

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF NEW BERLIN

Appearances:

Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, by
Mr. Roger Walsh, 700 North Water Street, Milwaukee, Wisconsin 53202,
appearing on behalf of the City of New Berlin.

Wisconsin Council of County and Municipal Employees, Local 2676, AFSCME, AFL-CIO, having, on June 25, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit by determining whether the position of Coordinator of Office Services - Public Works Department should be included in said unit; and hearings in the matter having been held in New Berlin, Wisconsin, on November 4, 1982 and January 6, 1983, before Examiner Sherwood Malamud, a member of the Commission's staff; and stenographic transcripts having been prepared, the second of which was received January 18, 1983; and no briefs having been filed; and 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, Conclusion of Law and Order Clarifying Bargaining Unit.

4. That the Union initiated the instant proceeding by petitioning, on June 25, 1982, to clarify said bargaining unit to determine whether the position of Coordinator of Office Services - Public Works Department should be included in said unit, and that the City, contrary to the Union, asserts that said position should be excluded as confidential and supervisory.

5. That Doris Mae Derosier is the Coordinator of Office Services in the Public Works Department, having held that position since it was created January 1, 1982; that prior to January 1, 1982, Derosier worked as a Stenographer III in the same location as she now works, which position was in the bargaining unit; that Derosier has been employed by the City since April 8, 1974; that Derosier types, answers phone calls, responds to letters and performs various secretarial services for the Public Works Department; that Derosier and the Director of Public Works have their offices in the City Hall; that the Director of Public Works has an inner office roughly five feet from Derosier's desk; that on approximately five occasions during the year preceding the hearing, Derosier received, read, and in some cases retyped negotiation suggestions from the DPW division heads concerning possible contract changes, which information was used by the City in developing its negotiations strategy; that prior to the creation of the new position, such suggestions were delivered directly to the Director of Public Works in sealed envelopes; that Derosier has access to labor negotiations files including proposals from the City's labor relations attorney; that Derosier does not attend meetings at which labor relations matters are discussed, however Derosier can overhear such discussions if the door to the Director's office is open; that when someone else is present in the outer office while such a meeting is occurring in the inner office, Derosier closes the door to the Director's office, as she did before her new position was created; that Derosier maintains personnel files and charts employee use of sick leave and vacation leave; that she types answers to grievances; that she types employee performance reviews and promotion recommendations completed by the Director and submitted by him to the Civil Service Commission; that employees have access to their own performance reviews but are not able to see other employees' reviews; that retyping sensitive bargaining suggestions involves a very small portion of her work time; that there is another secretary working in the City Hall who is excluded from the bargaining units as a confidential employee and who could perform those confidential labor relations duties; and that the Coordinator of Office Services performs confidential duties of a de minimus amount, and therefore is not a confidential employee.

6. That Derosier interviews applicants and hires one high school cooperative student for a non-bargaining unit position of twenty hours per week during the school year and full-time during summers; that she also interviewed and hired such students before her present position was created; that she has terminated one such student after learning that the student would not be available to work the full year; that Derosier feels a responsibility to prepare the student for future careers and gives oral instructions to said employee on office conduct and dress; that said student employee is currently paid \$3.35 per hour; and that the Coordinator of Office Services does not exercise supervisory authority in sufficient combination and degree to be a supervisor.

CONCLUSION OF LAW

That the occupant of the position of Coordinator of Office Services - Department of Public Works is neither a confidential nor supervisory employee, but rather is an employee within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act (MERA) and therefore appropriately is included in the collective bargaining unit described in Finding of Fact 3.

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

ORDER CLARIFYING BARGAINING UNIT 2/

That the position of Coordinator of Office Services - Department of Public Works is included in the collective bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 25th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

2/ See page three.

- 2/ 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.

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

The Union initiated this proceeding on June 25, 1982, by filing a petition to clarify a bargaining unit certified on January 6, 1975. The Union seeks the inclusion of the newly created position of Coordinator of Office Services - Public Works Department whereas the City contests the inclusion of said position on the grounds that it is confidential and supervisory. The incumbent in the position, Doris Mae Derosier, previously performed substantially similar duties in a position that was included in the bargaining unit.

Alleged Confidential Status:

The Commission has consistently held that to be considered confidential, an employee must have access to, knowledge of, or must participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes, it must be the type of information that: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2) is not available to the bargaining representative or its agents. 3/

In arguing that the position is confidential, the City relies in part on the proximity of Derosier's desk to the office of the Director of Public Works and the opportunity it gives her to overhear conversations relating to labor relations matters. However, proximity of an employee's work station to the work station of a person involved in labor relations does not render an employee confidential, 4/ especially in this instance, where the employee can, and on occasion does, close the office door to protect confidentiality.

Access to personnel files, herein through the charting of such matters as use of leave time, and, typing recommendations for promotions do not indicate confidential status since the affected employees have knowledge of their leave time use and have access to such recommendations. 5/ Similarly, the mere typing of answers to grievances does not give the Coordinator of Office Services knowledge of the City's labor relations position which the bargaining representative will not know shortly after the answer is typed.

The remaining evidence of the Coordinator of Office Services' exposure to confidential labor relations material is her access to the negotiations file and her access to, and typing of, bargaining suggestions. These suggestions are made in advance of formal proposals and their premature revelation could be significant. However, close examination shows that Derosier's involvement in these suggestions involves very little of her time and is insufficient to render her position confidential since there is another City Hall employee, the Mayor's secretary, who could perform this function. 6/ Accordingly, we find that the Coordinator of Office Services is not a confidential employee and, therefore, is included in the bargaining unit.

Alleged Supervisory Status:

The Commission has defined the indicia of supervisory status thus:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;

3/ Wisconsin Heights School District, Decision No. 17182 (8/79).

4/ Wisconsin Heights, supra.

5/ School District of Drummond, Decision No. 16614 (10/78).

6/ Cudahy, Decision No. 12087 (8/73).


2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees.

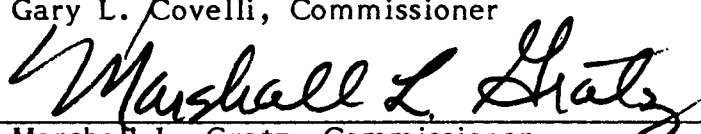
The Coordinator's duties in relation to the cooperative high school student who works twenty hours per week during the school year and full-time during the summer, while supervisory in nature, are too insubstantial to render her a supervisor. The cooperative program with the high school appears to be designed, in part, to give students on-the-job experience and Derosier's oral instructions to the students concerning office conduct and attire apparently result more from her desire to be a good mentor in preparing them for successful careers, than from the City's need to direct and discipline the work force. Derosier selects and hires the student employee. She also terminated one student based on the student's unavailability to work the full year. Nonetheless, in light of the full range of Derosier's functions, her hiring of the cooperative student and her oversight of the student's work are de minimus and insufficient in combination and degree to render her a supervisor, and therefore, Derosier is appropriately included in the bargaining unit.

Dated at Madison, Wisconsin this 25th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner