Register in Probate, and Payroll Clerk in the Comptroller's Office should continue to be excluded from the collective bargaining unit represented by the Union as casual and/or temporary employes. Part of the County's argument states that the occupants of these positions lack an expectation of continued employment, an argument that would exclude these employes as temporary employes.

The determinative factor in deciding whether an employe is deemed a regular part-time employe is the regularity of employment, rather than the number of hours worked. 2/ Thus, a casual employe is one who works on an on-call or as needed basis, who works irregularly and sporadically, and who can frequently reject assignments. 3/ However, employes working on an as-needed basis can constitute regular part-time employes where the need of the Employer for the employe has been regular. 4/ A temporary employe is one who lacks an

2/ See, i.e., Kewaunee County, Dec. No. 13185-E (WERC, 3/88).

3/ See, i.e., Green Lake County, Dec. Nos. 24955 and 24956 (WERC, 11/87).

expectation of continued employment. 5/

The County argues that the Payroll Supervisor should be excluded from the bargaining unit as a confidential employee. For an employe to be confidential, the employe must have significant access to, knowledge of, or participation in confidential matters related to labor relations. Information is confidential when it: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations or grievance handling between the bargaining representative and the employer; and (2) is not information which is available to the bargaining representative or its agents. 6/ While a de minimus exposure to confidential materials is insufficient grounds for exclusion of an employe from a bargaining unit, the purpose of the exclusion is to protect a municipal employer's right to conduct its labor relations confidentially through employes whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. 7/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work. 8/ However, an employer will not be allowed to exclude an inordinately large number of employes by spreading the work of a confidential nature among employes or giving them occasional tasks of a confidential nature. 9/

POSITIONS IN DISPUTE

1. Records Management Aide.

The County argues that this position should continue to be excluded from the bargaining unit because the County never promised any of the occupants of the two Aide positions on-going employment; therefore, the County argues, these employes lack a reasonable expectation of continued employment.

However, to determine whether an employe has a reasonable expectation of employment, the Commission will look not only at what the employer has said to the employe but, more importantly, how the employer has employed the employe. In this case, the previous incumbent in one of the Aide positions had worked as an Aide for almost ten years. While the employer may never have formally said that the employe would be continued to be hired, the employer's actions in rehiring the incumbent year after year certainly did.

With respect to the second position of Aide, the County has advised the affected employes that they will only work six months less one day. Such a temporary status might exclude said employes for voting in a representation election involving regular full-time and regular part-time employes. 10/ However, where the work performed by temporary employes is the same as or similar to work performed by unit employes and particularly where the work in question is of an ongoing nature, the employes and the positions they held can be appropriately included in the unit. 11/ Here, it is clear that the work being performed is similar to the work of unit employes and that the work in question is of an ongoing nature. The two previous Aide positions are being combined into one and the employe hired into said position will work four to six hours every work day, with no date certain, or even discussion of, terminating the position. From the record, it is clear that the position of Records Management Aide should be included in the bargaining unit.

2. Deputy Register in Probate

The County argues that this position should continue to be excluded from the bargaining unit because she is a casual employe who works irregularly and sporadically and because she is a temporary employe who has been given no

4/ Tomahawk School District, Dec. No. 22495 (WERC, 3/85).

5/ See, i.e., Kewaunee County, supra.

6/ See, i.e., City of Greenfield, Dec. No. 26423 (WERC, 4/90), and Portage County, Dec. No. 6478-D (WERC, 1/90).

7/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).

8/ See City of Greenfield, supra, and Portage County, supra.

9/ See Howard-Suamico School District, supra.

10/ Winnebago County, Dec. No. 10305-A (WERC, 9/79); City of Appleton, Dec. No. 16090-A (WERC, 9/78).

11/ School District of Pittsville, Dec. No. 21806 (WERC, 6/84); Winnebago County, supra, City of Appleton, supra.

commitment to employ her in the future.

The record does not support the County's contentions on either point.

The incumbent has been working in the Register in Probate office for six years.

During 1989 and 1990, she worked over an average of 10 hours per week. The need of the County for her services has been frequent and regular. As there is no reason to believe this position will be terminated, the incumbent is neither a casual nor a temporary employe but rather is a regular part-time employe. For these reasons the position should be included in the bargaining unit.

3. Payroll Clerk

The County argues that this position should continue to be excluded from the bargaining unit as a casual employe since her work in this position is sporadic and irregular. The record is clear, however, that this is an ongoing seasonal position, that it begins every January and ends every mid February, and that the incumbent has not only done it in the past but has been asked to continue to do so in the next year. Thus, the position is neither temporary nor casual but regular part-time seasonal, and as the incumbent has a reasonable expectation of continued employe, the position should be included in the bargaining unit.

4. Payroll Supervisor

The Union argues that the Payroll Supervisor should continue to be included in the bargaining unit while the County argues that the position should be excluded as confidential. The record is clear that the Payroll Supervisor does not participate in the formulation of the County's strategy or position in labor relations. The record is also clear that the incumbent does have some access to and knowledge of confidential information regarding the County's posture in collective bargaining and grievance handling. The Union argues that such participation is de minimus. Yet the record shows that the incumbent has been involved in at least five matters related to labor relations, and that as much as ten per cent of her time is spent consulting with the Department of Human Resources in a confidential capacity. The County asserts she would have been utilized more if she had not been a member of the bargaining unit.

The record is also clear that the Payroll Supervisor is the only person employed by the County who is able to access certain information from the computer for use in costing by the County. This point is uncontested. The Union argues that the County has many other confidential employes who could handle the confidential work done by the Payroll Supervisor. The Department of Human Resources is not computerized, so access to the computer would be a problem for the department concerned with handling labor relations. In addition, the County would have to train someone to do what the Payroll Supervisor already does. Even then, the Payroll Supervisor, as a gatekeeper into the computer system, would have access to the computer generated data. On this record, it is certainly the least disruptive of the County's employment relations to have the Payroll Supervisor provide the costing for the County.

Thus, while the amount of exposure to confidential matters has been limited by the Payroll Supervisor's status as a bargaining unit member, and while there are several confidential employes on the County's staff, we are convinced that the Payroll Supervisor should be excluded as a confidential employe so that the County can regularize her participation and fully utilize her computer skill in labor relations. If in the future the Union believes that the County's use of the Payroll Supervisor in labor relations is de minimus, it is free to petition that she be included in the bargaining unit.

Dated at Madison, Wisconsin this 9th day of November, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner