

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of

ONEIDA COUNTY EMPLOYEES
(COURTHOUSE) LOCAL 79,
AFSCME, AFL-CIO

and

ONEIDA COUNTY

Involving Certain Employees of

ONEIDA COUNTY

Case II
No. 12929 ME-461
Decision No. 9134-F

Appearances:

- Mr. Lawrence Heath, Corporation Counsel, Oneida County, Oneida County Courthouse, P. O. Box 400, Rhinelander, WI 54501, appearing on behalf of the County.
- Mr. Daniel J. Barrington, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5115 Briarwood Avenue, Wausau, WI 54401, appearing on behalf of the Union.

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

On July 8, 1983, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit in the above-entitled matter wherein inter alia the Commission concluded that the position of Deputy County Clerk was professional but not supervisory, managerial, or confidential, that the occupant of the position is a "municipal employee" within the meaning of Sec. 111.70(1)(b), Stats., and, that the position was therefore included in the bargaining unit in question. Oneida County filed a petition for rehearing on July 28, 1983, pursuant to Sec. 227.12, Stats., alleging that the Commission's Findings and Conclusions do not fully reflect the evidence in the record. Local 79, AFSCME, AFL-CIO, filed a letter in opposition to the petition on August 10, 1983, and the County filed written argument in support of its petition on August 25, 1983. The Commission, on August 29, 1983, granted the petition for rehearing in the form of additional written argument. Both parties filed additional written arguments by October 19, 1983. The Commission having reviewed the additional written arguments, as well as the entire record in this matter, and being fully advised in the premises, and being satisfied that its Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit should be modified, the Commission makes and issues the following revised Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit;

FINDINGS OF FACT

1. That Oneida County Employees (Courthouse) Local 79, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization and has its offices located at 4115 Briarwood Avenue, Wausau, Wisconsin 54401.
2. That Oneida County, hereinafter the County, is a municipal employer with its principal offices located at the Oneida County Courthouse, Rhinelander, Wisconsin 54501; and that as part of its functions it operates a County Clerk's office.

3. That the County and the Union are currently parties to a collective bargaining agreement which covers all regular full-time and regular part-time employees of the Oneida County Courthouse, but excluding all elected, supervisory, confidential, and managerial personnel.

4. That the County has a total of one hundred sixty-six permanent employees, including both represented and non-represented employees; that in addition to the Courthouse bargaining unit, there are two other bargaining units of employees in the County, consisting of the Highway Department employees and the Sheriff's Department employees; and that the following four positions are excluded from the bargaining unit as confidential positions: one Personnel Department secretary, one Corporation Counsel's secretary, and two secretaries in the District Attorney's office.

5. That at the beginning of the hearing the County stated that it would not contest the inclusion of the position of Maintenance/Custodian currently occupied by Jim Kelso, in the bargaining unit set forth in Finding of Fact No. 3, and therefore, no evidence was taken regarding that position.

6. That Maryanne Wahlers has held the position of Deputy County Clerk since September 1982; that, among other duties, Wahlers is responsible for the County's payroll function, the maintenance of the County's accounting records, the implementation and administration of the County's new accounting system, and the compilation of materials for the County Board to use in preparing the County's annual budget; that Wahlers attends open meetings of the County's Finance Committee during which meetings discussion occurs concerning the budget and participates in such discussions and provides the Committee with information, which is of a public nature; that, although Wahlers does not sit at the bargaining table, she nevertheless prepares cost estimates of various alternative proposals which the County might make to the Union during negotiations over labor agreements covering the County's employees; that she assists the County in establishing contingency accounts in the County Budget to fund potential increased costs of labor contracts to be negotiated with the bargaining unit, and further, advises the County as to whether particular proposals would exceed allocations in the budget; and that such activity involves sensitive labor relations information of a nature and in a manner sufficient to constitute Wahlers as a confidential employee.

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

CONCLUSIONS OF LAW

1. That, since the position of Deputy County Clerk is occupied by a confidential employee, the occupant of that position is not a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That since the position of Maintenance/Custodian is not supervisory in nature, the occupant of said position is a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

Upon 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. That the position of Deputy County Clerk in the County Clerk's office of Oneida County be, and hereby is, excluded from the bargaining unit described in Finding of Fact No 3.

1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats. (continued on page 3)

2. That the position of Maintenance/Custodian be, and the same hereby is, included in the bargaining unit described in Finding of Fact No. 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 9th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Gary J. Covelli*
Gary J. Covelli, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

1/ (footnote continued from page 2)

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

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.

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

On July 8, 1983 the Commission issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit in this matter, wherein the Commission concluded that the position of Deputy County Clerk was professional, but not supervisory, managerial or confidential, that the occupant of the position is a municipal employe within the meaning of Sec. 111.70(1)(b), Stats., and that the position was included in the bargaining unit. Oneida County filed a petition for rehearing on July 28, 1983, pursuant to Sec. 227.12, Stats., alleging that the Commission's Findings and Conclusions did not fully reflect the evidence in the record. The Union filed a letter in opposition to the petition. On August 29, 1983 the Commission granted the petition for rehearing in the form of written arguments. Both parties filed additional written arguments by October 19, 1983.

POSITION OF THE COUNTY:

The duties of the Deputy County Clerk position have substantially changed since September, 1982. The record demonstrates Wahlers performs a sufficient combination of supervisory functions to be considered a supervisor. In addition, because Wahlers makes effective recommendations to the County Board with regard to the County's budget and prepares the County Clerk Department's budget, she is also a managerial employe. Moreover, Wahlers is a confidential employe because she costs out the financial impact of possible negotiating positions under consideration by the County and advises the County what alternative negotiation positions could be funded from the County's contingency budget. Finally, because the position now requires a four-year accounting degree, and because the incumbent must repeatedly exercise independent discretion and judgment, it has become a professional position.

POSITION OF THE UNION:

The Union, on the other hand, maintains that any recent changes which may have occurred in Wahlers' position are insufficient to exclude it from the unit. As for the County's claim that the position has supervisory responsibilities, the position's responsibilities have not changed. Any supervisory authority possessed by Wahlers relates primarily to activities while only minimally to employes. Moreover, the Deputy County Clerk incumbent has historically received a higher wage rate than those employes she directs. With respect to the position's managerial status, the evidence shows Wahlers was not primarily responsible for the initial development of the new accounting procedures, and that she simply oversees departments to be sure they follow the new accounting guidelines. While she may develop the County Clerk Department's budget, the County Board's finance committee does not give her independence in the commitment of the budget. The Union also contends that under Chapter 59 of the Wisconsin Statutes, the County cannot delegate to the Deputy County Clerk the authority of the County Clerk it claims it has entrusted to Wahlers. Wahlers' position does not have confidential status because the information to which she is privy is all information to which the Union has access. Although Wahlers may have a bachelor's degree in accounting, her position does not now require a professional employe since Wahlers' responsibilities are similar to those held by the previous incumbents who did not have college degrees. If the County had intended to have the new accounting procedure alter the responsibilities for the position, such a change would have been reflected in the most recent job description of the position, which is not the case.

CONFIDENTIAL STATUS:

Upon review of the additional written arguments submitted by the parties, and the record, the Commission is satisfied that its previous conclusion that the Deputy County Clerk position is not confidential was in error.

As the County points out, upon close review, the record reveals that Wahlers' advisory and support role to the County involves not only the provision of public information to the Finance Committee during public meetings, but also the provision to the County of information as to the cost of alternative proposals which the County might make to the Union during contract negotiations, as well as

advising the County whether certain proposals would exceed budget allocations. As the individual upon whom the County directly relies for such analyses, Wahlers is privy to information concerning the County's development of its strategy and position in collective bargaining, which strategy information is not available to the Union. Therefore, Wahlers plays a significant role in the overall labor relations functioning of the County. For that reason, the Commission is satisfied that Wahlers' position is one which involves sensitive labor relations information of a nature and in a manner sufficient to warrant exclusion of her position from the bargaining unit as a confidential employee.

The foregoing conclusion renders unnecessary determinations by the Commission of the County's additional contentions that the position in question is supervisory, managerial and/or professional in nature. Therefore, the Commission has not addressed those issues in its revised Findings, Conclusions and Order, or this Memorandum.

Dated at Madison, Wisconsin this 9th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner