

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
: :  
In the Matter of the Petition of : :  
: :  
CRAWFORD COUNTY EMPLOYEES, : : Case 10  
LOCAL 3108, WCCME, AFSCME, : : No. 41785 ME(u/c)-315  
AFL-CIO, : : Decision No. 16931-B  
: :  
Involving Certain Employes of : :  
: :  
CRAWFORD COUNTY : :  
: :  
-----

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of Crawford County Employees, Local 3108, WCCME, AFSCME, AFL-CIO.  
Mr. Dennis M. White, Brennan, Steil, Besting & MacDougall, S.C., Attorneys at Law, 119 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53701-0990, appearing on behalf of Crawford County.

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

Crawford County Employees, Local 3108, WCCME, AFSCME, AFL-CIO, (the Union) filed a Petition To Clarify Bargaining Unit of Municipal Employes with the Wisconsin Employment Relations Commission (the Commission) on February 15, 1989, in which the Union requested that the Commission clarify an existing bargaining unit of employes represented by the Union to include the positions of Administrative Law Clerk, Administrative Secretary, Juvenile Court Worker, Chief Deputy County Treasurer, Chief Deputy County Clerk of Courts, Chief Deputy Register of Deed-,, and Highway Office Manager. In a letter filed with the Commission on April 13, 1989, the Union amended the petition to reflect that the proper title of the position identified on the petition as Administrative Secretary was Chief Deputy County Clerk. Hearing on the matter was held in Prairie du Chien, Wisconsin, on April 19, 1989, before Richard B. McLaughlin, an Examiner on the Commission's staff. A transcript of that hearing was prepared and submitted to the Commission on May 3, 1989. The parties filed briefs by June 15, 1989. The Commission, having considered the record and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Crawford County Employees, Local 3108, WCCME, AFSCME, AFL-CIO, herein the Union, is a labor organization which has its offices located in care of Route 1, Sparta, Wisconsin 54656.
2. Crawford County, herein the County, is a municipal employer which has its offices located at 220 North Beaumont Road, Prairie du Chien, Wisconsin 53821.
3. The Commission, in Decision No. 16931, issued on May 1, 1979, certified the Union as the exclusive collective bargaining representative of a bargaining unit described thus:  

. . . all regular full-time and regular part-time employes of the Crawford County Courthouse and related departments, including Highway Department clericals employed in the Courthouse and professional social workers, excluding mangerial, supervisory, confidential, craft, law enforcement employes, and blue collar Highway Department employes

The Commission's certification reflected the results of elections conducted by the Commission on April 23, 1979. The parties have incorporated the unit description stated in the Commission's certification in their 1989 collective bargaining agreement. This unit is referred to below as the Courthouse Unit, and consisted, as of April 19, 1999, of thirty-four employes. The County has two bargaining units in addition to the Courthouse Unit. Those two units are a certified Highway Department bargaining unit and a certified Sheriff's Department bargaining unit.

4. The Union filed a unit clarification petition with the Commission on February 15, 1989, in which the Union sought to have the following positions included in the Courthouse Unit: Administrative Law Clerk; Administrative Secretary; Juvenile Court Worker; Chief Deputy County Treasurer; Chief Deputy County Clerk of Court.%; Chief Deputy Register of Deeds; and Highway Office Manager. In a letter filed with the Commission on April 13, 1989, the Union noted "that the position title of Administrative Secretary . . . should be

Chief Deputy County Clerk." The County opposes inclusion of the positions of Administrative Law Clerk, Chief Deputy Clerk, Chief Deputy Clerk of Courts, Juvenile Court Worker and Chief Deputy Register of Deeds on the ground that the Union has agreed to the exclusion of these positions from the unit in the past. The County asserts that inclusion of the positions of Chief Deputy County Clerk and Juvenile Court Worker is also inappropriate because the Deputy County Clerk is a confidential employe and because the County did not have sufficient notice of certain issues relative to the Juvenile Court Worker's status. As to the Chief Deputy County Treasurer, the County contends inclusion is appropriate because the position does not currently exist. The County oppose.% inclusion of the Highway Office Manager asserting that the incumbent is a supervisory or supervisory/managerial employe.

5. Some of the positions noted in Finding of Fact 4 have been referred to with various job titles over time. The position of Administrative Law Clerk was known, at the time of the 1979 election, as Secretary to the District Attorney. The employe then occupying that position was Doris Lingreen. The position of Chief Deputy County Clerk was known, at the time of the 1979 election, as Deputy County Clerk. The employe then occupying that position was Alene Novey. The position of Juvenile Court Worker existed, and was so known, at the time of the 1979 election. The position of Chief Deputy County Treasurer was known at the time of the 1979 election as Bookkeeper - Secretary. The position of Chief Deputy County Clerk of Courts was known, at the time of the 1979 election, by that job title and by the job title Deputy Clerk of Court. The employe then occupying that position was Sharon Clanton. The County did not have a position known as Chief Deputy Register of Deeds at the time of the 1979 election, because office of the Register of Deeds was run on a fee system, and none of the staff of that office were County employes. The position of Highway Office Manager was known, at the time of the 1979 election, as Highway Department Clerk. The employe then occupying that position was Geraldine Myers. The Commission, after a hearing conducted on November 6 and 27, 1978, directed the election which ultimately produced the May 1, 1979, certification noted in Finding of Fact 3. 1/ Included in that decision were the following determinations:

#### FINDINGS OF FACT

...

5. That the office of the Highway Commissioner is located in the Courthouse, where Geraldine Myers and Marlene Emerson, Clerk and Assistant Clerk, respectively, are employed . . . that the parties agree that Myers performs confidential duties, and therefore should be excluded from any unit . . .

...

7. That during the course of the hearing the parties agreed that certain positions, and the individuals occupying same, be excluded from any unit or units found to be appropriate by the Commission on the basis of managerial, supervisory or confidential status; that, however, the County, contrary to the Union, contended that . . . Alene Novey (Deputy County Clerk) was a confidential employe . . .

...

11. That Alene Novey, Deputy County Clerk, performs various clerical duties for the County Clerk, Milo Cooper; that Cooper attends meetings of various County committees, at which he takes notes during which time there may be discussion regarding labor related matters, including contract negotiations; that his notes are transcribed by a clerical employe within the County Clerk's office; that Novey does not attend negotiation sessions, disciplinary hearings or executive caucuses of the County Personnel Committee, however, except on one or two occasions within the period of a year she has performed labor related typing, or set up meeting at which labor related matters would be discussed, when Cooper was unavailable.

...

#### CONCLUSIONS OF LAW

...

5. That Alene Novey is not clothed with sufficient duties and responsibilities to constitute said individual as a confidential employe, and, therefore, said individual is a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment

...

At the hearing preceding these determinations, the Union and the County disputed both the appropriateness of the unit and certain issues of voter eligibility. At the November 27, 1978, hearing, the Union and the County stipulated to a list of employees which identified those employees the parties agreed were eligible to vote; those employees the parties agreed were not eligible to vote; and those employees the parties could not reach agreement on regarding their eligibility to vote. Vincent Kanthak was, as of November 27, 1978, the County's Juvenile Court Worker, and his name appears on the list as an eligible voter. Sharon Clanton was then the County's Chief Deputy Clerk of Courts, and her name was crossed off of the list of eligible voters. In a list of employee names and classifications submitted by the County to the Commission on March 6, 1979, Kanthak's position was identified as "terminated". On the eligibility list utilized to conduct the April 23, 1979, election, Lingreen and Novey appear as eligible voters who actually voted. Kanthak's name is not on that list. Novey was involved in the parties' collective bargaining for an initial contract as a note-taker for the then incumbent County Clerk, who served on the County's negotiating team. As a result, the parties agreed to exclude Novey from the Courthouse Unit. Lingreen, who occupied the position known as District Attorney Secretary, was eligible to vote in the election which preceded the Union's certification. The District Attorney served on the County's negotiating team during the parties' bargaining for an initial contract. As a result, the parties executed a "MEMORANDUM OF UNDERSTANDING" dated March 4, 1981, which excluded the then incumbent District Attorney Secretary from the Courthouse Unit. The District Attorney has not been actively involved in negotiating with the Union since that memorandum was executed. Effective on January 1, 1985, the Register of Deeds and the staff of the Register of Deeds became County employees. The Union has been aware of the unit/non-unit status of the employees occupying the positions noted in this Finding of Fact, and made its first written demand on the County that the positions be included in the Courthouse Unit on September 29, 1988. During collective bargaining on several occasions since its certification the Union has tried, without success, to secure the County's agreement to include these positions in the Courthouse Unit.

6. Faye Johnson occupies the position of Deputy County Treasurer, which was known at the time of the 1979 election as Bookkeeper-Secretary. Johnson was eligible to vote in the election by which the Union was certified, and the position of Deputy County Treasurer presently is included in the Courthouse Unit. Martin Sprosty is currently the County Treasurer, and serve-9 as Faye Johnson's supervisor. On several occasions, Johnson has requested Sprosty to reclassify her as Chief Deputy County Treasurer. At sometime during the summer of 1998, Sprosty attended a meeting of the County Board's Personnel Committee to speak to it regarding Johnson's reclassification. Jeannine Schreck, the Union's President, also attended that meeting. Schreck understood the County's position on the reclassification request to be that Johnson could be reclassified to a position of (thief Deputy County Treasurer, but that the position would be excluded from the Courthouse Unit. Schreck discussed her understanding with the Union membership and with Johnson, and informed Johnson that she could accept the reclassification if she chose to. Schreck understood Johnson's decision to be that if the position was to be excluded from the Courthouse Unit, she did not wish to be reclassified to it. The County does not now, and never has had a job description for Chief Deputy County Treasurer.

7. The County created the Juvenile Court Worker/Bailiff position sometime in 1990. Janie Schwarz has been employed by the County in that position since 1984. Schwarz works closely with the City of Prairie du Chien Police Department and with the Crawford County Sheriff's Department. Schwarz has the power of arrest, which she exercises primarily with regard to her Bailiff duties. She has been informed that she is not to use her power of arrest while performing her duties as a Juvenile Court Worker, which include counseling juveniles. She has, however, been asked to assist in drug raids in which she was expected to exercise her power of arrest on juveniles and adults.

8. Geraldine Myers is the County's Highway Office Manager, and has been so employed for fifteen years. Her duties in that position have not significantly changed over that period. Myers job description reads thus:

#### OFFICE MANAGER

GENERAL STATEMENT OF DUTIES: Supervises the general office and performs account keeping functions in a large County Department.

DISTINGUISHING FEATURES OF THE CLASS: The employee in this class serves as office manager, supervising the clerical and fiscal activities of a specific County Department. The Office Manager maintains financial accounts and records in accordance with standard bookkeeping and accounting practices. The duties allow independence of action within the limits of the departmental rules, policies and procedures; however, situations outside of these limits are referred to a Department Head, who gives directed supervision to the employee. Supervision is exercised over subordinate personnel.

EXAMPLES OF WORK: (Illustrative only)

Supervises and performs clerical and accounting activities of a large County Department,

such as the Highway and/or the Human Services Departments;  
 Supervises clerical and fiscal employees assigned to the department;  
 Maintains accounts for money received and expended;  
 Prepares annual budget tabulations for the Department Head and various Committees;  
 Performs administrative assistant functions for the Department Head;  
 Determines allocation of disbursements to proper accounts;  
 Prepares vouchers for labor payrolls, machinery and materials;  
 Assists salesmen and citizens who call or come to the office;  
 Prepares accident, insurance and retirement forms as required;  
 Posts to and balances the general ledger and closes and opens fiscal record books;  
 Supervises requisitions for all work done in the Department according to type, machinery and equipment used and manpower; Submits account balances to the County Clerk and/or Department Head regularly;  
 Provides estimates of maintenance costs, supply needs and related data;  
 Prepares a monthly trial balance, and computes equipment depreciation;  
 Supervises or performs payroll distribution and maintains employee personnel files;  
 Audits suppliers' invoices and prepares them for approval;  
 Maintains records and prepares reports as directed;  
 Does related work as required.

#### QUALIFICATIONS

- Knowledge of the functions, policies, laws and operating needs of the Department;
- Knowledge of office management practices;
- Knowledge of the principles and practices of bookkeeping, accounting and cost accounting;
- Ability to supervise, plan and organize the work of others;
- Ability to establish and maintain satisfactory working relationship with employees and general public;
- Positions require ability to be bonded and possession of a valid Wisconsin driver's license.

TRAINING AND EXPERIENCE: Graduation from high school and completion of a vocational training program in accounting or business administration and considerable responsible experience which provides the required knowledge, skills and abilities.

This job description also applies to the position of Human Services Office Manager, which is not included in the Courthouse Unit. Myers and one other employe, who occupies the position of Assistant Highway Clerk, are the clerical staff of the Highway Department's courthouse office. Sharon Boylen is currently the Assistant Highway Clerk, and has been so employed since 1984. To be hired, Boylen submitted a job application to Job Service, which forwarded her application, with those of other applicants, to the County. The applications were ultimately placed before the County Board's Highway Committee. The members of the Highway Committee, the Highway Commissioner and Myers then conducted an interview of each applicant. Myers and each participating interviewer asked questions as each deemed appropriate. The field of applicants was narrowed to three, and Myers was asked which applicant she would prefer to have hired. Myers recommended Boylen to the Highway Commissioner. The Highway Commissioner and the Highway Committee ultimately unanimously agreed to hire Boylen. The same hiring process was followed regarding the two predecessors to Boylen. In each case, Myers recommended the hire of the individual ultimately hired. Boylen's work is not formally evaluated by Myers or any other County employe. Myers did not make any recommendation when Boylen completed her probation period, but would have if Boylen had not been competently performing her duties. Myers has the power to discipline the Assistant Highway Clerk, but has never had to do so. She has authority to issue an oral or written reprimand, but would have to report to the Highway Commissioner or Highway Committee prior to suspending an employe without pay. Boylen's position was, at one point, a full-time position, but was reduced to part-time. The County Board's Finance Committee recommended the change, and consulted with the Highway Commissioner regarding the change. The then incumbent Highway Commissioner did mention the proposed change to Myers, and discussed it with her. She did not make a formal recommendation on this point to the Finance Committee, but did indicate to the Highway Commissioner that she felt the reduction was feasible. Myers trained Boylen, and Boylen's predecessors. Boylen's training took about one year. At the end of that year, Boylen knew the job well enough that she no longer required daily assignment of duties. Boylen has a regular monthly schedule of work duties and is sufficiently familiar with those duties that Myers spends little time in issuing work assignments to Boylen. If there are tasks outside of that regular schedule, Myers assigns the tasks to Boylen. Boylen presently works from 8:00 a.m. until 4:30 p.m. on a rotating schedule in which she works four days in one week and three days in the next. Myers set that schedule of hours, and has the authority to change those hours, but has not done so. Boylen does not work any overtime. If Boylen wishes to take time off work, she makes the request to Myers, who will grant or deny the request without further consultation. Boylen records her hours on a form which she submits to Myers, who files the form and submits the file to the County Clerk's office. Myers plays no role in approving Boylen's time records. Boylen is the sole employe supervised by Myers. Boylen serves as the

secretary to the Highway Commissioner, who may request her to perform certain tasks, but who plays no significant role in overseeing her work. The rate of pay for Assistant Highway Clerk in the most recent collective bargaining agreement between the Union and the County is \$11,225.32 as the starting salary, \$12,939.69 upon completion of the probation period, and \$13,945.29 after two years. The salary of the Highway Office Manager, under the relevant County ordinance, is \$15,960 as the beginning rate, \$17,919 (effective 7/89) upon completion of the probation period, and \$20,279 as the maximum rate. Myers typically works from 8:00 a.m. until 4:30 p.m., on Monday through Friday, but may work outside of that schedule. She is not eligible for any overtime premium. Myers must maintain a record of the time she takes off work on, for example, vacation and sick leave, but does not submit any forms to the County Clerk to document her hours at work. Myers spends no more than ten percent of her time overseeing Boylen's work, and spends much of that ten percent verifying the accuracy of data recorded by Boylen. The balance of Myers' time is spent in performing her own duties.

9. Myers is responsible for doing all of the Highway Department's bookkeeping. She is responsible for paying the bills of the Highway Department. She prepares the record of County expenses which are billed to the State, townships and villages on a monthly basis. She handles the Highway Department's accounts receivable, balances the Department's ledger monthly, closes the Department's books annually, fills out State reports, and prepares the Department's annual budget. She pays the Department's bills by completing a payroll voucher, and submitting the voucher to the County Clerk's office, which prepares a check for the bill. She approves these vouchers before such checks are issued, and will verify the validity of a bill before approving the voucher. Her verification of such bills is to assure the accuracy of the amounts appearing on such bills. She receives money from the State, villages, and townships, and takes such funds to the County Treasurer. She plays no role in generating revenue for the Department. The Highway Commissioner plays no significant role in the Department's bookkeeping. She refers requests by vendors to sell goods or services to the Department to the Highway Commissioner, but does purchase the office supplies necessary to operate the Highway Office. The State recommended that the County computerize the Highway Department, and the County did so. Myers purchased the computer, but followed the State's recommendation on which computer to buy, and did not consider more than the company recommended by the State. Myers prepares the office aspect of the Department's budget by referring to the prior year's budget, adding whatever increases she deems necessary for the upcoming year and recording that amount onto a budget document. She prepares the non-office aspect of the Department's budget by conferring with the Highway Commissioner on County trunk highway maintenance and on any contemplated purchases of new equipment. She reviews prior Department budgets and determines, on her own, the anticipated expenses for equipment repair and for the administration of the Department. She also will determine the revenues which can be anticipated in the upcoming year. She then totals the relevant expenditures and revenues and enters the figures on a budget document which she submits to the County Clerk, who submits the document to the County Board's Finance Committee. Myers typically plays no role in the process by which the Department's budget is approved by the County Board. In 1988, the Finance Committee did ask her to appear before it to explain certain budget entries. In that case, the Finance Committee asked her why she had reduced the amount requested for one account from the prior year's budget. She had never appeared before the Finance Committee prior to that. Shortages can occur in the budget, after its approval. This happens quite often in the Department's machinery fund and in its County trunk highway machinery fund. In such cases the Highway Commissioner and the Highway Committee will authorize the transfer of funds from one account to another, have the authorization recorded in the minutes of the meeting, and rely on Myers to execute the necessary changes. Myers has never experienced a shortfall in the office aspect of the Department's budget. Myers requires roughly \$200.00 to cover the Department's office supply needs for a year. She has no independent authority to switch funds from one account to another. The County hired a new Highway Commissioner in March of 1989. His predecessor worked for the County as Highway Commissioner for seventeen years. The newly hired Highway Commissioner relies heavily on Myers to assist and to train him in handling the paperwork necessary to operate the Highway Department. Neither the new Commissioner nor his predecessor have played any significant role in the Department's bookkeeping.

10. The County has established by ordinance that non-unit employees such as Myers are provided the same fringe benefit package as unit employees such as Boylen. The Highway Commissioner and the Highway Committee are the ultimate supervisors of both Myers and Boylen. Myers, Boylen and the Highway Commissioner are the only County employees who are located in the Highway Department Office in the basement of the County courthouse. The Highway Commissioner also has an office in Gays Mills. The Highway Commissioner typically spends about six hours per week at his courthouse office. The Highway Department employes about twenty-nine employees at the Highway Shop in Gays Mills. Myers never leaves the courthouse to perform her duties, and rarely, if ever, sees Highway Department employees who report to the Gays Mills office.

11. Patricia Benish is the County's Clerk, and Sharee Severson is the County's Chief Deputy Clerk. Also employed in the Clerk's office are two Deputy Clerks. The Deputy Clerk positions have been included in the Courthouse Unit since 1979, while the Clerk and Chief Deputy Clerk positions never have been. County Clerk is an elected position. The job description for Chief Deputy County Clerk reads thus:

CHIEF DEPUTY COUNTY CLERK

GENERAL STATEMENT OF DUTIES: Serves as principal deputized assistant to the Crawford County Clerk and assists in the overall operation of the office.

DISTINGUISHING FEATURES OF THE CLASS: The Deputy County Clerk assists with and oversees the performance of duties in the County Clerk's office. The procedures of the office

are governed by Wisconsin Statutes and are executed accordingly. The work is performed under the directed supervision of the County Clerk. The employee in this class is deputized per Wisconsin Statutes.

EXAMPLES OF WORK: (Illustrative only)

Prepares county employee payroll and issues paychecks and accompanying reports;  
Prepares county employee payroll deductions and accompanying reports;  
Assists in the supervision of the bookkeeping system of the county;  
Accepts payments, issues receipts and maintains fiscal records;  
Assists in the preparation of statement of financial condition, including all revenues and expenditures; Performs typing, filing and all clerical functions of the office;  
Assists with the preparation of the annual budget; Assists the County Clerk with elections and participates in the duties required of the County Clerk in the administration of elections;  
Sells hunting and fishing and other licenses to dealers and individuals;  
Works at the counter and assists the public in preparing forms and applications;  
Assists in training office staff and supervises staff as required;  
Serves in the absence of the County Clerk; Does related work as required.

QUALIFICATIONS

- Knowledge of bookkeeping, office terminology, procedures and equipment and of business arithmetic and English;
- Knowledge of the State laws pertaining to operation of the County Clerk's office;
- Ability to follow complex oral and written directions; Ability to establish effective working relationships with other staff, citizens and officials;
- Ability to maintain complex clerical records and prepare reports from such records;
- Ability to make decisions in accordance with laws, regulations and established procedures;
- Ability to learn the operation of computer terminals;
- Ability to be bonded to \$5,000.

TRAINING AND EXPERIENCE: Graduation from high school and responsible general office or fiscal clerk experience; or any combination of training and experience which provides the required knowledge, skills and abilities.

Severson does all the typing for each Board Committee, such as Personnel, Finance and Law Enforcement. Included in this typing is the typing of the minutes for each committee meeting, whether the meeting is open or closed. Roughly forty percent of Severson's time is devoted to the processing of personnel-related matters, with the balance of her time being devoted to processing the County's payroll and related reports. Each of the employees in the Clerk's Office has access to individual employee records which are considered open to the public. Confidential personnel records not considered by the County to be open to the public are kept locked in Banish's desk. Banish and Severson each have a key to that desk, and are the only employees in the Clerk's Office with access to the desk. The Personnel Committee represents the County Board in its negotiations with the Union and in its responses to grievances arising under the collective bargaining agreement. Severson does not actively participate in collective bargaining or in the processing of grievances. The Personnel Committee tapes its meetings, and submits those tapes to Severson, who prepares a verbatim, typed record of those meetings. Such meetings occur during collective bargaining and during the processing of grievances. The Personnel Committee meets once per month to discuss personnel policies, problems etc. Severson types the minutes of these meetings. Severson does all of the Personnel Committee's typing. The County employs outside legal counsel in collective bargaining. Severson types the correspondence from the Personnel Committee to such counsel, and will process correspondence from such counsel to the Personnel Committee. Severson has, at the request of the County's legal counsel, collected data relevant to the preparation and advocacy of the County's positions in bargaining. When Banish is not in the office, Severson is responsible for opening and reviewing her mail.

12. Severson performs the same type of duties as the Deputy Clerks. The beginning salary for Chief Deputy County Clerk is \$14,513. The rate after the completion of a probation period is (effective 7/89) \$16,413, and the maximum rate for the position is \$18,430. The classification Deputy County Clerk 1, under the Courthouse Unit's 1989 collective bargaining agreement has a start rate of \$12,557.63. The rate after the completion of a probation period is \$13,338.75, and the maximum rate is (effective after two years) \$15,344.51. Severson and the Deputy Clerks report to Banish. Severson and the Deputy Clerks perform their duties exclusively in the courthouse and associate with other courthouse employees.

13. Neither the Union nor the County denies that the employees occupying the positions of Administrative Law Clerk, Chief Deputy County Clerk of Courts, or Chief Deputy Register of Deeds share a community of interest with the positions included in the Courthouse Unit. The County does not contend that the placement in the Courthouse Unit of the positions at issue here would

affect the Union's majority status.

14. Sheree Severson, Chief Deputy County Clerk, has sufficient access to, knowledge of, and participation in confidential matters relating to labor relations to be rendered a confidential employe.

15. Geraldine Myers, Highway Office Manager, exercises supervisory responsibilities in sufficient combination and degree so as to make her a supervisory employe.

CONCLUSIONS OF LAW

1. The employes occupying the positions of Administrative Law Clerk, Chief Deputy County Clerk of Courts, and Chief Deputy Register of Deeds are each a "municipal employe" within the meaning of Sec. 111.70(1)(i), Stats.

2. Janie Schwarz, who currently holds the position of Juvenile Court Worker/Bailiff, has the power of arrest, and the inclusion of that position in the Courthouse Unit would create a bargaining unit which is not appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. The County does not currently have a position of Chief Deputy County Treasurer and thus the Commission does not have the authority under Sec. 111.70(4)(d)2.a., Stats., to include such a job title within the Courthouse Unit.

4. The occupant of the position of Chief Deputy County Clerk, Sheree Severson, is a confidential employe, and, therefore, Severson is not a "municipal employe" within the meaning of Sec. 111.70(1)(i), Stats.

5. The occupant of the position of Highway Office Manager, Geraldine Myers, is a supervisory employe within the meaning of Sec. 111.70(1)(o), Stats., and, therefore, Myers is not a "municipal employe" within the meaning of Sec. 111.70(1)(i), Stats.

ORDER CLARIFYING BARGAINING UNIT 2/

1. The positions of Administrative Law Clerk, Chief Deputy Clerk of Courts, and Chief Deputy Register of Deeds are hereby included in the Courthouse Unit described in Finding of Fact 3.

2. The positions of Chief Deputy County Clerk, Juvenile Court Worker/Bailiff, and Highway Office Manager are hereby excluded from the Courthouse Unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this  
27th day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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

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 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

(Footnote 2/ is continued on page 11.)

---

(Footnote 2/ continued from page 10.)

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.

(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

(Footnote 2/ continued on page 12.)

(Footnote 2/ continued from page 11.)

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.

CRAWFORD COUNTY

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

THE UNION'S POSITION

The Union initially argues that the position of Chief Register of Deeds did not become a County-paid position until 1985, and it follows from this that the incumbent of that position "would not have been eligible to vote in the 1979 election and should not be barred at (t)his time."

After a review of various documents, the Union contends that: the positions of Chief Deputy County Clerk, Chief Deputy County Treasurer and Chief Deputy County Clerk of Courts did not exist at the time of the 1979 election, thereby making it impossible for the Union to address the issue." It follows, according to the Union, that it has not waived its right to have the positions included in the Courthouse Unit.

The Union acknowledges that there is no job description for the position of Chief Deputy County Treasurer, but argues that the record demonstrates that Johnson war, offered such a position if she chose "to leave the bargaining unit and become the Chief Deputy County Treasurer."

The Union contends that the Commission has only twice dismissed a petition because it was stale. The Union argues that both of those dismissals turned on the petitioner's failure to respond to an order of the Commission, and that both dismissals are thus unrelated to the present matter. Beyond this, the Union asserts that it has made ongoing attempts to have the positions voluntarily included in the Courthouse unit.

The position of Juvenile Court Worker/Bailiff should, according to the Union, "be included in either the Courthouse or Sheriff's Department bargaining unit", but should not be "split between the two bargaining units."

The position of Administrative Law Clerk has been excluded from the unit only because the District Attorney once acted as the County's bargaining representative. Since the District Attorney no longer performs that function it follows, according to the Union, that the "position is no longer confidential and, therefore, appropriately belongs in the bargaining unit."

Because the incumbent Chief Deputy County Clerk only performs a de minimis amount of confidential 'work, it follows, according to the Union, that this position must also be included in the Courthouse Unit.

After a review of the record, the Union contends that the Highway Office Manager does not have sufficient authority to be considered a supervisor, and also lacks the authority to be considered a managerial employe. Noting that Myers only oversees the work of one employe, whose duties are routine in nature, and that Myers lacks independent authority to "shift substantial amounts of money within the budget without County Board approval", the Union concludes the record does "not warrant exclusion from the bargaining unit."

THE COUNTY'S POSITION

The County initially asserts that Myers, as the incumbent Highway Office Manager, should be excluded as a supervisory or as a supervisory/managerial employe. Specifically, the County notes that Myers was excluded from the Courthouse unit as a confidential employe at the time of the unit's certification in 1979, and has remained "out of the bargaining unit ever since." Beyond this, the County contends that Myers' duties establish that she possesses sufficient indicia of supervisory authority under the Commission's traditional criteria to be excluded from the unit, and is the only on-site supervisor for Boylen. While acknowledging that Myers' "budget duties do not consume a large portion of her time", the County contends that she commits the County's resources through her preparation of a budget, and plays a significant bookkeeping and purchasing role for the County.

Severson, the incumbent Chief Deputy Clerk, should be excluded from the Courthouse bargaining unit as a confidential employe, according to the County. Noting that Severson is the sole Deputy Clerk with access to confidential materials locked in the Clerk's desk; types minutes of closed Personnel Committee meetings; acts as a conduit between the County's Personnel Committee and its labor counsel; and is the sole employe available to perform necessary confidential functions, the County concludes that Commission case law requires her continued exclusion from the Courthouse bargaining unit.

Noting that the Deputy Treasurer position is currently in the Courthouse bargaining unit and that no job description exists for the position of Chief Deputy Treasurer, the County concludes that the Union's request for the inclusion of the position of Chief Deputy

Treasurer presents "no justiciable controversy." Because "(i)t is idle speculation whether a Chief Deputy Treasurer position will be created" it follows, according to the County, that the Commission can express no opinion on this position.

Beyond this, the County contends that 11(t)he positions of Administrative Law Clerk, Chief Deputy Clerk, Chief Deputy Clerk of Courts, Juvenile Court Worker, and Chief Deputy Register of Deeds should be excluded because the Union has agreed to their exclusion from the unit in the past." All of these positions, with the exception of Chief Deputy Register of Deeds, existed at the time of the Commission's certification of the Courthouse unit, yet none of the occupants of those positions has ever been deemed a part of that unit. The County summarizes the background to this point thus:

. . . of the five positions at issue herein, two were excluded from the unit prior to the election, two were mutually agreed to be excluded after the election, and one . . . was created after the election but no request was made for the inclusion of that position into the unit.

With this as background, the County concludes that "the Union has waived the inclusion of the positions in the unit." Noting that the County does not dispute the community of interest between these five positions and those included in the Courthouse unit or claim that the inclusion of these positions would impact the Union's majority status, the County contends that Commission case law establishes that the Union's previous agreement to exclude the positions precludes any unit clarification where the earlier exclusions "do not violate the statute."

Beyond this, the County contends that the Commission can not make any determination regarding the placement of the Juvenile Court Worker into the Law Enforcement unit. Noting that this issue was first asserted at hearing, the County contends that "lack of notice to the County of the issue, and . . . due process considerations" preclude any Commission action on this point.

The County concludes its argument thus:

(T)he unit clarification petition should be dismissed. Alternatively, if the Commission does proceed with the petition, Geri Myers should be excluded from the unit as a supervisory/managerial employee and Sharee Severson should be excluded as a confidential employee.

## DISCUSSION

The broadest area of dispute in the present matter concerns the County's assertion that the Union has waived its right to have certain of the disputed positions included in the Courthouse Unit. This assertion potentially affects six of the seven positions sought by the Union. The assertion is, essentially two-fold. The first aspect concerns whether the Union has waived any right to claim the disputed positions, while the second concerns whether the parties have agreed to the exclusion of certain positions and whether that agreement should be altered by the Commission.

"Waiver" has been defined as "(t)he intentional or voluntary relinquishment of a known right . . . or such conduct as warrants an inference of the relinquishment of such right." 3/ The right of an employer or labor organization to request a unit clarification has been recognized by the Commission "as an adjunct of our jurisdiction over representation disputes under Section 111.70(4)(d). . ." 4/ The Commission has not been receptive to assertions of waiver of this right in past cases. In Walworth County, the Commission noted that: "neither an existing collective bargaining agreement and the associated question of timeliness . . . nor the original certification of the unit . . . bars clarification and amendment proceedings." 5/ In City of Milwaukee, the Commission stated its unwillingness to use a waiver analysts in broader terms:

It is true that since the issuance of original certification, when these positions were not excluded as professionals, the job content of the positions has not changed. However, the positions in question were not challenged in the earlier lengthy proceedings, and one purpose of clarification proceedings is to determine questions of this nature which were overlooked or

---

3/ Black's Law Dictionary, Revised Fourth Edition, (West, 1968).

4/ City of Green Bay, Dec. No. 12682 (WERC, 5/74) at 3.

5/ Dec. No. 11686, 9394-A (WERC, 3/73) at 4.

otherwise not raised at the time of the original proceedings. 6/

The Commission's unwillingness to limit the availability of unit clarification proceedings on the basis of waiver has extended to both employer and labor organization petitions. 7/ This unwillingness reflects the purpose of the unit clarification process, which the Commission has stated thus:

Unit clarification proceedings . . . are conducted by the Commission . . . to provide an orderly impartial proceeding for the review of collective bargaining units. This is done in order to relieve labor organizations and Municipal Employers of an area of dispute. 8/

Thus, the Commission has sought to broadly make the unit clarification process available, and has been unreceptive to asserted waivers of that right. The present record offers no persuasive basis to depart from this view.

Waiver turns on the conduct of one party, and as noted above, the County has asserted not only that the Union has waived its right to a clarification but also that the parties have reached certain understandings on the positions in dispute which must be upheld by the Commission. The County accurately argues that there are circumstances in which the Commission will honor parties' agreements to exclude certain C)positions from the unit. 9/ In City of Sheboygan (Water Department), we held:

(T)he Commission will not alter the voluntarily agreed upon composition of a bargaining unit over the objection by one of the parties to said agreement unless:

1. The position(s) in dispute did not exist at the time of the agreement; or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential etc. or
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act. 10/

The agreement pointed to by the County focuses on the eligibility determinations reached by the parties prior to the 1979 election, and two agreements to exclude positions reached by the parties after the 1979 election. Neither the Chief Deputy County Treasurer nor the Chief Deputy Register of Deeds positions existed at the time of the 1979 election, or were addressed by agreement of the parties. Thus, the first criterion of Sheboygan applies, and a unit clarification on these positions is not barred by an agreement by the parties. Findings of Fact 5 and 7 from the Commission's decision directing the 1979 election establish that the parties agreed to exclude the Highway Office Manager and Chief Deputy County Clerk of Courts positions from the bargaining unit based on the managerial, supervisory or confidential nature of those positions. Thus, the second criterion of Sheboygan applies, and a unit clarification on these positions is not barred by the parties' agreement. The remaining three positions are each covered by the third criterion of Sheboygan. The County asserts that the Chief Deputy County Clerk position has acquired confidential responsibilities beyond those possessed by Novey in 1979. The Union argues that the addition of Bailiff duties has materially changed the position of Juvenile Court Worker. 11/

6/ Dec. No. 6960-F (WERC, 1/70) at 4.

7/ See Sheboygan County, Dec. No. 8256-E (WERC, 4/70).

8/ City of Green Bay, Dec. No. 12682 (WERC, 5/74) at 3.

9/ West Allis-West Milwaukee School District, Dec. No. 16405-C (WERC, 1/89); Stevens Point School District, Dec. No. 7713-A (WERC, 8/89).

10/ Dec. No. 7378-A (WERC, 5/89) at 6. Citations omitted.

11/ As Finding of Fact 5 demonstrates, the basis for the exclusion of the position of Juvenile Court Worker/Bailiff is not clear. It appears the parties at one point viewed the occupant of the position as an eligible voter.

Beyond this, the Union argues that the original agreement to exclude the Administrative Law Clerk from the Courthouse Unit turned on the collective bargaining responsibilities of the District Attorney, and such responsibilities no longer exist.

In sum, the Union can not be considered to have waived its right to petition to clarify the Courthouse Unit, and the agreements reached by the parties regarding the unit placement of the positions at issue here are not considered under the Sheboygan criteria to bar a Commission determination.

Because the County does not dispute that the positions of Administrative Law Clerk, Chief Deputy County Clerk of Courts, or Chief Deputy Register of Deeds share a community of interest with Courthouse Unit employees, it follows that their inclusion in the Courthouse Unit is appropriate.

The remaining four positions present further issues. The conclusion reached above would permit the inclusion of the Juvenile Court Worker in the Courthouse Unit. Bailiff duties have, however, been added to that position, and those Bailiff duties include the power of arrest. A., the Findings of Fact demonstrate, the line between Schwarz's Bailiff and Juvenile Court Worker roles is not necessarily clear, for she has been asked to arrest juveniles. Since the Commission does not place employees with the power of arrest in bargaining units of employees who do not possess the power of arrest, 12/ it follows that the position of Juvenile Court Worker/Bailiff can not be included in the Courthouse Unit. Because the issue of possible placement in the Sheriff's unit arose at the day of hearing and as a surprise to the County, it would be improper to make any determination on the position's placement in the Sheriff's department unit in this proceeding. 13/ Accordingly, our Order entered above holds only that the position of Juvenile Court Worker/Bailiff is not included in the Courthouse Unit.

The County persuasively asserts that the Union's request for inclusion of the position of Chief Deputy County Treasurer presents no justiciable issue. It is axiomatic that for the Commission to place a position in a bargaining unit, such a position must exist. The record does not establish the existence of a position of Chief Deputy County Treasurer. There is no employee occupying such a position, and no job description to establish it. There is no evidence that the County Board has authorized the creation of such a position. Nor can the asserted offer of a reclassification be seen as a basis to permit a Commission order on the point in this proceeding. In sum, the County correctly asserts that the record poses no issue regarding the position of Chief Deputy County Treasurer which can be acted upon by the Commission in this proceeding.

The parties' dispute regarding the remaining two positions presents more conventional issues of unit placement. The County, contrary to the Union, asserts that the Chief Deputy Clerk is a confidential position. The Commission has noted that the confidential exclusion protects a municipal employer's right to conduct its labor relations through employees whose interests are aligned with those of management, rather than risk having confidential information handled by someone with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. 14/ The Commission has stated the test to determine confidential status thus:

In order for an employee to be considered a confidential employee and thereby excluded from a bargaining unit, the Commission has consistently held that such an employee must have access to, knowledge of, or participate in confidential matters relating to labor relations. Information is confidential if it is the type that (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations, and (2) is not available to the bargaining representatives or its agents. 15/

The Commission has also held the following:

The Commission has . . . held that a de minimus exposure to confidential labor relations material generally is insufficient grounds for excluding an employee from a bargaining unit. However, if the person in question is the only one available to perform such confidential

12/ Manitowoc County, Dec. No. 25851 (WERC, 1/99).

13/ See, generally, General Electric Co. v. WERC, 3 Wis.2d 227 (1958). However, given the existing Sheriff's Department unit and the Bailiff's power of arrest status, it appears this position properly belongs in the Sheriff's Department unit unless it is a supervisory, managerial or confidential position.

14/ Dane County, Dec. No. 22976-C (WERC, 9/88).

15/ Ibid., at 6.

duties, then that person is a confidential employee who, as such, must be excluded from the bargaining unit. 16/

Discussion of the position at issue here is complicated by the fact that the Commission determined that one of Severson's predecessors, Alene Novey, did not function as a confidential employee. The Commission has noted that its previous determination on unit placement issues "is entitled to great weight unless some material change is shown to have occurred in the interim." 17/ In the present matter, such material changes are apparent. The Commission's findings in Dec. No. 16931 state "a clerical employe within the County Clerk's office" typed the notes of the then incumbent County Clerk. It now appears that Severson is the employe who types such notes, and further that she does so for the entire Personnel Committee at all times, including during collective bargaining. Severson also types confidential labor relations correspondence from the County to its outside labor counsel and collects data in preparation for bargaining. Given the foregoing duties and Severson's status as the sole non-unit employe who performs, or is available to perform, such duties, it follows that Severson should be excluded from the Courthouse Unit as a confidential employe.

In determinining if a position is supervisory, the Commission considers the following criteria:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 18/

Not all of these criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described above are present in sufficient combination and degree to warrant the conclusion that the position is supervisory. 19/

Myers' has effectively recommended the hire of Boylen and her two predecessors. She trained Boylen and assigns her duties, but Boylen's work is of such a nature that little specific assignment is necessary. If Boylen's work was unsatisfactory, Myers would take corrective action and has the independent authority to issue verbal or written reprimands to Boylen. Boylen is the sole employe Myers must supervise, and Boylen is also under the Commissioner's supervision. Myers is a salaried employe, and receives no premium payment for working outside of her regular hours. She is paid more than Boylen on an annual and on a per hour basis, but there is no persuasive evidence to indicate this difference is primarily to compensate Myers for supervising Boylen. Given the nature of the work involved, and the limited amount of oversight Boylen requires, it is more likely that Myers receives the majority of the additional compensation for her skill and her overall responsibilities than for supervising Boylen. The bulk of Myers' time is spent in the performance of her own duties. She has the independent authority to approve Boylen's leave requests.

On balance, we are satisfied her position is supervisory, and thus should remain excluded from the Courthouse Unit.

Dated at Madison, Wisconsin this 27th day of September, 1989.

16/ Town of Pewaukee, Dec. No. 20759 (WERC, 6/83) at 7.

17/ City of Milwaukee, Dec. No. 6960-J (WERC, 5/89) at 9.

18/ Door County, Dec. No. 24016-A (WERC, 3/88) at 9.

19/ Ibid.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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