

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
GENERAL DRIVERS AND DAIRY :
EMPLOYEES UNION LOCAL NO. 563 : Case LXII
Involving Certain Employees of : No. 18046 ME-1079
CITY OF APPLETON : Decision No. 12917-B

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller and Brueggeman, S.C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, 788 North Jefferson Street, Room 600, P.O. Box 92099, Milwaukee, WI 53202, appearing on behalf of the Union.

Mr. David G. Geenen, City Attorney, 200 North Appleton Street, P.O. Box 1857, Appleton, WI 54913, appearing on behalf of the City.

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

General Drivers and Dairy Employees Union Local No. 563, hereinafter referred to as the Union, having on January 12, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of employees employed in the City Hall of the City of Appleton by determining whether the position of Secretary - Personnel Department should be included in said unit; and a hearing on said petition having been conducted in Appleton, Wisconsin on May 20, 1982 by Douglas V. Knudson, an Examiner duly appointed by the Commission to conduct said hearing and issue a final decision in accordance with the provisions of Section 227.09(3)(a), Stats.; and post-hearing briefs having been received from the parties by July 8, 1982; and the undersigned, having considered the evidence and the arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. That the City of Appleton, hereinafter referred to as the City, is a municipal employer with offices at 200 North Appleton Street, P.O. Box 1857, Appleton, Wisconsin 54913.

2. That General Drivers and Dairy Employees Union Local No. 563, hereinafter referred to as the Union, is a labor organization with offices at P.O. Box 174, Appleton, Wisconsin 54912.

3. That the Union is the certified bargaining representative of all regular City Hall employees and employees in conjunction thereto employed by the City of Appleton, excluding craft or professional employees, confidential employees, supervisors and executives and employees of the Parking Commission, Engineering Division - Department of Public Works and Office of the Assessor.

4. That the instant proceeding was initiated on January 12, 1982 by a petition filed by the Union, wherein it contended, contrary to the City, that the position of Secretary - Personnel Department, currently occupied by Pamela Manning, is not confidential in nature and therefore should be included in the bargaining unit.

5. That prior to January 1, 1982 the City's Personnel Department was staffed by the Personnel Director, David Bill, a Personnel and Training Specialist, Richard Barret, and, a full-time secretary, Doris Lodholz; that the position

occupied by Lodholz was, and continues to be, excluded from the bargaining unit as being confidential; that the City Attorney's secretary, Carol Theis, whose position was, and continues to be, excluded from the bargaining unit as being confidential, then worked half-time for the City Attorney and half-time in the Personnel Department; that the Personnel Department also utilized part-time and temporary employees on an occasional basis; that on January 1, 1982 the position of City Attorney's secretary became full-time in said office and the position of Secretary in the Personnel Department, which had been filled on a half-time basis by Theis, also was made full-time, at which time Pamela Manning was hired for said position; that Manning previously had been a clerk in the City's Planning Department, which is physically adjacent to the Personnel Department; that while employed as a clerk in the Planning Department, Manning occasionally had functioned as the receptionist for the Personnel Department and the City Attorney's office; and, that Manning had been a member of the bargaining unit while employed in the Planning Department.

6. That the City's Personnel Department administers and negotiates labor agreements for 17 bargaining units covering approximately 590 employees of the City and the Water Utility; that initial proposals had been exchanged in all negotiations for agreements covering 1982 prior to the creation of the second Personnel secretary's position; that during 1982 the City will engage in bargaining with 12 of the 17 bargaining units for agreements covering 1983; and, that several of the contracts between the City and the Union are bargained as a group in joint negotiations.

7. That the regular duties of Manning's position presently include general secretarial functions, monitoring sick leave usage for irregularities, and acting as a receptionist for the Planning Department, City Attorney's office, and Personnel Department; that the regular duties of Lodholz' position include general secretarial functions, preparation of responses to grievances and, since January of 1982, involvement in the employer's centralized safety program; that both positions will be involved in basic research, including the preparation of information concerning comparisons of wages and fringe benefits with other employers, for the formulation of bargaining positions, in typing and compiling possible bargaining positions for negotiations, in taking and/or transcribing minutes of negotiating sessions, in assisting in the costing of proposals made in labor negotiations, and, in other duties relating to the foregoing; that these duties relate directly to confidential labor relations matters; and, that these confidential duties reasonably could not be assigned exclusively to one secretary.

Upon the basis of the foregoing Findings of Fact, the undersigned makes and issues the following

CONCLUSION OF LAW

That the position of Personnel Secretary, currently occupied by Pamela Manning, is a confidential position, and therefore, 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.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law the undersigned makes and issues the following

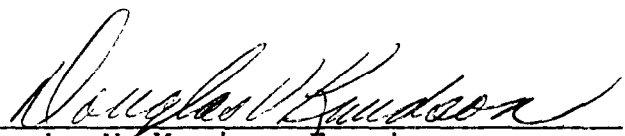
ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Personnel Secretary, currently occupied by Pamela Manning, be excluded from the bargaining unit described in Finding of Fact No. 3.

Dated at Madison, Wisconsin this 1st day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Douglas V. Knudson, Examiner

1/ See page three.

- 1/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner 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.

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.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

BACKGROUND:

The Union is the certified bargaining representative for certain City Hall employees employed by the City of Appleton, excluding craft, professional, supervisory and confidential employees. This proceeding was initiated by the Union's petition to clarify the status of Pamela Manning, who occupies a recently created secretary's position in the City Personnel Department. The City contends that the position is confidential, and thus is excluded from the bargaining unit. The Union disputes this contention, asserting that the confidential aspects of Ms. Manning's job as it presently exists are de minimis and could easily be assigned to other confidential personnel.

Prior to January 1, 1982 the City Personnel Department was staffed by David Bill, the Personnel Director, Richard Barret, a Personnel and Training Specialist, Doris Lodholz, the full-time secretary, and, on a half-time basis, the City Attorney's secretary. This staff was occasionally supplemented by part-time clerical help and CETA employees. The City thereafter made the position of secretary to the City Attorney full-time and replaced the Personnel Department's half-time secretarial position with a second full-time position. Pamela Manning, an employee of the City's Planning Department, was hired to fill the new position.

Since January 1, 1982 Pamela Manning has spent approximately 25% of her time maintaining the sick leave records of the City. This involves, among other things, monitoring employee sick leave requests for questionable usage patterns. To date her other major duty has been to act as the receptionist for the Personnel, Planning and City Attorney's offices, which are clustered together in the City Hall. She also has performed some research on the impact on staffing levels in the Fire Department, which would result from an increase in the vacation allotment when sick leave and vacation time are considered together. This research was used in analyzing a bargaining request for greater flexibility in scheduling vacations as well as in evaluating the need for new hires in the Fire Department to maintain staffing levels. Additionally, she has done some work relating to the maintenance of personnel files and other duties as assigned.

DISCUSSION:

The bulk of Pamela Manning's duties since her hiring as the second secretary in the Personnel Department has been in monitoring sick leave records and acting as receptionist for the Personnel, Planning and Attorney's offices. These functions, in and of themselves, do not warrant a finding of confidentiality. The reception work is, of course, not confidential. The Union correctly cites City of Greenfield (18304-C)(1982) for the proposition that merely monitoring sick leave records is not sufficient to remove an otherwise eligible employee from the bargaining unit. It should be noted, however, that City of Greenfield dealt with a bookkeeper whose alleged involvement in confidential labor relations matters was almost solely derived from her monitoring of sick leave records. Said situation is different from the case of a Personnel Department employee whose monitoring of sick leave is anticipated to be but one facet of a broader and more regular involvement in the employer's labor relations functions.

The City's Personnel Director, David Bill, testified that Pamela Manning's position would ultimately be the equivalent of Doris Lodholz' position. This is obviously an overstatement since Pamela Manning's regular duties include a good deal of receptionist work which Doris Lodholz performs only on an intermittent basis. Nevertheless, it is apparent that, if Bill's statements can be credited as to the remainder of Manning's duties, she appropriately should be excluded from the unit as a confidential employee. The duties described by Bill include the preparation of minutes of negotiating sessions, the typing of potential contract proposals, labor relations briefs and grievance dispositions, the costing of both Union bargaining proposals and possible City proposals for bargaining, and, the conduct of research on wage and benefit levels. These duties, together with the sick leave monitoring and her undisputed access to other labor relations and personnel information, would sufficiently enmesh the second Personnel secretary in the employer's labor relations function so as to remove the position from the

statutory definition of employee. The difficulty in determining the issue of confidentiality in this case springs from the fact that the petition for clarification of the bargaining unit was filed only 12 days after the position was filled and the hearing held only four months later. Thus, the evidence presented as to the actual confidential duties performed by Manning is largely of an anticipatory nature.

The Union objects to any consideration of Bill's testimony as it relates to the ultimate scope of Manning's duties, terming such testimony speculative. It is further contended by the Union that such duties as may be assigned to Manning in the future could easily be assigned to Lodholz, who is already excluded as a confidential employee. The inconsistency of these arguments is readily apparent, as the Union protests the City's speculation about future workload distribution and then proceeds to speculate that it can be distributed differently. The Examiner is persuaded that the City's assertion that confidential duties will be an integral part of Manning's position is reasonable and credible, and may in these somewhat unusual circumstances be considered in making the determination of her status.

The Personnel Department administers labor relations for the 17 bargaining units covering the approximately 590 employees of the City and the Water Utility. Although there has been some bargaining activity since January 1, the record reflects that it has not been of such a level or character as to place significant demands on the Personnel Department's clerical staff. 2/ A review of Manning's duties to date, therefore, is not conclusive of the expected scope of the position. We would also note that the incumbent Personnel Department secretary has been assigned additional duties with respect to the City's safety program since Pamela Manning was hired. This reduces the amount of time she would have available for the assignment of other confidential work. The reduction in the other Personnel secretary's availability, the number of contracts administered by the City 3/, the relative inactivity in negotiations since the position was filled, and, the potential for increased labor relations activity due to the expiration of 12 contracts on December 31, 1982, all tend to support Bill's contention that the confidential workload of this position will increase as time goes by.

The Union's contention that the City's intent to assign confidential work to Manning is speculative and must be discounted represented a self-fulfilling prophecy. To suggest that the employee be placed in the bargaining unit until such time as the employer can prove a significant involvement in confidential matters virtually insures that such involvement will never develop. While an employer may not reassign confidential work merely to remove an employee from the bargaining unit, an employer is not prohibited from legitimately establishing a new position which draws significant confidential duties from an existing position, thus rendering both positions confidential. Where, as here, a newly created position is at issue, so that there is no concrete descriptive evidence of the regular duties that will be performed by its occupant and the position is one that normally would involve confidential duties, then some allowance must be made for the right of the employer to organize and structure its labor relations functions. There is reasonable basis for the City's proposed distribution of work between the two Personnel Department secretaries and, given the number of units and employees involved,


2/ David Bill testified that initial proposals had been exchanged and bargaining commenced prior to January 1 for all those contract negotiations that were continuing by the time Pamela Manning became employed in the Personnel Department.

3/ The Union has suggested that the number of confidentials claimed by the City is disproportionate to the amount of labor relations work actually performed. The fact that the Mayor's secretary, a Water Department secretary, the City Attorney's secretary and a Police Department secretary have been excluded from the bargaining units as confidential employees does not alter Manning's anticipated involvement in confidential labor relations matters. The duties performed by those individuals are not at issue in this proceeding.

it does not appear that the distribution is a pretext. Accordingly, the Examiner concludes that the second secretarial position in the City of Appleton's Personnel Department is properly excluded from the unit as confidential. 4/

Dated at Madison, Wisconsin this 1st day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Douglas V. Knudson, Examiner

4/ In finding this position confidential, the Examiner does not preclude the Union from again seeking to have the position included in the bargaining unit. If after there has been sufficient experience to objectively assess the actual duties of the position, the Union determines that the workload distribution described by Mr. Bill is not justified by the amount of confidential work available, or if the distribution described is not that which develops, the Union may, of course, file another petition to clarify the bargaining unit. See La Crosse Area Joint School District No. 5 (No. 15710-A) 5/79, at page 4, footnote 1.