

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MILWAUKEE DISTRICT COUNCIL	:	Case LXIII
48, AFSCME, AFL-CIO	:	No. 26946 ME-1924
	:	Decision No. 18304-C
Involving Certain Employees of	:	
	:	
CITY OF GREENFIELD	:	
	:	

Appearances:

Mulcahy & Wherry, S.C., by John M. Loomis, Suite 1600, 815 East Mason Street, Milwaukee, Wisconsin 53202, appearing on behalf of the City.
 Podell, Ugent & Cross, S.C., by Nola J. Hitchcock Cross, Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Union.

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

City of Greenfield, having on April 10, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its clerical employees, by determining whether the positions of Bookkeeper, and, Clerk of the Municipal Court should be excluded from said unit, which unit is presently represented by Council 48, AFSCME, AFL-CIO, and a hearing in the matter having been conducted at Greenfield, Wisconsin on July 16, 1981, by Stuart S. Mukamal, a member of the Commission's staff; 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, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the City of Greenfield, hereinafter referred to as the City, is a municipal employer, having its offices at 7325 West Forest Home Avenue, Greenfield, Wisconsin.

2. That Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; and, that on February 19, 1981, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of the following employees of the City: 1/

All regular full-time and regular part-time clerical employees in the City Hall, Fire Department and Police Department, excluding the Deputy City Clerk, Secretary to the Director of Public Works, Secretary to the Police Chief and all supervisory, professional, confidential and managerial employees.

3. That the City, on April 10, 1981, initiated the instant proceeding by the filing of a petition requesting the Commission to clarify the above described unit by excluding the positions of Bookkeeper, as well the Clerk of the Municipal Court therefrom, which positions were previously included in said unit pursuant to a stipulation to the election resulting in the certification previously set forth herein; and, that the City, contrary to the Union, seeks to exclude the Bookkeeper on the claim that the position is confidential, and, to exclude the Clerk of the Municipal Court on the claim that the position either is confidential/managerial, or, lacks a community of interest with the employees in the unit.

1/ City of Greenfield (18304-B) 2/81.

4. That the Bookkeeper, in addition to other duties, prepares the City payroll; audits City accounts, including the review of payments for traffic tickets which requires access to Court files; verifies employment of City employes upon request, prepares employe wage statements upon request of the employe; operates a bookkeeping machine and posts journal entries; prepares the City's monthly financial statements; assembles Fire Fighter promotional tests; assists the Police Chief and Fire Chief in the preparation of their respective departmental budgets; attends closed hearings concerning departmental and City budgets; monitors employe addresses and sick leave use, pursuant to instructions to report possible abuse of sick leave or residency policies to department heads; projects costs of salaries and fringe benefits for use in the preparation of budgets and for collective bargaining; and, extracts from personnel files information concerning employe wage deductions, residency, sick-leave excuses and insurance assignments.

5. That in 1981 the Bookkeeper and the City Accountant recommended to the City that it amend its collective bargaining agreements covering City employes to conform to statutory requirements for the administration of worker's compensation, and that as a result of such recommendations, the City entered into discussions with the Union, resulting in amendments to the collective bargaining agreement with respect to the administration of worker's compensation benefits.

6. That the Bookkeeper performs a de minimis amount of work involving confidential labor relations matters between the City and the Union; and that the City Accountant, a non-represented employe, is available to perform such duties.

7. That the Clerk of the Municipal Court, inter alia performs the following duties: maintains court files and records; attends and records Court proceedings, including those closed to the public; prepares the Court calendar and notifies parties of appearance dates and cancellations; types court correspondence and documents, including warrants and judicial orders; receives, records, transfers and refunds payments for bail and fines; prepares municipal court reports; opens mail addressed to the Court; receives documents filed with the Court; processes paperwork in connection with requests for the substitution of judges, demands for jury trial, and, appeals to circuit court; notifies the State Division of Motor Vehicles of the disposition of traffic cases; provides information and assistance to defendants who are required to enroll in traffic safety school, or to submit to alcohol assessment; monitors compliance with judgments; orders office supplies and prepares payment vouchers for the judge's signature; and, signs documents and orders in her official capacity of Clerk of Court.

8. That the duties of the Clerk of Municipal Court are, for the most part, routine in nature, and are performed pursuant to statutory directives and instructions of her supervisor, the Municipal Judge; that said Clerk does not participate to a significant degree in the formulation, determination and implementation of management policy, does not have authority to either establish the budget for the Municipal court, or to authorize payment therefrom, and, thus, does not possess effective authority to commit the City's resources; that the Clerk of the Municipal Court does not perform any duties which involve confidential labor matters; and that based on the nature of the duties performed by the Clerk of Municipal Court, the occupant of said position shares a significant community of interest with the employes in the existing "clerical" bargaining unit.

CONCLUSIONS OF LAW

1. That, since the position of Bookkeeper is not confidential, the occupant of said position is a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the position of Clerk of Municipal Court is neither a confidential nor a managerial position, and therefore, the occupant of that position is a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and that said position shares a sufficient community of interest with clerical employes in the bargaining unit so as to warrant the continued inclusion of said position in said unit, within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT

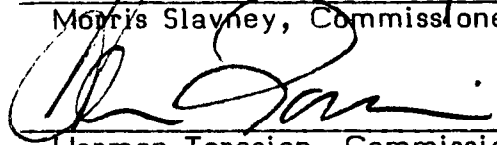
That the positions of Bookkeeper and Clerk of Municipal Court be, and hereby remain included in the appropriate collective bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin this 31st day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

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

The City contrary to the Union, would exclude the positions of Bookkeeper, as well as Clerk of Municipal Court from the collective bargaining unit represented by the Union on the basis that the Bookkeeper is a confidential employe, and, that the Clerk of Municipal Court is a confidential and/or managerial employe lacking a community of interest with the other unit employes.

The Municipal Employment Relations Act (MERA) expressly excludes, inter alia, confidential and managerial employes from the definition of "municipal employe". As a result of this exclusion, such employes can not be included in any collective bargaining unit. Since the Commission has the statutory duty to determine which employes are confidential or managerial, the parties cannot, by stipulation, preclude the Commission from exercising its statutory duty. The City's petition is, therefore, proper despite the stipulation leading to the certification of the unit.

The City argues that the Commission should expand the definition of confidential employe to include all employes who have access to information not available to the general public, regardless of the relevance of that information to labor relations matters. The Commission has consistently held that employes are excluded as confidential by reason of their participation in the employer's labor relations function and their access to sensitive labor relations information which would not normally be available to the union. 2/ Confidentiality, in any other sense of the term, is irrelevant to the determination of "confidential" status under MERA.

Bookkeeper

The record establishes that the Bookkeeper recommended to the City that the language in its collective bargaining contracts with its represented employes be amended to conform to statutory procedures for the administration of worker's compensation benefits, and that the contracts were subsequently amended to conform to said statutory procedures. Contrary to the City's assertion, however, such a recommendation does not indicate access to sensitive labor relations information, nor is it privileged participation in the City's labor relations function. First, the information imparted to the City, i.e., the statutory procedure for processing such compensation claims, was a matter of public record. Secondly, the Bookkeeper acknowledged that she was not aware of any bargaining proposals which the City drafted as a result of her recommendation, but rather, she assumed the changes were made in order that the contracts would conform to state law.

The City also contends that there is a conflict of interest between the Bookkeeper's status as a unit member and her duty to report suspected employe violations of the residency and sick leave programs to supervisors. The City asserts that such a conflict of interest is sufficient to warrant the Bookkeeper's exclusion as a confidential employe. Although the Bookkeeper does monitor employe records for potential abuse of sick leave and residency requirements, she does not determine if such abuse has occurred, nor does she either recommend disciplinary action stemming from such abuse or participate in any subsequent disciplinary proceeding. Any conflict of interest is, therefore, de minimis and does not warrant exclusion of the Bookkeeper from the unit as a confidential employe.

The City also argues that the Bookkeeper should be excluded from the unit as a confidential employe on the basis that she has access to personnel files, attends closed budget hearings, and performs duties substantially similar to those of the City Accountant, a non-represented employe. However there is no evidence that, as a result of these duties, the Bookkeeper is privy to any sensitive information with respect to labor relations between the City and the unions representing City employes.

2/ Waukesha Jt. School District No. 1, (10823-A), 3/30/81. Kenosha County (Assistant Attorney's Association), (15371), 3/22/77.

The City further argues that the Bookkeeper prepares wage and fringe benefit projections for use in collective bargaining. Inasmuch as the data upon which the projections are based, i.e., current employe wages and fringe benefits costs, are a matter of public record such information is not confidential. Furthermore, such cost projections occupy a de minimis amount of the Bookkeeper's time and could be prepared by the City Accountant.

For the foregoing reasons, the Commission concludes that the Bookkeeper is not a confidential employe within the meaning of the MERA.

Clerk of Municipal Court

The City argues that the Clerk of Municipal court attends juvenile court proceedings and has access to juvenile court files, and therefore, is a confidential employe. Although the record establishes that the juvenile court proceedings and files are closed to the general public, such "confidentiality" is not relevant to the determination of status as a confidential employe under the Municipal Employment Relations Act. The record demonstrates that the Clerk of Municipal Court neither participates in the City labor relations functions, nor, has access to sensitive labor relations information.

The City contends that the Clerk of Municipal Court is a managerial employe since she is the sole administrator of the Municipal Court, has the authority to prepare the Court budget and to expend monies, and, performs functions which are statutorily reserved to the Clerk of Municipal Court. The Commission has consistently defined a managerial employe as one who participates in the formulation, determination and implementation of policy, or, possesses effective authority to commit the employer's resources. 3/

Although the Clerk functions with minimal supervision by the Municipal Judge, she does not participate in the formulation, determination and implementation of policy. The majority of the Clerk's duties are routine and clerical in nature and are performed pursuant to statutory and judicial directives. The Clerk is statutorily required to affix her signature to a number of court documents. Failure to do so would render the documents null and void. However, the Clerk does not have the lawful authority to refuse to affix her signature to a document which is properly presented to the Court. Contrary to the assertions of the City, the record fails to establish that the Clerk has the authority to exercise discretion in the performance of statutory duties. Although the Clerk has some input into the preparation of the budget, such participation is limited to advising the Judge with respect to the supplies which will be needed in the budget year. The Municipal Judge is responsible for submitting to the Court's budget to the Mayor and the Common Council for their approval. Similarly, while the Clerk has the authority to order routine office supplies, the Judge authorizes payment of all such orders. The record does not support the City's assertion that the Clerk has the effective authority to commit City resources.

The City contends that the Clerk lacks a community of interest with the other bargaining unit employes, and therefore, should be excluded from the unit.

However the Clerk of Municipal Court, inter alia, performs many routine typing, filing and receptionist duties. There is no evidence that these duties differ materially from the clerical duties of other bargaining unit members.

3/ Marquette County, (17681-A, 17682-A), 9/25/81 City of Wausau, (14807), 7/76.

Therefore said Clerk has a sufficient community of interest with the other bargaining unit employes to justify the avoidance of a fragmentation of bargaining units which would occur if the City's position were adopted.

Dated at Madison, Wisconsin this 31st day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Gary L. Coyelli*
Gary L. Coyelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner