

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 PIERCE COUNTY :
 :
 Involving Certain Employes of : Case 4
 the County in the Bargaining Unit : No. 46409 ME-539
 Represented by : Decision No. 9616-G
 :
 LOCAL 556, AFSCME, AFL-CIO :
 :

Appearances:

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, P.O. Box 1030, Eau Claire, W
 Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40,
 AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, on
 behalf of Local 556, AFSCME, AFL-CIO.

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

On January 28, 1992, Pierce County filed a petition requesting that the Wisconsin Employment Relations Commission clarify the bargaining unit to exclude the position of Payroll Clerk/Office Assistant on the basis it is confidential. A hearing on said petition was held on April 3, 1992 in Ellsworth, Wisconsin before Examiner David E. Shaw, a member of the Commission's staff. A steno-graphic transcript was made of the hearing and post-hearing briefs were submitted by May 22, 1992. The Commission, having considered the evidence and arguments of the parties and being fully advised in the premises makes and issues the following

FINDINGS OF FACT

1. Pierce County, hereinafter the County, is a municipal employer having its principal offices located at 414 West Main Street, Ellsworth, Wisconsin 54011.
2. Local 556, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its principal offices located at 470 Garfield Avenue, Eau Claire, Wisconsin 54701.
3. The Union is the certified exclusive representative for the purpose of collective bargaining of the collective bargaining unit consisting of all regular full-time and regular part-time courthouse employes employed by Pierce County, but excluding all elected officials, supervisors, professional, and confidential employes. 1/
4. The position in dispute is Payroll Clerk/Office Assistant occupied by Susan Richardson. The position has been included in the bargaining unit set forth in Finding 3 and the County has petitioned to exclude the position on the basis that is confidential. The Union opposes the petition contending the position is not confidential. Richardson has been employed in the position since May 21, 1990 on a full-time basis. Richardson is located in the County

1/ Dec. No. 9616 (WERC, 5/70).

Clerk's office and her immediate supervisor is the County Clerk, David Sorenson. The County Clerk is responsible for the County's personnel functions and labor relations activities with six bargaining units. In addition to Sorenson and Richardson, there are three other individuals employed in the County Clerk's office: Deputy County Clerk - Julie Brickner, Office Assistant - Wanda Kinneman, and Administrative Assistant - Sandra Langer. Brickner and Kinneman are in the bargaining unit and Langer is presently excluded from the bargaining unit as a confidential employee. In addition to Langer, the County has four other employees in four other County departments excluded as confidential employees.

5. The position description for the Payroll Clerk/Office Assistant position reads in relevant part, as follows:

Position Summary (describe the major responsibilities of this position) Under the directed supervision of the County Clerk, performs responsible record keeping and clerical work in preparing and maintaining payroll and employee records in conformance with county policies and regulations.

Describe the goals and worker activities of this position.

Time: Include for goals and major worker activities.

Goals: Describe the major achievements, outputs and results.

Worker activities: Under each goal, list activities performed to meet the goal.

<u>Time</u>	<u>Goals and Worker Activities</u>
50%	<p>A. Computation and processing of county payroll and related pay reports using a computer terminal.</p> <ol style="list-style-type: none"> 1. Computes and processes all Pierce County payrolls using computer terminal. 2. Calculates salaries, union dues and all deductions. 3. Maintains salary schedule up to date. 4. Files, maintains and submits payroll records and reports. 5. Enters employee's personnel record changes on terminal.
25%	<p>B. Maintenance of county employee personnel records, including benefits recording and reporting.</p> <ol style="list-style-type: none"> 1. Posts sick leave and vacation leave to employees and departments and maintains current balances for each employee. 2. Calculates and submits to

State Retirement System
necessary forms for new,
current, and terminating
employees.

3. Updates, makes payments, and notifies employees concerning life insurance benefits.
4. Processes Health Insurance billings and payments.

10%

C. Assistance to the public and to the County Clerk to aid in fulfilling the statutory obligations of the County Clerk's Office.

1. Receives marriage license applications and issues hunting, marriage, fishing and other licenses.
2. Maintains records, prepares reports and assists the public and staff as required.

6. In performing her duties, Richardson reviews invoices for pay to ensure that County payment procedures have been followed or that it is consistent with the provisions of the applicable collective bargaining agreement. When she has a question on an invoice or feels it is not consistent with County policy or procedure and/or the applicable collective bargaining agreement, Richardson will bring the matter to Sorenson's attention. Sorenson will then make a determination as to whether to pay the invoice or will refer the question to the appropriate County committee or to the County's outside labor counsel, Richard Ricci. In some instances Richardson has made a recommendation as to whether payment would be consistent with County policy, the collective bargaining agreement or past practice. Her recommendation in the Hollister case led to nonpayment and the filing of a grievance by the employe, Hollister. Richardson keeps track of attendance and employe use of accumulated leave and notifies Sorenson if an employe uses more than he/she has accumulated or if Richardson feels the usage violates County leave policies or is not consistent with the applicable agreement or past practice. In a case involving an employe on Worker's Compensation, Quinn, Richardson's review of the records led to the discovery that Quinn was accruing benefits. Richardson discussed this with Sorenson, and researched the matter further leading to an interpretation that such benefits were not available pursuant to the collective bargaining agreement. This led to a grievance being filed in the case. Richardson has had some involvement in approximately five grievances either by way of looking up information for Sorenson or Ricci to be used in attempting to settle a grievance or in litigation on the matter, or by taking part in the discussions between Sorenson and Ricci regarding how to respond to the grievance. When a grievance involves an issue of compensation Sorenson keeps Richardson informed as to the correspondence between himself and Ricci on the matter because she is the person who would have to implement the final resolution and in order to facilitate her gathering further information that might be needed. In the Quinn case, Richardson also prepared exhibits from her records to be used in the arbitration. Her involvement has varied from five hours in one case to approximately 45 hours of work time in the Quinn case. Richardson costs County compensation proposals but otherwise she does not have access to management

bargaining strategy. She does not attend any meetings of the County's Personnel Committee. On one occasion Richardson did suggest that the County propose clarifying language in the Worker's Compensation provisions in the collective bargaining agreements between the County and the unions representing the various bargaining units. Richardson is also responsible for computing the pay schedules in the agreements after settlement has been reached on the successor agreements. There have been at least two occasions where a dispute has arisen between the County and one of the unions after Richardson had computed the new pay schedules in accord with what she had been told by management. Another dispute occurred over the manner in which Richardson initially computed the new pay rate for a part-time employe who had posted into a higher paid position. After unit members told Richardson how they had been treated in similar situations she reviewed payroll records and advised Ricci and Sorenson that she was in error and that a practice had been established. Ricci and Sorenson accepted her conclusion regarding a practice and the pay rate was changed. Richardson, Langer and Sorenson have unlimited access to the personnel files of County employes which are kept in the vault area of the County Clerk's office and Richardson and Langer are responsible for updating the personnel files. Kinneman has limited access to the files regarding Worker's Compensation and Brickner has access to the files only in Richardson's absence.

7. Langer has held the position of Administrative Assistant since January of 1990. The position description for the position of Administrative Assistant reads as follows:

ADMINISTRATIVE ASSISTANT

GENERAL STATEMENT OF DUTIES: Perform a variety of secretarial and administrative duties in the Office of Administrative Coordinator; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: This is a confidential secretarial/office management half-time position for the County Board of Supervisors, involving frequent detailed duties of administrative nature and of wide and varied scope. The main responsibility in this position is for the performance of difficult and varied clerical and public contact work for the County Board of Supervisors which is the focal point of the county government and the central point of contact with the general public. The employee must be familiar with all phases of the county government. The duties of this position are of such a nature that the employee often works on a large volume of projects covering a wide variety of subjects and is under the pressure of completing them within a limited time period. The employee frequently works with considerable independence of action in preparing routine correspondence, giving information, and performing other public contact work. The employee is given general instructions on assignments through conferences and is under the supervision of the Administrative Coordinator who makes review of the work, methods, or results.

EXAMPLES OF WORK: (Illustrative only)

1. Takes and transcribes dictated materials relative to collective bargaining matters;
2. Prepares correspondence, inter-office forms, requisitions and related papers;
3. Files office correspondence and records, determining proper filing designation to be used and sees that proper distribution and disposition of notices, memoranda, directives and related material is made;
4. Assists in budget matters;
5. Collects and compiles the information on miscellaneous projects for the County Board of Supervisors;
6. Maintain personnel files;
7. Maintain files relative to litigation;
8. Prepares documents for labor negotiations;
9. Makes decisions on minor administrative matters;
10. Prepares studies, cost comparisons, and data retrieval on a wide variety of research areas as directed by the Finance Committee, Supervisors, or County Board Chairperson;
11. When necessary, operates the switchboard;
12. Coordinates activities and communications between the County Board; Department Heads, and the general public;
13. Carries out other assignments as directed by the County Board.
14. Recording minutes of closed session.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES:

Comprehensive knowledge of modern office practices and procedures, business English, spelling and commercial arithmetic; thorough knowledge of the operation, functions, and scope of authority of county departments and offices as related to the handling and disposition of complaints, requests for information and delegated administrative details; skill in the taking and transcribing of dictation, and in the operation and care of a typewriter; ability to make minor decisions in accordance with regulations and departmental policy and procedures; ability to prepare effective correspondence on routine matters and to perform

routine office management details with only general supervision; ability to maintain effective working relationships with other employees, officials, and the general public; good physical condition.

ACCEPTABLE EXPERIENCE AND TRAINING: Extensive experience in performing stenographic and clerical work of a progressively responsible nature and completion of a standard high school course, including or supplemented by courses in shorthand, typing and business practices; or any equivalent combination of experience and training which provides the required knowledge, skills, and abilities.

Langer takes the minutes of the closed Personnel Committee and Finance Committee meetings and in her absence Sorenson takes the minutes of those meetings. Langer is the person primarily responsible for administering the County's personnel program and interpreting the County's personnel policies. Langer's position was 50% and in 1991 went to 63% time. She works 8:30 a.m. - 12:00 p.m. Monday through Thursday and 8:30 a.m. - 1:30 p.m. on Friday. When Langer is not there, Richardson covers for her with regard to the orientation of new employes and furnishing and processing applications for employment. Grievance and litigation files are kept in Langer's office; however, Sorenson and Richardson also have access to those files. The grievance files contain a copy of the grievance as well as any correspondence between Ricci's office and Sorenson regarding possible solutions to the dispute or strategies the County might utilize in handling the grievance. Richardson at times checks those files in implementing a grievance settlement affecting pay or in gathering information for Ricci.

8. In the position of Payroll Clerk/Office Assistant Richardson has sufficient access to, knowledge of, and participation in confidential labor relations matters so as to render her a confidential employe.

Based upon the Findings of Fact, we make the following

CONCLUSION OF LAW

The position of Payroll Clerk/Office Assistant in the Pierce County Clerk's office is occupied by a confidential employe and, therefore, Richardson is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 2/

2/ 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

The position of Payroll Clerk/Office Assistant shall be excluded from the collective bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

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.

Continued

(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.

PIERCE COUNTY (COURTHOUSE)

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

BACKGROUND

The County has petitioned to have the Commission clarify the collective bargaining unit represented by the Union to exclude the position of Payroll Clerk/Office Assistant on the basis that it is confidential in nature. The position has been included in the bargaining unit and the present incumbent is Susan Richardson who has been in the position since March of 1990. The Union opposes the petition.

POSITIONS OF THE PARTIES

County

The County asserts that the Payroll Clerk/Office Assistant position meets the criteria for finding confidential status as set forth in the Commission's decision in Rhineland School District, Dec. No. 17021-A (WERC, 12/86). In her position, Richardson is responsible for administering the various collective bargaining agreements to which the County is a party, as it relates to wages and fringe benefits. She reviews all pay vouchers and brings to the County Clerk's attention those vouchers that conflict with provisions of the collective bargaining agreements. In two instances where Richardson did so it was determined that the employees were not entitled to the pay authorized by their supervisors. If Richardson does not question such vouchers, they do not get brought to the Clerk's attention and are paid. Richardson in effect acts as the financial "watch dog" for the County. This places Richardson in direct conflict with positions taken by various members of the bargaining units and their units and has resulted in her being confronted by the union stewards regarding positions she has taken with respect to questions of whether a unit member was entitled to a benefit.

Richardson is involved in all compensation - related grievances and has participated in discussions with the County Clerk and legal counsel relative to pending grievances. She also has researched information for grievances and prepared exhibits for pending arbitrations, and she has access to all grievance files. Those files contain correspondence between the County Clerk and legal counsel regarding possible strategies for resolving the pending cases.

With respect to collective bargaining, Richardson has access to wage and benefit data which she uses to cost proposals for the County, and in the course of negotiations has access to counter proposals which are not immediately available to the unions. No other employee has that responsibility.

The County cites the Commission's decisions in Manitowoc County, Dec. No. 8152-J (WERC, 11/90), City of Racine, Dec. No. 17724 (WERC, 4/80), and Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88), and asserts that application of those decisions to the facts in this case requires that Richardson be found to be a confidential employe. Her role in the costing of proposals and in grievances, her access to personnel and grievance files, and her role in the administration of the agreements justify her exclusion as confidential.

The County also asserts that Richardson's confidential duties are not de minimis. While she does not spend a majority of her time performing such duties, it does take a substantial amount of time to do the costing for six bargaining units and a portion of her time is spent investigating and preparing data for grievance cases. Further, Richardson is the only person sufficiently familiar with the payroll data to do the costing and to investigate payroll-related grievances. The Administrative Assistant might be an exception, but her primary duties are to serve the County Board and she works limited hours.

Union

The Union contends that the Payroll Clerk/Office Assistant position is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats. The Union cites the Commission's decision in DePere Unified School District, Dec. No. 26572 (WERC, 8/90) for the standard used to determine confidential status and asserts that payroll functions are not confidential duties under Commission case law. Citing, Barron School District, Dec. No. 26987 (WERC, 8/91). The job description covering 85% of the duties for the position contains no confidential duties. The remaining 15% described by Richardson (Jt. Exhibit No. 6) also does not include any significant confidential duties in the labor relations sense. The administration of attendance and leave records, interpretation of contract terms and research of records available to employes or their representative are not per se confidential duties. While Richardson may perform some confidential duties in the absence of the Administrative Assistant, that has not been a basis for exclusion.

The Union asserts that costing of a contract or a grievance settlement is not necessarily a confidential duty where, as here, the incumbent is not privy to the employer's strategy in either bargaining or handling a grievance. Exposure to controversy over a grievance is not sufficient to find Richardson is not a municipal employe. Mere access to personnel files is also typically not sufficient and the County could limit that access if it chooses.

The Union concludes that it would not be unduly disruptive to have another confidential employe, i.e., the Administrative Assistant, perform whatever de minimis confidential duties are expected of the Payroll Clerk position. As to whatever confidential information the position has access to, the County remains able to protect its interests if it believed an employe was disclosing such information. Citing, DePere School District, Dec. No. 25712-A (WERC, 10/90).

DISCUSSION

The Commission has consistently held that for an employe to be considered confidential, the employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must: (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. 3/

3/ City of Lancaster, Dec. No. 27180 (WERC, 2/92); Barron School District, Dec. No. 26987 (WERC, 8/91); City of Greenfield, Dec. No. 26423 (WERC, 4/90).

The record indicates that Richardson has some access to information related to ongoing negotiations and that her role in the collective bargaining process is primarily related to costing out possible wage/benefit proposals and counter proposals for the County. She does not participate in any meetings with the Personnel Committee or meetings where contract bargaining strategy is discussed but is advised periodically about the status of certain proposals. While she once suggested that the County propose that the contractual language regarding Worker's Compensation be clarified, she does not have a role in developing the County's bargaining proposals.

Richardson's role in contract administration and involvement in grievance handling and related litigation is also substantial. The record establishes that in her position as Payroll Clerk/Office Assistant, Richardson is responsible for reviewing pay vouchers and paid leave reports to ensure that they comply with County policies and procedures and with the applicable collective bargaining agreement. In two instances involving employees in bargaining units, Hollister and Quinn, Richardson brought the vouchers to the County Clerk's attention even though they had been signed and authorized by the proper supervisors. In both of those cases, Richardson was involved in discussions with the County Clerk and the County's outside labor counsel, Ricci, regarding how the matters should be handled. Grievances were filed in both of those cases and Richardson had further involvement.

Richardson's role in grievances varies from being involved in discussions with the County Clerk and Ricci regarding whether payment ought to be made or how the matter might be resolved, to gathering information for Ricci to use in handling the grievance and to preparing exhibits for arbitration. In performing these functions, Richardson has access to the grievance and litigation files. The grievance and litigation files contain correspondence between Ricci and the County Clerk regarding possible strategies for approaching the matter and positions the County should take in the matter. Thus, she has access to confidential information that is not available to the employe or the union.

Richardson's exposure to confidential labor relations strategy in the area of contract administration and related litigation is more than de minimis. She testified that she spent approximately three hours per day for three weeks researching information and preparing exhibits for the Quinn arbitration. (Tr. 107-108) She also testified that she spent approximately fifteen hours researching and gathering information for Ricci involving the discipline and discharge of an employe in the Highway Department unit. (Tr. 108)

As the Union argues finding Richardson to be confidential will give the County two confidential employes in the Clerk's office. That might appear excessive were it not for the fact that the Administrative Assistant, Langer, only works part-time, and other than updating personnel files and gathering information on grievances, 4/ there does not appear to be an overlap in their duties with regard to confidential labor relations matters. Given Langer's part-time status and the lack of overlap in their confidential duties, it would be unduly disruptive to require the County to reassign Richardson's confidential duties to Langer.

Given the foregoing, we have concluded that Richardson's knowledge of,

4/ Richardson is generally the one responsible for researching information for grievances involving compensation and benefits. (Tr. 135, 138).

access to, and participation in, confidential labor relations matters is sufficient to justify her exclusion from the bargaining unit on the basis that she is a confidential employe.

Dated at Madison, Wisconsin this 19th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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