

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

Involving Certain Employes of

LAFAYETTE COUNTY

Case 13
No. 47853
ME-3255

Decision No. 17260-G

Appearances:

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, 1734 Arrowhead Drive, Beloit, Wisconsin 53511-3808, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Brennan, Steil, Basting & MacDougall, S.C., by **Attorney Howard Goldberg**, 22 East Mifflin Street, Suite 400, Madison, Wisconsin 53701-0990, appearing on behalf of Lafayette County.

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

Wisconsin Council 40, AFSCME, AFL-CIO on April 18, 1999, filed a petition with the Wisconsin Employment Relations Commission seeking clarification of a bargaining unit comprised of certain employes of Lafayette County by including therein the Chief Deputy County Clerk. The County opposes the petition by contending that the Chief Deputy County Clerk is a confidential employe who must continue to be excluded from the bargaining unit.

No. 17260-G

Hearing was held in Darlington, Wisconsin, on January 21, 2000, before Examiner Amedeo Greco, a member of the Commission's staff. Both parties filed initial briefs and the County filed a reply brief on March 29, 2000. Council 40 advised the Examiner on May 8, 2000, that it was not filing a reply brief.

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

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization that maintains its principal offices at 8033 Excelsior Drive, Madison, Wisconsin.

2. Lafayette County, herein the County, is a municipal employer that maintains its principal offices at 626 Main Street, Darlington, Wisconsin.

3. Following the results of a representation election conducted by the Commission in November 1979, the Union became the certified bargaining representative for the following bargaining unit as described in the Commission's Certification of Results of Election:

“all regular full-time and regular part-time employes of the Lafayette County Courthouse and related departments, including professional Social Workers employed in the Lafayette County Social Services Department, professional Registered Nurses employed in the Lafayette County Nursing Agency, professional employes of the Unified Services, and professional accountants employed in the County Clerk's office, but excluding supervisory, confidential, craft, law enforcement employes, blue collar Highway Department employes, and employes of the Lafayette County Home and Lafayette County Hospital.”

4. The disputed position of Chief Deputy County Clerk, then occupied by Arlene Kluesner, existed at the time of the Union's certification in November, 1979. Her position at that time was excluded from the bargaining unit because both parties agreed that she was a confidential employe. Kluesner remained the Chief Deputy County Clerk until November, 1999, during which time she was excluded from the bargaining unit because of her confidential duties. Kluesner was replaced by Carla Jacobson, the current Chief Deputy County Clerk, who took over in October, 1999. Jacobson had worked in the County Clerk's office since 1995 as an Assistant Deputy Clerk, during which time she was in the bargaining unit.

The County Clerk's office presently has two full-time employes, County Clerk Bowden and Chief Deputy Clerk Jacobson, and one part-time employe.

5. Up until January, 2000, there was no formal job description for the Chief Deputy County Clerk position. The County in January, 2000, created the following job description for the Chief Deputy County Clerk:

POSITION SUMMARY:

The Chief Deputy County Clerk shall aid in the performance of the duties of the County Clerk under the County Clerk's direction, and in the case of the absence or disability of the County Clerk or of a vacancy of the County Clerk position, unless another is appointed, shall perform all of the duties of the County Clerk during the absence or until the vacancy is filled. These duties are secretarial, accounting, budget, personnel administration, acting as an agent of the state in matters concerning elections, issuing marriage and D.N.R. licenses, and other miscellaneous statutory responsibilities relating to legal actions, tax deeds, and contracts as required under Wisconsin State Statute No. 59.23(2). Due to performing these statutory duties in a small office, the Chief Deputy Clerk is a managerial/supervisory non-union position.

The Chief Deputy County Clerk is also designated as the County Personnel Coordinator in conjunction with the County Clerk. Duties will include, without limitation, preparation of correspondence, memoranda, filing and minutes which include information related to the County's relations with its collective bargaining units, including information which is withheld from the union for bargaining purposes. Duties shall also include dealing with supervisors and department heads regarding personnel matters of all types including hiring, discipline, grievance handling. The Chief Deputy County Clerk is to have familiarity and understanding of the County Personnel Code and with each of the labor agreements between the county and the various unions that represent county employees.

The County Clerk has the statutory right under Wisconsin State Statute 59.23(1) to appoint a person to the position of Chief Deputy Clerk. The County Clerk also has the right to discharge a Chief Deputy Clerk.

DUTIES AND RESPONSIBILITIES:

The duties and responsibilities described below are to be performed by the Chief Deputy County Clerk. Other duties may be assigned as required.

1. Assist the County Clerk in election duties such as publishing notices of elections, preparing and distributing ballots, supervising the canvass and returns, and certification of results.
2. Issuance of marriage and D.N.R. licenses.
3. Distribute dog licenses and tags to local officials.
4. Assist the County Board as needed.
5. Collect and maintain confidential drug testing documents. In the absence of the County Clerk or, at the direction of the County Clerk, notify and assist supervisors of applicable employees when drug testing problems are found.
6. Perform computer input of general vouchers for the county.
7. Assist the County Clerk in pre-auditing of bills and other county expenditures.
8. Do filing as necessary.
9. Type correspondence, forms, letters, and perform other clerical support for the County Clerk, County Board, and Personnel Coordinator including the handling of information pertaining to the County's strategy and positions in collective bargaining and relations with its bargaining units.
10. Act as the clerical and paraprofessional support staff person designated at this time for confidential labor relations matters involving Lafayette County and its bargaining units.
11. Reconcile the D.N.R. license accounts.
12. File all Senate and Assembly bills.
13. Perform such other administrative duties as may be required.

14. Perform all of the duties of the County Clerk in his/her absence and represent the County Clerk to the public. This would include attendance at meetings, in the absence of the County Clerk of the County Bargaining Committee, the County Grievance Committee, the County Finance Committee, the Building and Insurance Committee and such other county committee meetings as are normally attended by the County Clerk.
15. Assign duties to other deputy clerks as they may be hired; participate in their hiring and evaluation; and accept their grievances and attempt to resolve them at the first step of the grievance procedure.
16. Assist the County clerk in the preparation of the budget for the Clerk's Office and implement the Clerk's policies in the office.

REQUIRED TRAINING AND WORK EXPERIENCE:

1. High school diploma, or equivalent degree required; a minimum of an Associate Degree in business or a combination of work experience and training equivalent to two years of increasingly varied and complex office experience.
2. Ability to input on the computer accurately and at a minimum of 60 w.p.m.
3. Knowledge of word processing and spreadsheet programs.
4. Ability to establish working relationships with county officials, department heads, employees, and the general public, including the ability to maintain confidentiality of information concerning the County's position in labor relations.
5. Ability to work independently.
6. General knowledge of basic bookkeeping.
7. Excellent written and verbal communication skills.

Said job description accurately mirrored the job duties formerly performed by Chief Deputy Clerk Kluesner and, but for not processing vouchers on a computer, it accurately represents the duties presently being performed by Chief Deputy County Clerk Jacobson.

6. The incumbent County Clerk, Linda Bowden, took office in January, 1999, and reorganized the County Clerk's office. As part of that reorganization, Sandy Russell, who had been an Assistant Deputy Clerk and who had been in the bargaining unit, was transferred from the County Clerk's office to a newly-created County finance department where she now works as a confidential employe. There, Russell helps cost out contract proposals made in collective bargaining between the County and various unions and communicates with the County's outside labor counsel as to such matters.

Attorney Goldberg, acting on behalf of the County, informed Union Representative Thomas Larsen by letter dated December 18, 1998, that the County considered Russell to be a confidential employe because she now helps cost the County's bargaining proposals in contract negotiations and because she deals with Attorney Goldberg on confidential labor relations matters. Goldberg's letter did not mention Jacobson or her bargaining unit status.

Larsen by letter dated December 30, 1998, replied that the Union would agree to the County's representation that Russell should be excluded from the bargaining unit because she was a confidential employe and he then asked for the status of the other employes who remained in the County Clerk's office. Goldberg informed Larsen in an April 7, 1999, letter that the County considered Chief Deputy Clerk Jacobson to be a confidential employe because he, Goldberg, expected to deal with her on confidential labor matters on behalf of the County.

7. Like her predecessor Kluesner, Jacobson has regular, ongoing communications with the County's Attorney, Howard Goldberg, relating to the County's labor relations. In her capacity as co-County Personnel Director, she responds to questions from County management personnel as to how a labor contract provision might apply to a fact situation. She also reviews County Clerk Bowden's correspondence relating to confidential bargaining matters and she has typed the confidential minutes of the County's bargaining committee.

Jacobson fills in for the County Clerk when she is absent and she is expected to attend confidential monthly meetings of the County Board's bargaining committee when Bowden is absent. There, personnel matters are discussed, as are any grievances. Jacobson (and the County Clerk), have access to confidential personnel files which are kept in the County Clerk's office.

Jacobson has not attended any management meetings where grievances were discussed; she has not attended any closed County Board meetings where personnel matters were discussed; and she has not been involved in preparing any collective bargaining proposals on behalf of the County.

8. Chief Deputy County Clerk Jacobson has sufficient access to, knowledge of, and participation in confidential labor relations matters to be a confidential employe.

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

CONCLUSION OF LAW

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

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

ORDER CLARIFYING BARGAINING UNIT

The Chief Deputy County Clerk shall continue to be excluded from the collective bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of July, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

LAFAYETTE COUNTY

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

POSITIONS OF THE PARTIES

The Union contends that Chief Deputy County Clerk Jacobson should be included in the bargaining unit because the County “is seeking to unduly fragment the confidential duties” by doubling the number of employees it deems confidential; because Jacobson does not possess sufficient *indicia* of confidential status; because Jacobson “has only minimal involvement in labor matters”; and because there “is no basis to believe that this small amount of work could not have been performed by. . .” Russell who works in the finance office. The Union also argues that the County “cannot have it both ways” by first claiming that Russell must be excluded from the bargaining unit because it transferred the responsibilities for labor relations out of the County Clerk’s office to the finance office and then claiming here that “the labor functions remained in the County Clerk’s office.”

The County contends that Jacobson is a confidential employee because “virtually nothing has changed since 1979” when the parties first agreed to exclude former Chief Deputy Clerk Kluesner from the bargaining unit because of her confidential duties and because Jacobson is now performing almost all of the duties formerly performed by Kluesner. The County also asserts that Jacobson performs sufficient confidential duties to warrant her exclusion from the unit and that it is impractical to transfer her confidential duties to Russell who works in a separate office.

DISCUSSION

The Commission has held that a confidential employee must participate in matters involving the consideration of confidential information relating to labor relations, or must have access to or knowledge of confidential information 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 unavailable to the bargaining representative. GREEN BAY SCHOOL DISTRICT, DEC. NO. 17706-B (WERC, 1/00); CRAWFORD COUNTY, DEC. NO. 16931-B (WERC, 9/89); NICOLET AREA TECHNICAL COLLEGE, DEC. NO. 23366-C (WERC, 3/93). A *de minimis* exposure to confidential materials is generally insufficient grounds for excluding an employee from a bargaining unit. BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87).

In 1998, the County Clerk's office had four full-time employees (Chief Deputy Clerk Kluesner, Assistant Deputy Clerk Jacobson, Assistant Deputy Clerk Russell and Assistant Deputy Clerk Golly) in addition to the County Clerk. Chief Deputy Clerk Kluesner was excluded from the bargaining unit as a confidential employee. Jacobson, Russell and Golly were in the bargaining unit.

The County then reorganized the County Clerk's office by moving Russell and Golly to a newly created finance department. Based on Russell's responsibility for costing collective bargaining proposals and communicating with outside labor counsel who bargains collective bargaining agreements on behalf of the County, Russell was removed from the bargaining unit as a confidential employee.

In November, 1999 Kluesner retired and was replaced by Jacobson as Chief Deputy Clerk. At present, the County Clerk's office consists of one full-time employee (Jacobson) and one part-time employee in addition to the County Clerk.

The present newly elected County Clerk (Bowden) concluded that the labor relations and personnel responsibilities of the County Clerk's office (which functions as the de facto personnel department for the County) should be less centralized and thus more evenly distributed between the County Clerk and Chief Deputy County Clerk than was the case under her predecessor. Wishing to insure that these functions would continue to be competently handled when she is absent or when she leaves office due to electoral defeat or retirement, Bowden has chosen to increase the Chief Deputy Clerk's involvement in labor relations matters. Thus, for instance, Chief Deputy Jacobson fields questions from County management personnel as to how a bargaining agreement might apply to a fact situation and discusses labor relations issues with the County's outside labor counsel.

The Union contends that the County has inappropriately fragmented the confidential labor relations work and could reasonably be expected to consolidate these functions in the finance department with Russell. It argues that there is no persuasive basis for allowing the County to expand the number of confidential employees from one to two. If the extent of Jacobson's confidential duties was limited to typing committee minutes and filling in for the County Clerk at meetings when she is absent, the Union's argument would have substantial merit. However, as discussed earlier herein, Jacobson's confidential role is much more substantial. Pursuant to the good faith decisions of an elected official and the County, Jacobson's role goes well beyond clerical responsibilities and finds her serving as a resource person for management employees/outside counsel on confidential labor relations matters. In this context, we are persuaded that Jacobson has more than a de minimus amount of confidential work and that the confidential roles of Russell and Jacobson cannot reasonably be consolidated.

Given all of the foregoing, we conclude that Jacobson is a confidential employe.

Dated at Madison, Wisconsin this 19th day of July, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

