

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
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 CITY OF MANITOWOC : Case XVII  
 : No. 16839 ME-945  
 Involving Certain Employes of : Decision No. 12403-B  
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 CITY OF MANITOWOC :  
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Appearances:

Mr. Patrick J. Willis, City Attorney, City of Manitowoc, 817 Franklin Street,  
 P. O. Box 765, Manitowoc, Wisconsin, appearing on behalf of the City.  
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council of County and  
 Municipal Employees, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc,  
 Wisconsin, appearing on behalf of the Union.

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

City of Manitowoc having filed a petition on May 26, 1981 requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of its employes, represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and determine whether the position of Deputy City Clerk should be excluded from said unit; and a hearing on the matter having been held on July 13, 1981 in Manitowoc, Wisconsin before Edmond J. Bielarczyk, Jr., a member of the Commission's staff, during which the parties presented evidence and arguments regarding their positions in the matter; and the Commission having reviewed the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the City of Manitowoc, hereinafter referred to as the City, is a municipal employer with its offices located at 817 Franklin Street, Manitowoc, Wisconsin 54220.
2. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization with its offices located at Manitowoc, Wisconsin 54220.
3. That the Union is the certified exclusive bargaining representative of employes of the City employed in a bargaining unit described as all regular full-time and all regular part-time office personnel and custodial employes of the City, employed in City Hall and associated departments, including Sewage Plant, Cemetery and Parks Department, Street Department, Police Department and Housing Authority, but excluding department heads, supervisors, City Sanitarian, confidential secretary, Public Health Nurses, Sewage Plant operators, Bridge Tender, hourly employes in the Street and Cemetery and Parks Departments, and all other employes, hereinafter referred to as the City Hall unit; and that the City and the Union were at the time of the hearing herein parties to a collective bargaining agreement covering the wages, hours and conditions of employment of the employes in the City Hall unit, effective from January 1, 1981 through December 31, 1982.
4. That in its petition initiating the instant proceeding, the City, contrary to the Union, contends that the position of Deputy City Clerk, currently occupied by Evelyn R. Martin and presently included in the City Hall unit, is occupied by a "confidential" employe, and therefore should be excluded from said unit.

5. That in addition to the City Hall unit which contains 97 employes, there exists the following additional bargaining units of City employes: a non-supervisory law enforcement unit containing 45 employes; a supervisory law enforcement unit, containing 18 employes; a fire fighters unit, containing 45 to 50 employes; a Department of Public Works unit, containing 45 to 50 employes; a Waste Water Treatment Plant unit, containing 18 employes; and a Nurses unit consisting of 3 employes.

6. That the Mayor's secretary and the City Attorney's secretary are excluded from said bargaining units as "confidential" employes on the basis of their being privy to collective bargaining and labor relations matters; and that neither of said secretaries have the ability to take shorthand notes.

7. That the City Clerk's office is manned by six persons, the City Clerk, the Deputy City Clerk, and four clerk typists; that the City Clerk is required by Sec. 62.09(11)(b), Wis. Stats., to attend all meetings of the City's Common Council, hereinafter referred to as the Council, and keep a full record of the Council's proceedings; that the City Clerk maintains in her office the City's files, tax matters, collective bargaining agreements, and the official files of the City's Aldermen; that the City Clerk does have the ability to take shorthand and the ability to type, but that said ability is impaired due to multiple sclerosis.

8. That the Council meets twenty-four times per year and that its meetings are convened at 7:00 p.m. in the City's Council Chambers; that the Deputy City Clerk attends all Council meetings and is paid overtime for such attendance; that during open meetings of the Council the City Clerk reads documents and reports presented to the Council into the record, and that the Deputy City Clerk takes, in shorthand, the minutes of the proceedings; that closed sessions of the Council are held in a conference room adjacent to the Council Chambers; that between June 2, 1980 and June 15, 1981 the Council held ten closed sessions relating to labor relations matters; that of the ten closed Council meetings, three meetings pertained to the financial authority of the City's Employee Relations Committee when negotiating wage increases, three meetings concerned disability benefits being claimed by a police patrolman, one meeting concerned promoting an employe in a bargaining unit to a new position, and determining if the new position would be supervisory, one meeting concerned a disputed position in the City's Building Inspection Department, and the remaining closed meetings concerned the handling of grievances and the actions and alternatives the City could take in resolving the grievances; that during said closed sessions the City Clerk remains in the Council Chambers, having custody over documents and reports presented to the Council and to answer questions from the press concerning same while the Deputy City Clerk is in attendance at said closed meetings taking minutes thereof; that the Deputy City Clerk types the minutes of the open and closed Council meetings during normal work hours; that the minutes of open and closed Council meetings are kept in the City Clerk's personal office and are maintained by the Deputy City Clerk; and that the minutes of the Council's closed sessions are not available to the public or to general City employes.

9. That the duties of the Deputy City Clerk which involve the taking, typing and maintaining of minutes of closed Council meetings pertain to confidential collective bargaining and labor relations matters.

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

#### CONCLUSION OF LAW

That the Deputy City Clerk position of the City of Manitowoc is confidential within the meaning of the Municipal Employment Relations Act, and that therefore said position is not occupied by a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT

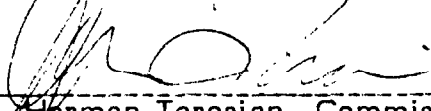
That the position of Deputy City Clerk be excluded from the bargaining unit described in Finding of Fact No. 3.

Given under our hands and seal at the City of Madison, Wisconsin this 7<sup>th</sup> day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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

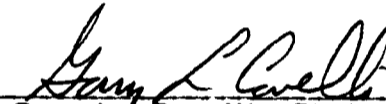
In its petition the City contends that the Deputy City Clerk performs confidential duties and therefore should be excluded from the City Hall bargaining unit. The City premises the Deputy City Clerk's alleged confidential status upon her duties of taking, transcribing and maintaining the minutes of closed Council sessions concerning labor relations matters. The Deputy City Clerk attends all Council meetings and is paid overtime for her attendance. Minutes of closed Council sessions are kept in the City Clerk's office in files which are not open to the public. The Union alleges that the position should not be excluded from the unit because the confidential duties of the Deputy City Clerk constitute a de minimus portion of her work.

The Commission has consistently found that in order for an employe to be deemed "confidential" the employe involved must be privy to decisions of the employer with respect to personnel and labor relations matters. 1/ Here neither of the City's two "confidential" employes have the ability to take shorthand and therefore cannot take shorthand notes of the minutes of closed Council meetings. In addition, the City Clerk has multiple sclerosis and her ability to take shorthand notes and to type has been impaired. Thus the only employe with ability to take shorthand notes of the closed Council meetings is the Deputy City Clerk. As the Commission has found that the closed Council meetings pertain to confidential labor relations matters, the Commission concludes that the position of Deputy City Clerk is confidential and therefore is excluded from the City Hall bargaining unit.

Dated at Madison, Wisconsin this 7<sup>th</sup> day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



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Gary L. Covelli, Chairman



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Morris Slavney, Commissioner



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Herman Torosian, Commissioner

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1/ Eau Claire County Health Care Center and Mt. Washington Home, LXVII, Decision No. 17488-A, 3/81, Manitowoc County 8152-A, 5/79.