

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF PORT WASHINGTON  
(CITY HALL & POLICE DEPARTMENT)

## Appearances

Mr. David P. Moore, Moore Management Services, Inc., 2345 North 70th Street, Wauwatosa, Wisconsin 53213, appearing on behalf of the Employer.

Ms. Helen M. Isferding, District Representative, 2323 North 29th Street, Sheboygan, Wisconsin 53081, appearing on behalf of the Union.

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

AMEDEO GRECO, HEARING OFFICER: On October 5, 1981, Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, Local 108, herein the Union, filed the instant unit clarification petition with the Wisconsin Employment Relations Commission, herein Commission, wherein it requested the Commission to determine whether the positions of Deputy City Clerk, Administrative Secretary, and Secretary/Receptionist should be included in a collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of Port Washington in its City Hall and Police Department. Thereafter, on November 11, 1981, the Commission, pursuant to Section 227.09(3)(a), Wis. Stats., appointed the undersigned, a member of the Commission's staff, to conduct a hearing on said matter and to issue a final decision on behalf of the Commission. The hearing on said matter was held at Port Washington, Wisconsin on December 3, 1981. Both parties filed briefs. Based upon the entire record in this matter, the Examiner issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

## FINDINGS OF FACT

1. The City of Port Washington (City Hall & Police Department), hereinafter referred to as the City, is a municipal employer.
2. Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 108, hereinafter referred to as the Union, is the certified exclusive bargaining representative of all regular full-time and regular part-time City Hall and Police Department employees of the City of Port Washington, excluding professional employees, elected officials, department heads, supervisory, managerial, executive, confidential and library employees. There are approximately fifteen employees in the bargaining unit.
3. In its petition initiating the instant proceeding, the Union contends that the positions of Deputy City Clerk, Administrative Secretary, and Secretary/Receptionist, which are presently excluded from the bargaining unit, should be included in the unit. The City claims that the positions of Deputy City Clerk and Administrative Secretary are supervisory and that the position of Secretary/Receptionist is confidential and that, as a result, all three (3) positions should therefore all be excluded from the unit.
4. Deputy City Clerk Lyall Bostwick has served in that capacity for approximately the last twenty years, working in the City Clerk's office. He is salaried and earns \$18,700 a year. He does all payroll work for the City. This includes the maintenance of all payroll journals and other records which reflect payroll deductions for social security, retirement, health insurance, life insurance, and any other payroll deductions. He computes all quarterly water and sewer bills, lays out the meter reading routes, prepares the reading books and ledger sheets for the Water Utility, and he assists in preparing election notices.

voter lists, training poll workers, and registering voters. Additionally, he answers inquiries and assists the public in preparing forms and applications. He works with four (4) employees in the City Clerk's office, three (3) of whom are employed as Account Clerks I and one as an Account Clerk II. At the time they were hired, Bostwick was involved in training them. However, he spends very little time in directing them after their initial training. Along with them, he uses two bookkeeping machines to compute quarterly water and sewer bills, and he operates the copier and other office machines. He determines which tasks will be performed by these employees and he reviews and approves their time cards. Their vacation requests are not cleared through him. At least one-half of his time in a given week is spent in doing the same type of work that is done by them. He lends his expertise to these employees and he consults with the City Clerk if questions or problems arise which he cannot resolve. He also serves in the absence of the City Clerk.

5. Bostwick has had only minimal input with respect to budgetary matters, and then usually only to the limited extent of supplying information requested by the City Clerk. He has access to personnel files for the limited purpose of ascertaining or verifying information and he routinely adds papers or records regarding vacations, sick leave, retirement, insurance and related matters. He cannot exercise independent judgment concerning expenditures. In any discussions he has had with the City Clerk about other employees, he has never been asked for any recommendations and he testified that if he ever gave any they were not followed. He has never been involved in either interviewing, hiring, evaluating, or disciplining any employees, and he has never attended any closed management meeting.

6. Mary Johnson, the Administrative Secretary in the Police Department, was hired in 1971. Her immediate supervisor is the Chief of Police. Her time is spent performing routine secretarial tasks such as typing, filing, preparing CIB reports, maintaining records, preparing court schedules, attending court sessions, recording dispositions, ordering and keeping inventories of office supplies, and preparing subpoenas and citations as directed. Additionally, she selects and prepares material for microfilming, works on various ledgers and accounts, receives citizens' complaints, performs research, and lends assistance in connection with the preparation of funding projects. She also prepares agendas for Police and Fire Commission meetings.

7. When dispatchers are hired, Johnson conducts their interviews, gives them a typing test and a general intelligence test, and she tests their voices on the radio. She grades their typing and intelligence tests and makes a recommendation to the Chief of Police on the basis of said tests. She and the Chief examine the test results and they usually agree on one of the applicants on the basis of the test scores. The Chief and the Sergeant then interview the applicant. New dispatchers must complete a probationary period. Johnson has sometimes made recommendations at the end of dispatchers' probationary periods and those recommendations have sometimes been followed. In the cases of those dispatchers who were retained, she usually had recommended retention. The dispatchers on each shift have specific duties assigned to them and Johnson will normally not assign work to them unless there is a heavy work load and some work is not completed on a particular shift. The Sergeant prepares the dispatchers' schedules. Johnson has never been involved in disciplining employees. Once when she felt that not enough work was being performed by some dispatchers on their eight (8) hour shift, she confronted them about it. They, in turn, tendered their resignations to the Chief, but he refused to accept them. Since then, she has made it a practice to refer such matters to the Chief or the Sergeant. She keeps no time records or sick leave records for the dispatchers, and their vacation schedules are determined by the Sergeant. There are four (4) fulltime dispatchers and one (1) part-time dispatcher. She works with only one (1) full-time dispatcher on the day shift.

8. Johnson has had only minimal input with respect to budgetary matters. The Chief and the Sergeant will consult with her annually to get her opinion on what she regards as a fair percentage wage increase for the dispatchers as a group. After further discussion among them, a proposal will be sent to the Police and Fire Commission for changes or approval and thereafter will be submitted with the budget. In addition, Johnson will offer information concerning needs for the coming year concerning office and uniform supplies. On one occasion when there was an internal departmental investigation conducted by either the Chief or the Sergeant, she was required to take notes and/or statements which were to be kept confidential. There have also been two (2) or three (3) minor complaints made by

citizens about police officers concerning which she was privy to and which were to be kept confidential.

9. Beverly Burczyk, the Secretary/Receptionist in the Engineering Department, has been employed by the City for approximately five years and she reports to the City Engineer. No other employees work in her office. She does not assign work to anyone. Burczyk prepares agendas for meetings of the Board of Public Works and the Plan Commission and has been informed that in the future she will be assigned new duties concerning the Harbor Commission. She has only attended meetings of the Board of Public Works and the Plan Commission upon request, and her role then was to assist in taking the minutes. She is given written copies of the minutes of the Plan Commission meetings and is responsible for typing them. She is also involved in issuing building permits and assisting in issuing plumbing, electrical and street opening permits. Her position requires the use of shorthand and the use of a dictaphone on occasions. She has been assigned to do secretarial work for the Board of Public Works and the Plan Commission and will be doing secretarial work for the Harbor Commission. She arranges meetings and sends out notices of agendas, and she gathers statistical data for the preparation of the budget and monthly, quarterly, and annual reports. Additionally, she maintains the petty cash account and operates various office machines.

10. Burczyk has been involved in helping the City Engineer and/or Director of Public Works in Union matters. Thus, she has typed the City's responses to Union contract proposals, she has typed the City's own contract proposals, and she has typed the City's responses to Union grievances. She has not, however, attended any closed meetings wherein management discussed Union contract proposals and she has never costed out any Union proposals. She has never attended closed management meetings wherein Union grievances were discussed. Burczyk, along with Johnson, is one (1) of the two (2) secretaries employed by the City.

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

#### CONCLUSIONS OF LAW

1. That the positions of Deputy City Clerk and Administrative Secretary in the Police Department are not supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act. 1/ Instead, said positions are "employees" within the meaning of Section 111.70(1)(b) of the Act.

2. That the position of Secretary/Receptionist in the Engineering Department, is confidential in nature and is therefore excluded from the appropriate bargaining unit.

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

#### ORDER CLARIFYING BARGAINING UNIT

1. The positions of Deputy City Clerk and Administrative Secretary in the Police Department shall be, and hereby are, included in the collective bargaining unit described herein.

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1/ The record also establishes that neither the Deputy City Clerk nor the Administrative Secretary in the Police Department are confidential employees.

2. The position of Secretary/Receptionist in the Engineering Department shall be, and hereby is, excluded from the collective bargaining unit described herein.

Dated at Madison, Wisconsin this 2nd day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco  
Amedeo Greco, Examiner

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

The City contends that the Deputy City Clerk and Administrative Secretary in the Police Department are supervisors and should therefore be excluded from the unit described herein. It also asserts that the Secretary/Receptionist in the Engineering Department is a confidential employee who should also be excluded from the bargaining unit. The Union, on the other hand, disputes these claims and contends that all three positions should be included in the unit.

Turning first to the Deputy City Clerk, the record shows that he spends at least one-half of his time performing the same type of work that is performed by the Account Clerks. He occasionally helps these employees and assigns specific tasks to them. After their initial training, however, he spends very little time in directing them. While his level of pay is higher than theirs, this is apparently attributable to his length of service with the City. He exercises virtually no independent judgment concerning them and he does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. In the absence of evidence of such indicia of supervisory status, it must be concluded that the Deputy City Clerk is an "employee" within the meaning of Section 111.70(1)(b) of MERA and therefore included in the unit described herein.

As to Administrative Secretary Johnson, the record establishes that she reports directly to the Chief of Police. She conducts interviews of applicants for the dispatcher positions and administers and grades the tests they are given. While she recommends hiring, she does so only on the basis of the applicants' test scores. The Police Chief and the Sergeant then interview those applicants and they make their own independent determination as to who should be hired. Johnson has sometimes recommended retention of dispatchers beyond their probationary periods and those recommendations have sometimes been followed. Her assignment of work to the dispatchers is routine and limited in scope. While she has some authority with respect to the work being performed by them, she does not have overall supervision of them. She does not keep either their time records or their sick leave records. Their work schedules are prepared by the Sergeant. She works on the day shift with only one full-time dispatcher. As a result, it is clear that she is supervising an activity, rather than supervising employees. More importantly, Johnson does not have the authority to hire, transfer, suspend, lay off, recall, promote, discipline, discharge employees, or effectively recommend such action. Accordingly, the Administrative Secretary is an "employee" within the meaning of Section 111.70(1)(b) of MERA and is therefore included in the unit described herein.

Left, then, is Secretary/Receptionist Burczyk, who works in the Engineering Department and who reports to the City Engineer. On this issue, the Commission has consistently held that in order for an employee to be considered a confidential employee and thereby excluded from the bargaining unit, such employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 2/ In order for information to be confidential for such purpose, it must be the type of information that: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2) is not available to the bargaining representative or its agents. 3/ The Commission has also held that a de minimus exposure to confidential labor relations material generally is insufficient grounds for excluding an employee from a bargaining unit. 4/ However,

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2/ City of Ashland, (18808) 7/81; Green County (Sheriff's Dept.), (16270) 3/78; Kenosha V.T.A.E. District No. 6, (14993) 10/76.

3/ Wisconsin Heights School District, (17182) 8/79.

4/ Kenosha V.T.A.E. District No. 6, supra; Wisconsin Heights School District, supra.

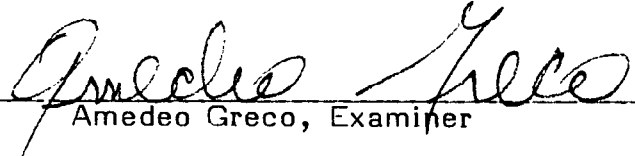
if the person in question is the only one available to perform such confidential duties, that person is a confidential employee who, as such, must be excluded from the unit. 5/

Here, Burczyk has typed the City's responses to Union contract proposals, has typed the City's own contract proposals, and has also typed City responses to Union grievances. While these confidential duties are not extensive, and although Burczyk was not involved in performing these duties during the most recent contract negotiations, 6/ it appears that the City at present has no other employees to perform such confidential duties. Moreover, it should also be noted that her overall responsibilities will be increasing in the future as she will also be required to do secretarial work for the Harbor Commission. In light of the foregoing, it must be concluded that although Burczyk spends only a portion of her time on confidential duties, she nevertheless should be excluded from the bargaining unit since she is apparently the only person in the City's employ who can perform such confidential duties. 7/

Dated at Madison, Wisconsin this 2nd day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Amedeo Greco, Examiner

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- 5/ City of Kaukauna (Utility Commission) (17149-A), 1/80.
- 6/ The record does not indicate who performed those duties during the most recent contract negotiations.
- 7/ City of Kaukauna (Utility Commission, (17149-A) 2/80; Drummond School District, (16614) 10/78; Village of Brown Deer, (8915) 2/69.