

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**AFSCME LOCAL 728, AFL-CIO**  
Involving Certain Employees of  
**IRON COUNTY**

Case 65  
No. 56237  
ME-1157

**Decision No. 16821-D**

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**Appearances:**

**Michael J. Wilson**, Staff Representative, Wisconsin Council 40 AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717, appearing on behalf of AFSCME Local 728, AFL-CIO.

**Jodie Bednar-Clemens**, Corporation Counsel, Iron County Courthouse, Room 121, 300 Taconite Street, Hurley, Wisconsin 54534, appearing on behalf of Iron County.

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

On October 17, 2005 AFSCME Local 728, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing unit of regular full-time and regular part-time Iron County employees that it represents for the purposes of collective bargaining by the inclusion therein of an administrative/clerical position in the District Attorney's Office currently held by Doreen Kuker. The County opposed the petition arguing that the incumbent in the position is a casual and/or confidential employee.

A hearing on the petition was held on March 7, 2006 in Hurley, Wisconsin, before Paul Gordon, Commissioner, with a stenographic record being made available to the parties. The parties offered oral arguments and summation after the hearing. On March 17 AFSCME filed a letter withdrawing a standing objection made at the hearing and making other arguments. The County did not respond to the letter, and the record was closed on April 3, 2006.

No. 16821-D

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**

1. Iron County, herein the County, is a municipal employer with offices at 300 Taconite Street, Hurley, Wisconsin.

2. AFSCME Local 728, AFL-CIO, herein the Union, is an affiliate of AFSCME Council 40, AFL-CIO, and is a labor organization with offices at 8033 Excelsior Drive, Madison, Wisconsin. The County and the Union are parties to a 2002-2004 collective bargaining agreement which contains the following recognition clause:

Section 1. The Employer recognizes the Union as the exclusive representative of all its regular full-time employees and regular part-time employees in the Courthouse, Department of Human Services and Health Department, pursuant to Wisconsin Employment Relations Commission, Case V, No. 23832, ME-1613, Decision No. 16812 (sic), but excluding elected or appointed officials, supervisors and confidential employees for purposes of collective bargaining with respect to wages, hours and working conditions and other conditions of employment which are mandatory subjects of bargaining.

3. The County District Attorney's office is in the County Courthouse. The position at issue works in the Courthouse, is under the direct supervision of the District Attorney and is described variously as bad check specialist, secretary, confidential secretary, receptionist, and administrative assistant. There is no written job description for the disputed position. Doreen Kuker is the incumbent.

4. Kuker's position was created in approximately 1999 to replace employees on vacation. Since its creation, the position has gradually assumed additional duties. For at least the last three years, Kuker has generally worked three days per week from 8:00 a.m. to 4:00 p.m. Kuker selects the days of the week that she works and is allowed to leave before 4:00 p.m. if she wishes to do so.

5. Kuker works with sufficient regularity to be a regular part-time employee.

6. The duties of the position include processing worthless check cases and performing a variety of clerical/administrative tasks. Other employees in the Union bargaining unit perform clerical/administrative tasks. Kuker does have access to files which contain confidential information as to juveniles and crime victims but has no access to or knowledge of confidential labor relations information.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

**CONCLUSIONS OF LAW**

1. Kuker is not a casual employee and is a regular part-time employee.
2. Kuker is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and is therefore a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT**

The position held by incumbent Kuker is included in the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of August, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**IRON COUNTY**

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

**DISCUSSION**

We will first consider the County's contention that Kuker cannot be included in the Union bargaining unit because she is a casual employee (and thus not a regular part-time employee) due to her flexible hours and days of work.

The Commission has long held that the determinative factor when deciding whether an employee is a casual or regular part-time is the regularity of employment. RICHLAND COUNTY (SENIOR CITIZENS HOME AND FARM), DEC. NO. 11484 (WERC, 12/72). Thus, as long as the need for the employee's services produces regular work, the variable timing of the work does not exclude an employee from regular part-time status. TOMAHAWK SCHOOL DISTRICT, DEC. NO. 22495 (WERC, 3/85). Therefore, the flexibility Kuker has as to the days of week she works and her ability to leave early if she wishes are irrelevant to her regular part-time status as long as she works on a regular basis. The evidence in the record establishes that Kuker generally works three days each week from 8:00 a.m. to 4:00 p.m. Therefore, it is clear that she works with sufficient regularity to qualify as a regular part-time employee.

Having concluded that Kuker is a regular part-time employee, we turn to the County's contention that she must nevertheless be excluded from the unit because she is a confidential employee.

The following legal standard set forth by the Commission in MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), and affirmed by the Court of Appeals in MINERAL POINT SCHOOL DISTRICT V. WERC, 251 Wis. 2D 325, 337-338 (Ct. App. 2002) is used when determining whether an individual is a confidential employee:

We have held that for an employee to be held confidential, the employee must have sufficient 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. . . .

While a de minimis exposure to confidential materials is generally insufficient grounds for exclusion of an employee from a bargaining unit, . . . we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. . . . Thus,

notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, . . . and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption to the employer's organization. . . . (Citations omitted.)

It is clear from the record that the District Attorney's office plays no role in collective bargaining and that Kuker's duties do not expose her to any confidential labor relations information. While Kuker has access to confidential medical and counseling records of crime victims and juveniles, such records are not confidential in the labor relations sense and thus her access thereto is irrelevant to her status as a confidential employee in the labor relations context under the Municipal Employment Relations Act.

Based upon the above, we conclude that Kuker is not a confidential employee.

In summary because Kuker is a regular part-time employee and is not a confidential employee, she/her position are appropriately included in the Union bargaining unit. <sup>1</sup>

Dated at Madison, Wisconsin, this 22nd day of August, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>1</sup> To the extent the County also argues that Kuker's inclusion in the unit is inappropriate because her duties differ from those of other unit employees, we also reject that argument. Kuker and current unit employees both perform clerical/administrative duties and, in any event, as reflected in the contractual recognition clause, the unit is comprised in part of "Courthouse" employees and Kuker is employed in the Courthouse.

