

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petitions of :
CITY OF GREENFIELD and LOCAL 2, :
AFSCME : Case 63
Involving Certain Employees of the : No. 48025 ME-598
CITY OF GREENFIELD : Decision No. 18304-G
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Appearances:

Podell, Ugent & Cross, by Ms. Monica Murphy, Attorney at Law, 611 North
Michael, Best & Friedrich, by Mr. Robert W. Mulcahy, 100 East Wisconsin

Broadw
Avenue

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

On August 10, 1992, the City of Greenfield (hereafter, "the City," or "the Employer,") filed with the Wisconsin Employment Relations Commission a petition to clarify a bargaining unit whereby it sought the exclusion of the positions of Court Clerk and Bookkeeper, on the grounds that the positions were supervisory, confidential and managerial. On September 4, 1992, Local 2, AFSCME (hereafter "the Union,") filed with the Commission a petition to clarify the same bargaining unit, whereby it sought the inclusion of the positions of Confidential Secretary in the Assessor's Office and Confidential Secretary to the Director of Public Works, on the grounds that the positions shared a community of interest with existing unit positions. The petitions were consolidated for hearing before Stuart Levitan, a member of the Commission's staff, on December 16 and 17, 1992, and January 26, 1993, in the City of Greenfield. At hearing the Union moved to strike certain testimony due to undue influence, which motion the Examiner denied. The hearings were stenographically transcribed with transcripts being made available to the parties by January 13 and February 10, 1993. The City and Union filed written arguments on March 15 and March 23, 1993, respectively; the City filed a reply brief on April 30, while the Union waived its right to do likewise. Due to a dispute as to the admissibility of certain evidence which the City submitted and later withdrew, the record remained open until June 1, 1993. The Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby makes and issues the following

No. 18304-G

FINDINGS OF FACT

1. The City of Greenfield, hereafter the City or the Employer, is a municipal employer with offices at 7325 West Forest Home Avenue, Greenfield, Wisconsin.

2. Local 2, AFSCME, AFL-CIO, affiliated with Milwaukee District Council 48, hereafter the Union, is a labor organization with offices at 3427 West Saint Paul Avenue, Milwaukee, Wisconsin.

3. The City, a Milwaukee-area suburb of about 35,000 people, employs approximately 210 regular employees, plus approximately 50-75 seasonal and/or casual employees. Police officers are represented by Teamsters Local 695; police supervisors are in a supervisory association; firefighters are represented by the International Association of Fire Fighters; clerical employees and employees of the Department of Public Works are represented by separate AFSCME units; and residual employees are represented by Teamsters Local 200. There are seven City employees excluded from representation on the grounds of confidential status, namely the "confidential secretaries" in the Fire, Police, Engineering, Personnel, Assessor's and Public Works Departments, and the Deputy Treasurer.

4. In February, 1981, the Union was certified as the exclusive representative of a bargaining unit described as follows:

All regular full-time, regular part-time and temporary clerical employees in the City Hall, Fire Department, Police Department, Municipal Court and Health 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.

5. Kathy Kasza is the incumbent Assistant Comptroller/Accountant, a position held by the employer to be newly created and unrepresented, with the following position description:

CITY OF GREENFIELD

JOB DESCRIPTION

ASSISTANT COMPTROLLER/ACCOUNTANT

REPORTS TO: Comptroller/Accountant

PURPOSE OF POSITION: The Assistant Comptroller/Accountant supervises daily operations of the Accounting and Data Processing Departments, maintains computerized financial and payroll systems, and assists in preparing financial reports.

ESSENTIAL FUNCTIONS:

- 1)Supervises daily operations of Accounting and Data Processing Departments relative to staff work assignments and evaluation of work performed.
- 2)Maintains computerized accounting and payroll systems. Prepares payroll and associated reports.
- 3)Prepares bank reconciliations, financial statements and other accounting reports, as requested by the Comptroller/Accountant, Mayor and Common Council.
- 4)Provides budget, payroll and associated confidential personnel information, as required, to appropriate city officials and agents.
- 5)Prepares information, agendas and minutes for the Finance Committee.
- 6)Interfaces with employees in resolving problems related to payroll, personnel issues, and/or budgetary expenditures.
- 7)Assists the Comptroller/Accountant in preparing and monitoring the City budget.
- 8)Attends Common Council, Finance Committee and city staff meetings, as necessary. Represents the City at meetings, conferences and hearings, when required.
- 9)Provides back-up to the Information Systems Specialist in operating the city's computer system.
- 10)Assumes the duties of the Comptroller/Accountant in his/her absence.
- 11)Performs other duties, as assigned by the Comptroller/Accountant.

PHYSICAL DEMANDS OF POSITION

- 1)Standing, walking, sitting and stooping.
- 2)Kneeling, crouching, climbing, balancing and bending/twisting.
- 3)Reaching, feeling, talking and hearing.
- 4)Far vision at 20 ft. or further, and near vision at 20 inches or less
- 5)Lifting, carrying, pushing/pulling: 40 lbs. or less.
- 6)Handling, grasping and fingering: calculator, computer keyboard, etc.

ENVIRONMENTAL/WORKING CONDITION OF POSITION

1) Inside workplace environment.

EQUIPMENT USED:

1) Typewriter, calculator, copy machine, computer terminal, fax machine, telephone and micro-computer.

2) Hand tools, such as hammers, wrenches, screwdrivers, etc.

3) Car.

EDUCATION/LICENSE/CERTIFICATION REQUIREMENTS:

1) Associate's (sic) degree in accounting, or related field, from an accredited college. Knowledge of general accounting principles, payroll and use of micro-computer programs. Prior experience should include a position of a supervisory nature. Bachelor's degree in accounting or related field is desirable.

2) Experience in municipal finance helpful.

KNOWLEDGE AND SKILLS REQUIRED FOR POSITION:

1) Effective communication, oral and written.

2) Read, write, add and subtract.

3) Skill in directing the work and supervision of employees.

4) Working knowledge of office practices and procedures, and skill in their application.

MEDICAL:

Applicants may be required to submit to a medical examination prior to appointment, consistent with requirements of the position, at the discretion of the Personnel Director.

RESIDENCY:

Residency is required within one (1) year after completion of a six-month probationary period, which would be a fifteen (15) mile radius of the City from South 76 Street and West Layton Avenue. Employees hired prior to December 6, 1977 are grandfathered from the residency requirement.

SALARY AND BENEFITS:

Wages and benefits are determined by the current union contract or general non-represented City ordinance in effect. Such benefits as Wisconsin Retirement Fund, health and life insurance, sick days, holidays, vacations, overtime pay and other fringe benefits generally appear in the contract or ordinance.

BACKGROUND:

All applicants may be fingerprinted and a record check made of local, state or federal authorities. A conviction

is not an automatic bar to employment.

Kasza began with the City as part-time bookkeeper in March, 1985; her hours increased from 20 to 30 hours per week in 1986; in February, 1989, she became full-time. Her position description as Bookkeeper was as follows:

JOB DESCRIPTION

BOOKKEEPER or PART-TIME BOOKKEEPER

Desirable Training and Experience :

Graduation from high school with additional coursework in business, office, data processing and accounting is preferred. An associate degree in the accounting field is highly desirable.

Experience in municipal finance, accounting, payroll, and the public budgeting process would be helpful. Additional experience in an automated environment, with knowledge in the use of personal computers and spreadsheets, is beneficial.

The ability to effectively communicate with the public, the staff, and other City departments, is required.

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JOB DESCRIPTION

BOOKKEEPER or PART-TIME BOOKKEEPER

General Nature of the Bookkeeper Position:

Works under the general direction of the City Treasurer/Comptroller, performing duties relating to the maintenance of the municipal accounting system according to generally accepted accounting principles and other required government standards. Assists the City Accountant and the Treasurer/Comptroller in preparing, compiling, and maintaining the annual municipal budget and other financial reports. Knowledge of the payroll system and other health and benefit programs maintained by the City is required. An automated environment exists, requiring data entry, maintenance and retrieval of information on a computerized data base using CRT's, personal computers, and other automated systems. Contact with the general public and other City departments, using effective communication skills, is required. This position deals with confidential personnel, payroll and budget related matters, and should be considered management in nature.

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JOB DESCRIPTION

BOOKKEEPER or PART-TIME BOOKKEEPER

General and Specific Duties:

- 1.) Assist the City Accountant and Treasurer/Comptroller in maintaining the automated general ledger accounting system in accordance with generally accepted accounting principles (GAAP), on the computer, which includes the posting, balancing, and reconciliation of all general and subsidiary ledgers.
- 2.) Assist the City Accountant in maintaining and updating the required fund accounting for the debt service fund, capital equipment fund, public works funds, refuse fund, escrow fund, sinking fund, sewer service fund, and other required fund accounts.
- 3.) Assist in the processing of monthly financial statements and other operating reports as required.
- 4.) Work in maintaining the payroll system, including the processing of the biweekly payroll, and other related payroll reports and records.
- 5.) Assist the City Accountant and Treasurer/Comptroller in preparing, compiling, and maintaining the annual City budget and cash flow forecast.
- 6.) Work in maintaining and monitoring adherence to the City purchase order system, and processing of related

invoices as received.

- 7.) Coordinate and maintain the accounts receivable billing system, including the aging of receivables, and contact with the collection agency as appropriate. Requires the processing of ambulance and false alarm invoices.
- 8.) Assist the City Accountant in maintaining and updating the inventory of fixed assets of municipal projects.
- 9.) Coordinate and assist in the operation and maintenance of computer hardware and software maintained in the Accounting Department, including PC's, CRT's, printers, and spreadsheet applications.
- 10.) Perform computer system operations and activities relating to the Accounting Department, including:
 - a.) Interfacing of year-to-date data files with the general ledger.
 - b.) Back-up of accounting files.
 - c.) Processing system journal entries.
 - d.) Closing of the month's activity, including preparation of trial balances, and revenue and expenditures guideline reports.
 - e.) Data entry of budget information received from various departments.
 - f.) Other related data entry work.
- 11.) Prepare necessary reports, letters and schedules for the Treasurer/Comptroller, through the use of wordprocessing and spreadsheets.
- 12.) Prepare and compile necessary disbursement schedules of various funds for presentation by the Treasurer/Comptroller to the Finance Committee and the Common Council.
- 13.) Attend meetings, seminars, and conferences as authorized in performance of the job.
- 14.) Assist the City Accountant in reconciliation of various bank statements.
- 15.) Assist in maintaining and reviewing account distribution of expenditures and revenue to determine if they are recorded in the proper accounts. Also includes the distribution of payroll to the appropriate accounts.
- 16.) Work with other departments as authorized and directed by the Treasurer/Comptroller, relating to inquiries on the budget, payroll, departmental expenditures, and proper verification of receipts and disbursements.
- 17.) Performs any other related assignments and tasks as directed.

Prior to August, 1990, the City's fiscal and financial affairs were overseen by a Treasurer/Accountant. Upon the retirement of the incumbent at that time, the City separated the two functions, raising the former represented deputies into Acting Treasurer and Acting Controller status. On January 3,

1992, Kasza was herself appointed Acting Comptroller/Accountant. The City hired John Possell as the Comptroller/Accountant in April, 1992, at which time Kasza continued to serve as Acting Comptroller/Accountant, to provide continuity and other services (including signing) related to the financial audit then underway. On November 30, 1992, Kasza was reclassified into the newly created position of Assistant Comptroller/Accountant, at which time her salary was changed from the contractual \$11.62 an hour to an annual \$27,000, as set by ordinance. During the period she served as Acting Comptroller/Accountant, Kasza was paid at the entry level rate for that position. She has a high school diploma and an associate degree in accounting from MATC.

Kasza supervises the Accounting Clerk, Information Specialist, Accounting Student Intern, and a vacant Data Entry Intern position. Kasza assigns and directs the work of the Comptroller's Office staff. Possell and Kasza have the same authority to effectively recommend discipline. During Kasza's tenure in the department there has not been an occasion to discipline or lay off employees. Kasza has the authority to approve vacation and/or disapprove vacation and sick leave requests. Kasza was involved in adjusting a bargaining unit employee's grievance regarding his placement on the salary schedule. Kasza has been involved in interviewing and selecting temporary employees and unpaid personnel such as student interns. She was responsible for initiating and administering a student intern program in which she has had influence over student grades. The City does not have a formal evaluation process for permanent employees. The only evaluation is performed at the end of a new employee's probationary period. Kasza independently performed probationary period evaluations, while serving as Acting Comptroller/Accountant, for two current unit members. These evaluations allowed two current employees to successfully complete probation. While still serving as Bookkeeper, Kasza exercised authority to hire a student intern, who has since become a permanent employee. In January 1991, Kasza interviewed candidates and hired a Data Processing Specialist. She has also been responsible for hiring student interns and other data entry interns. Kasza has attended Personnel and Finance Committee meetings since 1988-1989. Based on established formulas and information received from the Milwaukee Metropolitan Sewerage District, Kasza prepares the initial budget for the Water and Sewer Commission.

As part of the City's budgeting process when collective bargaining agreements are being negotiated, the City places money for contract settlements in various accounts such that the funds are available but not readily apparent to the Unions. To do this the Finance Committee, meeting as the Budget Committee with the Mayor and the Common Council President, have a closed session to determine how much money should be placed in what accounts. Kasza is present for those meetings. Except for participating in these closed sessions, neither Possell nor Kasza have a formal policy-making role in collective bargaining sessions. Kasza has, however, had input in developing City bargaining proposals. This input dealt with uniform allowances, overtime provisions and standardizing various fringe benefits. She recommended changes in time off policies in the police contract, which would have lowered the City's financial obligation. Kasza performs costing functions for labor negotiations. Kasza and the Controller/Accountant are the only two individuals who have full access to the City's entire data base and are aware of the accounts in which collective bargaining monies are placed.

In her capacity of being in charge of payroll, she has the authority and responsibility to interpret and apply rules regarding time cards and time records. Falsification of time records can lead to disciplinary action. Kasza is responsible for notifying department heads about the importance of accurate time records. Kasza herself would not be involved in disciplining employees of other departments for falsifying time records. Kasza has the authority and responsibility to review all time sheets to determine that overtime is paid in accordance with City policies. Kasza applied the policy requiring bargaining

unit members to be in pay status on the day before and after a holiday. Kasza has the authority and responsibility to raise payroll questions with department heads and to take action based on the response. If a department head disagrees with Kasza's payroll interpretation, she will yield to department head. Kasza maintains the City's official sick leave and vacation records for all full-time employees. She routinely checks to make sure that there is available time in appropriate banks. If there is not an adequate balance, Kasza withholds pay. On at least one occasion, she notified the Deputy Chief of Police and Mayor of her belief that a bargaining unit member was improperly receiving both sick leave and call-in pay; she was told to leave the matter alone. Routinely she has to recompute overtime and other pay items. On at least one occasion, she reported to the Mayor that she felt two particular officers were accumulating an extraordinary amount of overtime; the matter was subsequently addressed. In interpreting and applying policies concerning overtime pay, Kasza has had occasion to raise eligibility questions regarding Police Department bargaining unit personnel. These inquiries have resulted in the withdrawal of overtime payment requests. In reviewing payroll activities, Kasza has on at least one occasion (December, 1992) required a Local 2 employee to reimburse the City approximately \$800 for overpayment.

The City holds monthly department head meetings and weekly agenda meetings. Kasza attended these meetings while serving as Acting Comptroller/Accountant. She currently attends these meetings when the Comptroller/Accountant is not able to be present. Kasza has some effective authority to recommend adjustments within line items of her budget, and would have authority to make such adjustments if serving as Acting Comptroller/Accountant. In the absence of the Comptroller/Accountant, Kasza is in charge. The Treasurer is in charge when both the Comptroller/Accountant and Kasza are absent. She attends closed sessions meetings at which personnel and financial matters are discussed. She has appeared as a management witness in an arbitration proceeding brought by Local 2. Kasza has prepared management exhibits for an interest arbitration proceeding. Kasza interacts directly with department heads, alderpersons and the Mayor. Kasza represents the Department at council meetings and committee meetings in the absence of the Comptroller/Accountant.

Kasza was a union steward for one year, participating in bargaining for the 1989-1991 collective bargaining agreement. When Kasza served in a union capacity, she did not have the degree of access to confidential labor relations matters that she has now.

Kasza has sufficient access to and knowledge of confidential labor relations matters to be deemed a confidential employee.

6. The City maintains a Municipal Court, the Hon. Thomas Wilkoski, Municipal Judge, presiding. There are three clerical/support positions -- Court Administrator (formerly Court Clerk), Court Clerk and Typist -- all represented by AFSCME Local 2. The position description adopted by the Common Council on October 22, 1992, identifies the duties and responsibilities of the Court Administrator as follows:

CITY OF GREENFIELD

JOB DESCRIPTION

COURT ADMINISTRATOR

REPORTS TO: Municipal Judge

PURPOSE OF POSITION: Under direction of the Municipal Judge, the Court Clerk (sic) is responsible for the administration, supervision and management of the

Municipal Court. Also assists the Municipal Judge in performing his/her statutory duties.

ESSENTIAL FUNCTIONS:

- 1) Knowledge of modern office practice and procedures, and skilled in their application. Good knowledge of business English, spelling and composition.
- 2) Data entry. Ability to type 50 wpm, operate the department computer and word processor, and take shorthand at 80 wpm.
- 3) Responsible for follow-up on case records, including correspondence.
- 5) Records in-court proceedings, findings and orders.
- 6) Responsible for maintaining confidentiality in interviews and making recommendations for new hires.
- 7) Responsible for matters of a confidential nature, such as discipline, and layoff, rehire, suspension and discharge recommendations to Municipal Judge.
- 8) Follows directive of Municipal Judge to rehire, (sic) suspend and discharge employees.
- 9) Receives employee complaints and handles grievances in a confidential manner in the absence of Municipal Judge.
- 10) Prepares annual budget, and compiles monthly and quarterly financial and statistical reports.
- 11) Coordinates, assigns and evaluates work of Municipal Court personnel.
- 12) Establishes office procedures and designs computer forms and reports.
- 13) Approves all department purchases.
- 14) Attends meetings with and on behalf of the Municipal Judge.
- 15) Maintains time cards of Municipal Court employees.
- 16) Performs other duties, as assigned by supervisor.

PHYSICAL DEMANDS OF POSITION:

- 1) Standing, walking, sitting and stooping.
- 2) Kneeling, crouching, climbing, and bending/twisting.
- 3) Reaching, feeling, talking and hearing.
- 4) Far vision at 20 ft. or further, and near vision at 20 inches or less
- 5) Lifting, carrying, pushing/pulling: 10 lbs. or less.

6)Handling, grasping and fingering: filing, typing, writing, etc.

ENVIRONMENTAL/WORKING CONDITION OF POSITION:

- 1)Inside workplace environment.
- 2)Exposure to irate individuals.
- 3)Exposure to dust: historical files and records.

EQUIPMENT USED:

- 1)Typewriter, calculator, copy machine, computer terminal, fax machine, telephone and answering machine.

EDUCATION/LICENSE/CERTIFICATION REQUIREMENTS:

- 1)High school diploma.
- 2)Two years of administrative or clerical experience in a court, court office, law office, or related course work desirable.

KNOWLEDGE AND SKILLS REQUIRED FOR POSITION:

- 1)Effective communication, oral and written.
- 2)Initiative, resourcefulness and good judgement. Ability to work independently, with little or general directives.
- 3)Read, write, add and subtract.
- 4)Skilled in use of computer, telephone, typewriter, fax machine, calculator, copy machine and answering machine.
- 5)Good interpersonal skills.
- 6)Ability to type 50 wpm and take shorthand at 80 wpm.
- 7)Good knowledge of office practice and procedures, and skill in their application.
- 8)Develops Municipal Court Standard Operating Procedures.
- 9)Skill in handling difficult and complex office situations.

MEDICAL:

Applicants may be required to submit to a medical examination prior to appointment consistent with requirements of the position, at the discretion of the Personnel Director.

RESIDENCY:

Residency is determined by the current union contract or general non-represented ordinance in effect.

SALARY AND BENEFITS:

Wages and benefits are determined by the current union contract or general non-represented ordinance in effect. Such benefits as Wisconsin Retirement Fund, health and life insurance, sick days, holidays, vacations, overtime pay and other fringe benefits generally appear in the contract or ordinance.

BACKGROUND:

All applicants may be fingerprinted and a record check made of local, state or federal authorities. A conviction is not an automatic bar to employment.

Judith Kumprey is the incumbent Court Administrator, serving at the pleasure of Wilkoski in a position the City contends is unrepresented. She started with the City as Court Clerk in September, 1986, and was reclassified into her current position on October 7, 1992, at which time her salary went from an hourly \$11.41 to an annual \$27,000. Kumprey shares a private office with Wilkoski; the other personnel work in a common area.

Wilkoski is present for court during the morning and early evening on three or four Wednesdays a month. He has delegated substantial supervisory authority to Kumprey, such that she assigns and evaluates routine work on a daily basis; attends department head meetings; has authority to approve and/or deny overtime and time off without pay; maintains and approves time records; has signed Worker's Compensation reports as the supervisor; and would be a step in the grievance process, although she has never actually handled a grievance.

On her own authority, she devised new procedures for vacation, sick leave and time off. A denial of time off without pay which resulted in a grievance would entail a grievance against an action of Kumprey's. Neither Wilkoski nor Kumprey have a formal role in the City's labor relations function, and neither are privy to management's labor relations strategy. Wilkoski has not been the object of any grievances. Kumprey issued a verbal reprimand to one employee, and has the authority to issue written warnings as well. Kumprey would have the authority to send an employee home if the employee was unfit for duty, but would have to involve Wilkoski in possible suspensions and terminations. Since Kumprey has held her position there has been no opportunity to hire a regular employee. However, Kumprey has hired temporary employees, whose work is largely routine. On occasion, Kumprey has brought to Wilkoski's attention her concerns about compliance with office procedures; he has instructed her to handle matters as she saw fit. The City has no formal system of evaluation. In seeking to have a permanent part-time position made full-time, Kumprey took the initiative, working with the necessary City departments to implement the action. Kumprey worked with a building committee in designing current facilities. At no time relevant has the office experienced layoff, discharge or suspension. Kumprey attends weekly department head and agenda meetings. Kumprey works within line items of an adopted budget in making purchases, and signing purchase orders as a department head. Kumprey believes that she can transfer funds between lines in an adopted budget, in accordance with the citywide policy. Kumprey prepares an initial departmental budget, which Wilkoski largely approves without change.

Kumprey possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

7. The City maintains an Assessor's office wherein the permanent positions are Assessor, Assistant Assessor and Confidential Secretary (all unrepresented); Deputy Assessor (a member of the Teamster Local 200 unit) and Secretary (AFSCME 2 unit). The office also employs 7-8 temporary data entry and data collection positions under a two-year re-evaluation project. The

Assessor, Merl Everson, sits on the City's bargaining team for negotiations with the Teamsters unit. The Assistant, who supervises the Confidential Secretary and the data collection personnel, serves as the Acting Assessor in the Assessor's absence from the office, which is approximately half the normal work-week. Pursuant to a position description approved July 21, 1992, the duties and responsibilities of the Confidential Secretary are as follows:

CITY OF GREENFIELD

JOB DESCRIPTION

CONFIDENTIAL SECRETARY TO CITY ASSESSOR

REPORTS TO: City Assessor

PURPOSE OF POSITION: The Confidential Secretary to the City Assessor serves as Administrative Assistant and Confidential Secretary to the Assessor, and is responsible for supervising the daily office functions within the Assessor's office.

ESSENTIAL FUNCTIONS:

- 1)Organizes and maintains files, records, manuals, handbooks and other materials, as needed.
- 2)Composes and types confidential correspondence in an accurate and timely manner.
- 3)Coordinates work assignments and/or work schedules for staff members in conformance with department needs.
- 4)Answers routine questions and obtains needed background information before referring calls to the Assessor or other staff members.
- 5)Communicates and exchanges information with staff members to accomplish office functions.
- 6)Provides training and orientation for new employees.
- 7)Places and/or returns telephone calls for the Assessor.
- 8)Locates and assembles data/information, as requested. Prepares accurate and complete reports, as directed, including cases requiring litigation.
- 9)Assists in compilation and preparation of the department budget.
- 10)Assists in completing purchase orders and payment vouchers in a timely and accurate manner.
- 11)Participates in and expeditiously carries out all other duties, as assigned by the Assessor.

PHYSICAL DEMANDS OF POSITION:

- 1)Standing, walking, sitting and stooping.
- 2)Kneeling, crouching and climbing.
- 3)Reaching, feeling, talking and hearing.
- 4)Far vision at 20 ft. or further, and near vision at 20 inches or less.
- 5)Lifting, carrying, pushing/pulling: 10 lbs. or less.
- 6)Handling, grasping and fingering: filing, typing, writing, etc.

ENVIRONMENTAL/WORKING CONDITIONS OF POSITION:

- 1)Inside work environment.

EQUIPMENT USED:

- 1)Typewriter, calculator, copy machine, computer terminal, fax machine, telephone, postage machine and dictaphone.

EDUCATION/LICENSE/CERTIFICATION REQUIREMENTS:

- 1)High school diploma.
- 2)Secretarial courses pertaining to typing, shorthand and word processing.

KNOWLEDGE AND SKILLS REQUIRED FOR POSITION:

- 1)Major life activities.
- 2)Good knowledge of office practice and procedures, and skill in their application.
- 3)Effective communication, oral and written.
- 4)Read, write, add and subtract.
- 5)Organize, direct and process oral and written instructions into reports.
- 6)Skilled in use of computer, calculator, telephone, typewriter, fax machine, dictaphone, copy machine and postage machine.
- 7)Ability to type 50 wpm, take shorthand at 80 wpm and knowledge of word processing.
- 8)Good interpersonal skills.

COLLECTIVE BARGAINING AGREEMENT:

Non-union position (General Non-Represented Employee Ordinance).

MEDICAL:

Applicants may be required to submit to a medical examination prior to appointment, consistent with requirements of the position, at the discretion of the Personnel Director.

RESIDENCY:

For employees hired after December 6, 1977, residency is required within one (1) year after completion of a six-month probationary period, which would be a fifteen (15) mile radius of the City from South 76 Street and West Layton Avenue. Employees hired prior to December 6, 1977 are grandfathered from the residency requirement.

SALARY AND BENEFITS:

Wages and benefits are determined by the current non-represented City ordinance in effect. Such benefits as Wisconsin Retirement Fund, health and life insurance, sick days, holidays, vacations, overtime pay and other fringe benefits generally appear in City ordinances.

BACKGROUND:

All applicants may be fingerprinted and a record check made of local, state or federal authorities. A conviction is not an automatic bar to employment.

Karen Lee is the incumbent Confidential Secretary, having been hired on June 23, 1992 at \$8.40 an hour and going to \$11.36 per hour shortly thereafter.

Lee is the functional equivalent of the office manager, the Assessor -- who is in the field about half the work week -- having delegated substantial authority to supervise office personnel, essentially the data entry personnel. In the position description as published, there was no explicit indication of supervisory authority, but Assessor Everson told Lee of her supervisory role at the time of her interview. Lee was responsible, with the Personnel Director, for recruiting, interviewing, selecting and setting the pay for a temporary data entry clerk, whom Everson met on her first day at work. Lee made a decision to rehire a former employee as a temporary employee. In hiring data entry clerks, she canvassed area municipalities to determine a proper wage. In hiring the temporary data entry clerk, the Personnel Director did the initial screening, reducing the number to three applicants. The Personnel Director and Lee conducted final interviews and selected the candidate. The formal act of offering the position was performed by the Personnel Director. Lee assigns work to employees, specifically the Data Entry Clerk and the Secretary. Employees prepare weekly job reports, which are submitted to Lee. Lee has reviewed respective final offers in interest arbitration proceedings, giving advice on action to the Assessor.

In October, 1992, Lee served as the first step in the grievance procedure regarding a dispute based upon the alleged actions of the Assessor. The collective bargaining agreement provides that first step grievances are to be presented to the immediate supervisor; both AFSCME and the grievant felt Lee was immediate supervisor. Everson concurs. Lee responded to the grievance on behalf of City. Lee subsequently proposed amendments to collective bargaining agreement to clarify the response process. Lee participated in a meeting which could have led to the discipline of the Deputy Assessor. She met with and

discussed phone calls, and break times with the Secretary, culminating in what was a verbal warning reduced to writing. Lee had the authority to impose further discipline, on her own authority, if the employee had not taken proper corrective action. She was instrumental in reviewing and effectively recommending changes in the employment contract with an independent subcontractor. In the fall of 1992, when a period of bad weather kept the crew inside, Lee made effective recommendations on whether to reassign or temporarily layoff. In a separate action, based on performance and workload, Lee effectively recommended the layoff of two data collection temporary employees. Lee was instrumental in assisting the Assessor in preparing the initial budget, including decisions relating to salary allotments. Lee will be instrumental in determining what to do about hiring a replacement for an ill secretary. Lee took the initiative to transfer a summer part-time employee to a temporary position (contacting Personnel, preparing job description, interviewing and deciding who to hire).

Everson serves with a manager from the Health Department and outside counsel Robert W. Mulcahy on the City's bargaining team for negotiations with the Teamsters residual unit, which includes the Deputy Assessor. The last direct negotiation was prior to Lee's hire. Lee prepares and receives correspondence between Everson and the City's outside counsel for labor affairs, totalling between six and nine pieces of correspondence. Lee has access to files which include matters relating to collective bargaining. Everson is not involved in negotiations concerning the AFSCME unit. Lee provides relief to Personnel Department confidential secretary, also located on the second floor of City Hall. At the time of her interview, Everson told Lee she would have substantial involvement in bargaining and contract administration. Lee prepares draft responses to grievances on behalf of the office. Lee has access to draft grievance responses prior to finalization. Draft budgets, which contain projected percentage increases, and are not shared with Union, are either prepared by or known to Lee. Responding to a City-wide request for bargaining proposals, Lee proposed language changes to address the issue of first-level grievance responses, auto allowance and sick leave monitoring. Lee and Everson are the only ones with keys to locked personnel files. Lee formerly attended the City's monthly department head meetings as Everson's alternative. She is now designated recording secretary, and the only clerical/support staff routinely present. The City does not regard department head or weekly meetings as public meetings of record; the minutes, however, while held outside the scope of the Public Records Law, will be stamped confidential.

Lee possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

8. City's Public Works garage is located approximately 1.5 miles from City Hall, about 300 feet from Police Headquarters and about 500 feet from the Fire Station. Richard Andresson is the Director. Carolyn Chopp, the incumbent Confidential Secretary to the Director of Public Works, is the only confidential employee located at the garage. There are about 30 AFSCME-represented employees plus a non-represented Assistant Superintendent. The position of Superintendent is currently vacant. Chopp was hired under the following position description:

CITY OF GREENFIELD

JOB DESCRIPTION

CONFIDENTIAL SECRETARY TO THE DIRECTOR OF PUBLIC WORKS

REPORTS TO: Director of Public Works

PURPOSE OF POSITION: The Confidential Secretary to the

Director of Public Works shall be responsible for the general administration of office operations in the Department of Public Works.

ESSENTIAL FUNCTIONS:

- 1) Knowledge of modern office practices and procedures, and skilled in their application. Good knowledge of business English, spelling and composition.
- 2) Ability to type 50 wpm, take shorthand at 80 wpm, and operate the department computer and word processor.
- 3) Ability to take notes from rapid dictation and to transcribe notes accurately on the typewriter or word processor.
- 4) Good interpersonal skills with the public, staff members and elected officials.
- 5) Prepares and maintains all confidential reports, such as union grievances, disciplinary matters, legal documents and labor negotiations.
- 6) Maintains filing system, Department of Public Works project files, index cards, and correspondence files.
- 7) Acts as receptionist, and routes incoming telephone calls. Accurately takes and distributes messages to appropriate individuals in a timely manner.
- 8) Performs other duties, as assigned by supervisor.

PHYSICAL DEMANDS OF POSITION:

- 1) Standing, walking, sitting and stooping.
- 2) Kneeling, crouching, climbing, and bending/twisting.
- 3) Reaching, feeling, talking and hearing.
- 4) Far vision at 20 ft. or further, and near vision at 20 inches or less
- 5) Lifting, carrying, pushing/pulling: 10 lbs. or less.
- 6) Handling, grasping and fingering: filing, typing, writing, etc.

ENVIRONMENTAL/WORKING CONDITIONS OF POSITION:

- 1) Inside workplace environment.

EQUIPMENT USED:

- 1) Typewriter, calculator, copy machine, computer terminal, fax machine, telephone, dictaphone and drafting equipment.

EDUCATION/LICENSE/CERTIFICATION REQUIREMENTS:

- 1)High school diploma, or equivalent
- 2)Secretarial courses pertaining to typing, shorthand and word processing.

KNOWLEDGE AND SKILLS REQUIRED FOR POSITION:

- 1)Effective communication, oral and written.
- 2)Understanding and following work rules.
- 3)Read, write, add and subtract.
- 4)Organize, direct and process oral and written instructions into reports.
- 5)Skilled in use of computer, calculator, telephone, typewriter, fax machine, dictaphone, copy machine and drafting equipment.
- 6)Ability to type 50 wpm, take shorthand at 80 wpm, and knowledge of word processing.
- 7)Good interpersonal skills.

COLLECTIVE BARGAINING AGREEMENT:

Non-union position (General non-represented ordinance).

MEDICAL:

Applicants may be required to submit to a medical examination prior to appointment, consistent with requirements of the position, at the discretion of the Personnel Director.

RESIDENCY:

For employees hired after December 6, 1977, residency is required within one (1) year after completion of a six-month probationary period, which would be a fifteen (15) mile radius of the City from South 76 Street and West Layton Avenue. Employees hired prior to December 6, 1977 are grandfathered from the residency requirement.

SALARY AND BENEFITS:

Wages and benefits are determined by the current non-represented City ordinance in effect. Such benefits as Wisconsin Retirement Fund, health and life insurance, sick days, holidays, vacations, overtime pay and other fringe benefits generally appear in City ordinances.

BACKGROUND:

All appointees may be fingerprinted and a record check made of local, state or federal authorities. A conviction is not an automatic bar to employment.

Prior to Chopp's hire, the functions of Public Works and the City Engineer were combined; that department's confidential secretary was Maryella Riesen, whose position was held to be confidential in a 1988 WERC proceeding. Following a

reorganization which divided Engineering and Public Works in January, 1992, Riesen went with Engineering and the City created the position Chopp now holds. Chopp's initial rate of pay was \$8.67 per hour; her hourly rate was raised to \$11.36 per hour after about one month without any added duties, pursuant to Council action in June, 1992.

Andresson serves as a member of the City's bargaining team for negotiations with the AFSCME unit. Chopp files and maintains the Director's correspondence. She has access to locked files and maintains the Director's locked files which contain union negotiations documents. Contained in these files are documents relating to the City's strategy in labor relations. She has access to other labor relations matters, including correspondence to and from outside legal counsel for labor affairs. Chopp drafts grievance responses and types initial budget requests and program initiatives for the City budgeting process. Chopp was told at the time of her interview that the position would be confidential, and that she would perform the same duties as Riesen. Chopp sent a survey to area municipalities inquiring as to their costs and benefits, and prepared a survey summary analyzing the results. This summary was not shared with the Union. Some responses to the survey included material beyond a summary of existing bargaining agreements. The survey summary helped the City develop strategy in upcoming negotiations. Prior to Chopp's hiring, the City's Personnel Director sent a confidential survey to Department heads on their bargaining goals and plans. Andresson sent his back handwritten. Had Chopp been present, she would have typed it. Chopp will in the future assist in preparation of bargaining proposals and grievance responses.

Chopp serves as the secretary to a department head who has substantial labor relations responsibilities. She has sufficient access to and knowledge of confidential matters relating to labor relations to be deemed a confidential employee.

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

CONCLUSIONS OF LAW

1. The incumbent Assistant Comptroller/Accountant is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

2. The incumbent Court Administrator is a supervisory employee within the meaning of Sec. 111.70(1)(o), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

3. The incumbent Confidential Secretary to the Assessor is a supervisory employee within the meaning of Sec. 111.70(1)(o), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

4. The incumbent Confidential Secretary to the Director of Public Works is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

The positions referenced in the Conclusions of Law 4 shall continue to be excluded from the bargaining unit described in Finding of Fact 4.

Given under our hands and seal at the City of
Madison, Wisconsin this 26th day of October,
1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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

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- 1/ 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 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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

(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 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.

CITY OF GREENFIELD

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

POSITIONS OF THE PARTIES

The Employer asserts that the four subject positions all satisfy the statutory and evidentiary criteria for exclusion from the bargaining unit.

As to the position of Assistant Comptroller/Accountant, the Employer contends that substantial confidential, supervisory and managerial duties are specifically shown by the incumbent's involvement in hiring, directing and providing daily supervision for office staff; by the incumbent's ability to discipline should circumstances warrant; and by the incumbent's participation in confidential discussions involving collective bargaining and other labor relations matters, including her assistance to the Employer in an interest arbitration proceeding.

As to the position of Court Administrator, the Employer argues that indisputable status as a supervisory, managerial and confidential position is evident by the incumbent's direction and supervision of two bargaining unit members; her involvement in future hiring decisions; her previous involvement in the hiring of temporary staff; her ability to impose discipline; her regular attendance at department head meetings; her role in reviewing and approving staff time cards, and her role in preparing the department's budget.

As to the position of Confidential Secretary to the Director of the Department of Public Works, the Employer alleges that its status as a confidential position is undeniably clear, as shown by the incumbent's performing the same duties as her predecessor, whose position was recognized as confidential by the WERC; her prospective involvement in the formal grievance process and the drafting of labor relations documents; her access to confidential labor relations matters such as bargaining proposals, personnel records and correspondence, and her service as the only available confidential secretary to the department head, who serves on the Employer's bargaining team.

As to the position of Confidential Secretary to the City Assessor, the Employer asserts that the incumbent's status as a confidential, supervisory and/or managerial employee is shown by her role in recruiting, selection, directing and evaluating office personnel, most clearly shown by her role in the hiring of data entry clerk O'Hearn; her authority to effectively recommend departmental layoffs; her access to confidential matters relating to labor relations, attained in connection with the City Assessor's participation on the Employer's bargaining team; her role in reviewing and responding to grievances; her access to confidential budget data, and her participation in the formulation and implementation of management policy.

Accordingly, because the Union should not be allowed to second-guess the City's judgment on these positions, and because the Union bears the burden of proof to show the City's decisions regarding these positions is flawed, and because it is crucially important that management's philosophy and strategies relating to labor relations be kept sacred until appropriately shared with the Union, and because there is sufficient indication of managerial, supervisory and/or confidential status of the contested positions, the Commission should necessarily exclude them from the bargaining unit.

The Union asserts that the subject positions all fail to satisfy the statutory and evidentiary criteria for exclusion.

As to the position of Assistant Comptroller/Accountant, the Union contends that it is not supervisory, as shown by a number of factors. The incumbent was temporarily serving as Acting Controller she recommended the hiring of two permanent employees. The incumbent's only other involvement in hiring has been with a part-time temporary position, which is not accorded the same weight as hiring a permanent employee. In assigning work, the incumbent is only carrying out goals set by the Comptroller. The Assistant Comptroller/Accountant is supervising activities, not other employees. A finding that this position is supervisory will result in two supervisors for two bargaining unit employees, and one part-time student intern. The Union further asserts that the position is not confidential, in that the confidential duties are minimal at best. The incumbent is not privy to either strategy or detailed data concerning budgets for prospective personnel costs. The Union also notes that the incumbent was a Union officer and bargaining team member in 1989, which was a time when she had assumed responsibility for some wage and benefit calculations. The Union questions why, if these duties truly are at odds with her union activities, the City didn't raise this matter in the 1990 or 1991 unit clarifications. Finally, the Union states that the limited confidential duties could easily be transferred.

As to the position of Court Administrator, the Union asserts that the

position is more properly considered a lead worker. The incumbent lacks involvement in labor negotiations, grievance processing and employee evaluations; she lacks the authority to impose any discipline more severe than a verbal reprimand. The Court Administrator lacks involvement in the hiring or firing of personnel. The municipal judge, not the Administrator, sets policies, priorities, and standard operating procedures. Finally, the Union notes that the determination that this position is supervisory will result in an inordinately high supervisor-to-municipal employee ratio of 1:1.

As to the position of Confidential Secretary to the City Assessor, the Union contends that the duties are primarily supervising work flow rather than supervising employees, as shown by the fact that her job description notes no supervisory duties at all. The fact that the Assessor abdicated some of his responsibilities for hiring and firing does not make the Secretary a supervisor. If the Secretary is found to be a supervisor, there will be three supervisors for two permanent employees. The Union also argues that the position is not confidential, because the incumbent has only de minimis involvement with confidential matters. Her supervisor's involvement in contract negotiations occurred prior to the incumbent's tenure with the City. The Union discounts the importance of the incumbent's involvement with a survey of area municipalities, noting that the affected positions at issue were temporary ones which were not in the bargaining unit. The Union also discounts the incumbent's role in a grievance matter. The Union contends that it was a unique case concerning the alleged harassment of the grievant by the Assessor. The communications which ensued were not themselves confidential. Finally, the Union argues that the incumbent's occasional role as a temporary fill-in for the Confidential Secretary in the personnel office is not sufficient to be considered a confidential employee.

As to the position of Confidential Secretary to the Director of Public Works, the Union argues that the incumbent has very few, if any confidential duties. She has not been involved in any grievance activity or with the preparation of the Employer's proposals for collective bargaining. This position is separate and distinct from the Confidential Secretary to the City Engineer position, which was the subject of a prior WERC proceeding. The Confidential Secretary to the City Engineer remains available for any truly confidential duties which might arise. The Union also states that the incumbent, while conducting a survey of benefits provided by area municipalities, was not privy to the Employer's strategy for using the results. The Union also argues that, since there are no employees to supervise, this position cannot be supervisory.

In its lengthy reply brief, the City renews its claim as to the supervisory and/or confidential status of the subject positions.

As to the Assistant Comptroller/Accountant, the City states that the Union never denied that the incumbent has performed confidential duties. The Union was mistaken in its claim that the incumbent had no knowledge of confidential information and that the incumbent's confidential duties could reasonably be transferred to other personnel. The Union also incorrectly understates the incumbent's supervisory and managerial authority. The City argues that the Assistant Comptroller/Accountant position is more aligned with management than other employees.

As to the Court Administrator, the City states that for four and one-half days per week, the position is the only confidential, supervisory or managerial employee present. The City argues that it is appropriate and necessary to have at least one employee available to provide such authority.

As to the Confidential Secretary to the City Assessor, the City rejects the Union's suggestion that the incumbent's acknowledged confidential duties be transferred to the Assessor or his Assistant. The City asserts that the

incumbent is secretary to an individual with substantial involvement in confidential labor relations matters. The City also contends that the incumbent is the supervisory office manager, with sufficient budget preparation responsibilities to make the position managerial.

As to the Confidential Secretary, Department of Public Works, the City states that the incumbent is the only clerical position in the department, and has always been excluded from representation as confidential. Furthermore, the City contends that the Union has failed to show a changed circumstance sufficient to justify reversal of the prior Commission decision holding a predecessor position to be confidential.

DISCUSSION

The statutory and case law formats for evaluating claims of confidential, supervisory and managerial status are well-settled.

When evaluating a claim of supervisory status, we consider the following factors:

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

It is well-settled that, for an employee to be held confidential, such employee must have access to, knowledge of, or participation in confidential matters relating to labor relations; for information to be confidential, it must: (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. 3/

While a de minimis exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 4/ we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. 5/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 6/ and, similarly, where a management employee has

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

3/ Dane County, Dec. No. 22796-C (WERC, 9/88).

4/ Boulder Junction Joint School District, Dec. No. 24982 (WERC, 11/87).

5/ CESA Agency No. 9, Dec. No. 23863-A (WERC, 12/86).

6/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85).

significant labor relations responsibility, the clerical employee assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption of the employer's organization. 7/

The Legislature has excluded "managerial employees" from the definition of "municipal employees," but it has not provided a statutory definition of the former term. Section 111.70(1)(i), Stats. Instead, it has left to the Commission the case-by-case development of precise meaning to define those individuals whose relationship to management imbues them with interests significantly at variance with those of other employees.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individuals possess the authority to commit the employer's resources, either by exercising significant authority in the establishment of an original budget or by allocating funds for different program purposes within an original budget. 8/

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." 9/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. 10/

Assistant Comptroller/Accountant

There are few matters more central to the employer's strategy in collective bargaining negotiations than the amount of money the employer is willing to spend pursuant to a voluntary agreement. Knowing precisely where that "bottom line" is would give the labor organization a significant tactical advantage. Thus, that knowledge is not made available to the labor organization, but is rightfully kept confidential.

Kasza, the Assistant Comptroller/Accountant, is privy to such information. Each year, the City places a certain amount of money into various accounts, secretly earmarked for labor settlements. Kasza is present for the Budget Committee's closed session proceedings in this regard. Kasza and the Comptroller/Accountant are the only two City staff with complete system-wide computer access to the entire data base and knowledge of where these funds are placed. In addition, Kasza performs costing functions, including the impact of particular percentage increases.

7/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).

8/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (Ct.App. 1984).

9/ Village of Jackson, Dec. No. 25098 (WERC, 1/88); Portage County, Dec. No. 6478-C (WERC, 10/87); Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88).

10/ Village of Jackson, supra; Forest County, Dec. No. 17528-B (WERC, 6/85); Jackson County, Dec. No. 17828-B (WERC, 10/86); City of Whitewater, Dec. No. 24354 (WERC, 3/87).

Accordingly, we have found the position of Assistant Comptroller/Accountant to be confidential. We need not address further the other claims made by the Employer.

Court Administrator

The Court Administrator works under the supervision of the Municipal Judge. Because the Municipal Judge is only present during the morning and early evening on three or four Wednesdays a month, he has delegated significant supervisory authority to Judith Kumprey, the Court Administrator. She assigns and evaluates work on a regular basis. Kumprey approves or denies overtime and time off without pay. On her own initiative, she devised new procedures to handle vacation, sick leave, and other time off. The Court Administrator has issued a verbal reprimand to one employee and has the authority to issue written warnings and send unit employees home. While there has not been an opportunity to hire a regular employee, Kumprey has hired temporary employees when the need arises. She was successful in increasing a permanent part-time position to full-time. While no grievances have been filed since she has been Court Administrator, Kumprey would be a step in the grievance procedure. The Court Administrator possesses sufficient supervisory authority to be deemed a supervisory employee. Because of this finding, we need not address the Employer's other arguments.

In reaching our conclusions, we have considered and rejected the Union argument that the testimony of the Assistant Comptroller/Accountant and the Court Administrator be stricken as "tainted" by increases in compensation they received from the City. We found nothing in the record to support the Union's claim.

We have also rejected the Union argument that our ruling as to these two positions be held in abeyance pending the outcome of City of Greenfield, MP-2687. The Examiner in MP-2687, is holding his proceeding in abeyance pending this decision because of the impact our ruling will have on his analysis of the Union's complaint. Dec. No. 27606-A (8/93).

Confidential Secretary to the Assessor

The Assessor, who is out of the office about 50% of the work week, has delegated substantial supervisory authority to his Confidential Secretary, Karen Lee. She has used this authority most directly in effectively recommending the hire of an individual whom the Assessor first met when she reported to work. Lee also made the decision to rehire a former employee for a temporary position. She has responded to grievances on behalf of the City. The Confidential Secretary issued discipline which consisted of providing a verbal warning in written form and participated in a pre-disciplinary investigation. She has effectively recommended layoffs and reassignment of temporary personnel. The Confidential Secretary to the Assessor has sufficient supervisory authority to be deemed a supervisory employee authority. Because of this conclusion, it is not necessary to address the other arguments of the Employer.

The Director of Public Works is a member of the City's bargaining team for the AFSCME unit. As such, he is aware of the Employer's negotiating strategy. The Confidential Secretary to the Director of Public Works, Carolyn Chopp, has access to and knowledge of the Director's negotiations records. She types and processes other documents that relate to confidential labor relations matters including correspondence with the City's labor counsel. In preparation for bargaining, Chopp sent a wage and benefit survey to area municipal employers. She prepared a summary of the results which was useful in formulating the City's negotiation strategy. The survey and summary was not shared with the Union. The Confidential Secretary to the Director of Public Works has sufficient access to and knowledge of confidential labor relations

matters to be deemed a confidential employe.

Dated at Madison, Wisconsin this 26th day of October, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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

