

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**WISCONSIN COUNCIL 40, AFSCME,  
AFL-CIO and LOCAL 546-B,  
AFSCME. AFL-CIO**

Involving Certain Employes of

**CLARK COUNTY**

Case 19  
No. 54115  
ME-838

**Decision No. 19744-G**

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Appearances:

**Mr. Michael J. Wilson**, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717, on behalf of Local 546-B, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 4330 Golf Terrace, Suite 205, Eau Claire, Wisconsin 54702, by **Ms. Kathryn J. Prenn**, on behalf of Clark County.

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

Local 546-B, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission on May 15, 1996, wherein it requested that the Commission clarify the bargaining unit of Clark County employes it represents to include the positions of Deputy County Clerk, Business Office Manager in the Clark County Public Health Department, Executive Secretary in the Clark County Sheriff's Department, Land Use Technician and Conservation Technician. Clark County objected to the inclusion of those positions. The County later agreed to the inclusion of the Land Use Technician position and the Union acknowledged that the Conservation Technician position was already included in the unit.

Hearing on the petition was held before Examiner David E. Shaw, a member of the Commission's staff, on September 19 and November 26, 1996, in Neillsville, Wisconsin. By

No. 19744-G

letter of September 27, 1996, Local 546-B withdrew its petition with regard to the Executive Secretary position in the Sheriff's Department. A stenographic transcript was made of the hearing and the parties completed the submission of post-hearing briefs by February 18, 1997.

The Commission, having considered the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

### **FINDINGS OF FACT**

1. Clark County, hereinafter the County, is a municipal employer with its principal offices located at 517 Court Street, Neillsville, Wisconsin.

2. Local 546-B, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization affiliated with Wisconsin Council 40, AFSCME, AFL-CIO, a labor organization with its principal offices located at 8033 Excelsior Drive, Suite "B", Madison, Wisconsin.

3. The County maintains and operates a number of offices and departments, including the County Clerk's office and the Clark County Public Health Department, both of which are located in the Clark County Courthouse. The County employs approximately 625 employees at its various facilities, with approximately 250 employees working at, or out of, the Courthouse in Neillsville. The County has collective bargaining agreements with seven bargaining units. At time of hearing the County had the following eight positions excluded from bargaining units as confidential employees: Administrative Assistant in Social Services Department (Courthouse - 5th Floor), Administrative Assistant in Community Services (Courthouse - 5th Floor), Office Manager at the Health Care Center (located at Owen, Wisconsin, approximately 32 miles from the Courthouse), Office Manager in the Highway Department (4-5 blocks from the Courthouse), Business Office Manager in the Public Health Department (Courthouse - 1st floor), Executive Secretary in the Sheriff's Department (Courthouse - 3rd floor), Deputy County Clerk (Courthouse - 3rd floor), and Personnel/Insurance Coordinator (Courthouse - 3rd floor). Approximately 120 to 130 of the employees working at, or out of, the Courthouse are employed in the smaller County departments that do not have a confidential employee in the department.

4. The Union is the recognized exclusive collective bargaining representative of a bargaining unit described in the parties' most recent contract as:

All regular full-time and regular part-time, non-professional employees of Clark County excluding sworn law enforcement, blue collar highway, social service, health care center, professional, managerial, confidential and supervisory employees as well as the elected officials.

The parties had previously voluntarily agreed to exclude the positions of Chief Deputy County Clerk, and Administrative Assistant in the Public Health Department on the basis that they were confidential employees.

On May 15, 1996, the Union filed a petition with the Commission requesting that the Commission clarify the bargaining unit represented by the Union to include the positions of Deputy County Clerk and Business Office Manager in the Public Health Department. 1/ The County objected to the inclusion of the positions on the grounds that both are confidential employees and that the Business Office Manager position is also a supervisor and a managerial employee.

5. The County employs a Personnel/Insurance Coordinator, which position has been filled since its inception approximately eight and one-half years ago, by Thomas Renne. Renne has no direct clerical assistance and, for the most part, does his own typing. Renne is responsible for coordinating all of the County's insurances with regard to personnel matters. Renne advises department heads with regard to hiring, discipline, terminations, and interpretation of the various labor agreements to which the County is a party. Most decisions regarding hiring, discipline including terminations, and layoffs are made by the department heads. Renne is involved in all grievances to advise department heads. Renne, along with the County's Personnel Committee and Labor Counsel, are responsible for representing the County in bargaining. Renne takes the minutes of the Personnel Committee closed meetings.

6. The administrative head of the County Clerk's Office is the County Clerk, Barbara Petkovsek, who has held that elected office for the past ten years. Besides the County Clerk, there are four employees in that office: Deputy County Clerk, Clerk/Typist III, Administrative Assistant and Assistant Systems Operator III. While all four of the employees are deputy county clerks, the individual with the title "Deputy County Clerk" is considered the "first" or "chief" deputy. The incumbent in the Deputy County Clerk position is Mary Dux, who has held that position for approximately seven months at time of hearing. Prior to Dux, the position had been held by Janice Mayer for approximately twenty years, following more than five years service in the Clerk of Courts office. Dux and Petkovsek are the only employees with private offices; all others work in a shared "bullpen" setting in that office.

The following is the existing position description for the Deputy County Clerk position which also applied to the former incumbent in the position:

**Clark County  
Position Description**

**Name:** Janice Mayer

**Department:** County Clerk

**Position Title:** Deputy County Clerk **Date:**

**Pay Grade:**

**Reports To:** County Clerk

**Position Summary:**

Under general direction, performs the payroll functions in the County Clerk's office.  
Assists County Clerk in managing the Clerk's office.

**Duties/Responsibilities:**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

- . Responsible for all phases of the County payrolls: preparation, input of master file changes into the computer and distribution of checks.
- . Does all follow-up reporting regarding payroll, such as Wisconsin Retirement insurance, unemployment, and federal and state withholding, on a monthly, quarterly and annual basis as required.
- . Balances all payroll records and reports annually.
- . Works closely with Personnel/Insurance Coordinator to keep wages, benefits and other fringe benefits current and correct.
- . Prepares general vouchers weekly and/or monthly as required.
- . Audits various department general vouchers.
- . Issues various permits and licenses, such as hunting, fishing and marriage, etc.
- . Records committee meetings when appropriate, and follows up with needed correspondence as necessary.
- . Works on the election returns and canvass.
- . Proofreads County Board proceedings prior to publication and entrance into permanent record files.
- . Generates federal and/or state reports, such as federal gas tax, federal EEO report, federal and state withholding reports.
- . Is a notary public.
- . Writes general correspondence and does journal entries when assisting the Clerk.

**Work Direction Received:**

Receives general direction with regard to the payroll.

**Supervision Exercised:**

None.

**Decision Making:**

Decisions affecting the payroll administration are made in conjunction with either the County Clerk or the Personnel Coordinator.

**Interaction:**

Works with the County departments, the public and employees.

**Deisrable Knowledge and Abilities:**

Knowledge of standard office practices and procedures, terminology and equipment. Knowledge of basic bookkeeping and record keeping. Must be able to type, operate adding machine, and calculators. Must be able to prepare and maintain clear and concise records and reports. Notary Public commission preferred. Must have a thorough knowledge of payroll procedures and methods. Must exercise extreme accuracy and dependability with regard to the payroll.

**Training and Experience:**

Associate degree, with one to two years of payroll and computer experience.

In evaluating candidates for this position, the County may consider a combination of education, training and experience which provides the necessary knowledge, skills and abilities to perform the duties of the position.

The Deputy County Clerk reports directly to the County Clerk and the position has been considered to be confidential and excluded from the bargaining unit of Courthouse employes on that basis.

The Clark County Clerk is the County's lead administrator, performing functions which in other counties are traditionally performed by such staff as a county administrator, auditor or finance department, none of which Clark County employs. Within the Clerk's office, the

Deputy County Clerk's core functions are payroll-related; she is responsible for reviewing payroll submissions, travel vouchers and other expense reports for compliance with relevant provisions of collective bargaining agreements, County policies and other legal requirements. The payroll data Dux reviews is entered by another staff member of the office, a member of the bargaining unit. The time sheets and voucher submissions which Dux reviews have already been authorized by the appropriate department heads before Dux audits them. If Dux is unsure whether a submission is in compliance with the relevant requirements, or feels that it is not, she raises her concerns with Personnel Coordinator Renne, who gives weight to her comments in his decision. In her first seven months' tenure, Dux flagged concerns about a number of submissions, on such matters as holiday pay, sick leave, longevity and LTE wages. On one occasion, questions arose concerning payout for an employe who had been terminated; after the parties appeared to resolve the issue by agreeing to a supplemental payment, Dux continued to review the data before concluding that the employe had already been overpaid. Dux brought her findings to Renne, and convinced him that his earlier decision had been wrong. Renne then wrote to the terminated employe seeking repayment of the overage. On another occasion, Renne made a preliminary determination to pay back wages to an LTE employe; Dux then alerted Renne to her concerns that doing so would compromise the County's position with regard to a grievance filed by another employe seeking similar payments, and the payments were not made. Dux has also prevented the payment of overtime she determined was not proper under the collective bargaining agreement, and refused to process a health insurance application she believed was inappropriate. Dux does not attend bargaining sessions, but provides data to the County Clerk, Personnel Coordinator and to the unions on a wide array of subjects pertaining to bargaining and contract language. Dux would answer truthfully any bargaining-related question a bargaining unit member posed, but she would not offer any additional information. When she became aware of a change in levels of contribution to the state retirement system, Dux immediately notified Renne and the Clerk, but left the union to its own devices to learn of the change. The Clerk submits bargaining proposals to Renne, generally regarding administrative or procedural matters which would have a county-wide impact, and in doing so the Clerk first asks for suggestions from the Deputy Clerk and subsequently has that person review the proposals before submitting them to Renne. Dux takes the minutes of the Public Property Committee, and has taken minutes of a closed meeting at which the committee discussed employe evaluations. She may in the future also be assigned similar duties for the Personnel Committee. No labor-related litigation in which Dux was involved had arisen at time of hearing.

7. The County operates a Public Health Department, with approximately 25 employes, including a Director, a Business Office Manager (BOM), five Home Care Nurses, three Public Health Nurses, one Director of the WIC (Women, Infants and Children) program, one WIC Clerk Typist, one Clerk Typist III, one Public Health Supervisor, one Home Care Coordinator, one Family Planning Nurse, eight Home Health Aides and a secretarial position. At the time of hearing, the positions of Director, WIC Director, BOM and Public Health Supervisor were excluded from the bargaining unit on grounds of supervisory status. Two of the clericals, one regular full-time and one regular part-time, are within the section which the

BOM oversees. The duties of the BOM were formerly included in the position of Administrative Assistant, which position also included the duties of the WIC Director. The department then lost the contract to provide personal supportive care services, resulting in layoffs and a downsizing of the administrative position. Further, federal requirements that the WIC Director be a dietitian caused that position to be separated into another position and the Administrative Assistant recast as the Business Office Manager (BOM), with the following position description:

CLARK COUNTY  
POSITION DESCRIPTION

Name: Department: Public Health

Position Title: Business Office Manager      Date: January 11, 1996

Pay Grade:      Range 4      Reports To: Agency Director

**Position Summary:**

Under general direction, ensures that all administrative needs of the agency are provided for and supervises, directs and evaluates the work of clerical support staff in day-to-day operations of the agency.

**Duties/Responsibilities:**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

- . Supervises and assigns work to support staff.
- . Assures adequate telephone and receptionist coverage during business hours.
- . Acts on behalf of the Director in the administrative affairs area during the Director's absence.
- . Assists the Director in the preparation of the annual department budget.
- . Assists the Director in the preparation of grant applications and grant budget proposals.
- . Monitors all budget and general ledger accounts on a continual basis to ensure proper revenue and expense accounting, keeping the director apprised. Prepare journal entries and year end adjusting journal entries.

. Responsible for all accounts receivable, accounts payable, payroll, fixed assets, general ledger and administrative inventory management functions of the department.

. Maintain fiscal data and prepare reports for the various grant funded programs of the department for internal use and submission to the Wis. Division of Health.

. Provide a variety of financial analysis to the agency Director and BOH including recommendations concerning the same.

. Evaluate, recommend, implement and maintain computer hardware, software and other office equipment and service needs of the department.

. Provide administrative support in matters pertaining to the Board of Health.

. Supervise and ensure proper billing for all revenue producing services such as Medicare/Medicaid and third party and private payors.

. Approves and monitors vacation and sick leave use.

**Work Direction Received:**

Works under the general direction of the Department Director.

**Supervision Exercised:**

Directly supervises two clerical staff and makes final recommendations regarding hiring, firing and discipline and final decision regarding evaluation and assignment of employees.

**Decision Making:**

Decisions within the area of responsibility are made independently.

**Interaction:**

Works with members of the Board of Health and the Clark County Board of Supervisors and with various County offices such as the Clerk, Treasurer, Personnel, Social and Community Services and Maintenance. Works closely with



the Director and program supervisors. Has occasional contact with various fiscal intermediaries, the State and Western Region Division of Health, vendors and the general public.

**Desirable Knowledge and Abilities:**

Knowledge of the functions, procedures, rules and regulations governing administration of the agency; knowledge of business administration procedures and practices, and office management; knowledge of the principles and practices of bookkeeping. Must have experience with a variety of computer hardware and software, and experience with software manipulation and programming. Ability to direct, supervise and evaluate the work of others. Ability to prepare accurate and complete records and reports. Must have a good knowledge of personnel management.

**Training and Experience:**

Relevant associate degree with three to five years of experience.

In evaluating candidates for this position, the County may consider a combination of education, training and experience which provides the necessary knowledge, skills and abilities to perform the duties of the position.

Kris Schoen has been the incumbent Business Office Manager in the Public Health Department since January, 1996. Schoen will type the minutes of any closed meeting of the Board of Health, which meets monthly. In Schoen's first nine months, the Board did not have any closed meetings. Schoen has authority to recommend additions or deletions in the preparation of the Department's budget, and has involvement in the preparation and administration of various grants. When the Department hired a Secretary II in May, 1996, Schoen and the Director constituted the hiring committee, interviewing approximately six applicants from a pool maintained by the Personnel Department before narrowing the field to three for further joint interviews. Schoen recommended the County hire a certain individual, and the Director concurred. In the Director's absence, Schoen has the authority to suspend an employe. Schoen possesses the authority to effectively recommend the discharge or suspension of an employe and possesses the authority to issue oral or written reprimands on her own authority. Schoen has issued an oral reprimand, documented in writing, to one of the Department's secretaries for inappropriate attire. Schoen conducted the performance evaluation of the Clerk Typist III in her office on her own authority. 2/ Schoen makes work assignments to the clericals in her office. The BOM position is salaried with a wage that would equate to an hourly rate of \$11.42 based on a 2,080-hour work year, approximately one to two dollars more than the clerical positions in her office. Schoen receives compensatory time, which is not available to the bargaining unit employes. Schoen has exercised the authority to decide whether

or not to order equipment and supplies requested by other supervisors, to sign vouchers authorizing payment for goods and services, as well as the authority to transfer budgeted funds. Schoen has issued on her own authority several revisions of policy and procedures on administrative matters affecting the overall operations of the Health Department. The BOM signs the time sheets for the two clericals in her section, and has authority to approve or deny their overtime and leaves. The Home Care Coordinator, the Public Health Supervisor and the WIC Director have similar authority for the personnel in their sections. Schoen has discussed with the Department Director future staffing levels as part of the budgeting process. In Schoen's absence the Department Director supervises the two clericals in her section. There have been no collective bargaining negotiations affecting the Public Health Department during Schoen's tenure. During the next round of negotiations, Schoen will have the opportunity to include proposals affecting the number and hours of the personnel in her section.

8. The incumbent in the position of Deputy County Clerk has sufficient access to and knowledge of confidential matters relating to labor relations to be deemed a confidential employe.

9. The incumbent in the position of Business Office Manager, Public Health Department, possesses supervisory authority in sufficient combination and degree to be deemed a supervisor.

On the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### **CONCLUSIONS OF LAW**

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

2. The Business Office Manager, Public Health Department, is a supervisor within the meaning of Sec. 111.70(1)(o), Stats. and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On 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**

The Deputy County Clerk and Business Office Manager, Public Health Department, 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 8th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**CLARK COUNTY**

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

**POSITIONS OF THE PARTIES**

**Petitioner**

The Union notes that the two positions in issue, the Business Office Manager, formerly the Administrative Assistant, in the County's Public Health Department and the Deputy County Clerk had been previously excluded by the Commission on the bases of supervisory status and confidential status, respectively. The Union notes that the formerly excluded Administrative Assistant position was reclassified to Business Office Manager as a result of downsizing in the Public Health Department and changes in the regulations of the WIC Program which resulted in fewer clerical employees to supervise and the position no longer acting as the WIC Director. Since the Business Office Manager position was "newly-created" and there has been a material change in the circumstances affecting its unit status, the Commission should entertain the petition with regard to that position. Citing, HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 23639-A (WERC, 11/89). The petition should also be entertained with regard to the Deputy County Clerk position because it was heretofore excluded on the basis of a "statutory" exemption. Citing, EDGERTON SCHOOL DISTRICT, DEC. NO. 18856-A (WERC, 5/90).

The Union asserts the record indicates that neither of the positions have confidential duties and that the Office Manager position does not have sufficient supervisory authority to be excluded from the bargaining unit and possesses no managerial authority. According to the Union, the Business Office Manager is primarily supervising the activity of two employees and does not have significant personnel-related authority independent of the Director of the County's Public Health Department.

The Union asserts that neither of the positions have confidential duties and responsibilities pertaining to the County's labor relations. Keeping track of and recording requests from the Union for information or maintaining silence regarding provisions or changes in the Wisconsin Retirement Fund hardly qualifies the Deputy County Clerk position as confidential. There is no evidence that either of the positions have access to anything that could remotely be considered as sensitive material in the labor relationship and neither has access to the County's strategy in collective bargaining, contract administration or litigation. The assertion by the County that the Office Manager is supervisory/managerial/confidential is a futile attempt to lump together the statutory exemptions. The Office Manager has no managerial duties and her supervisory duties are primarily related to supervising work activity, as opposed to supervising employees. When the Administrative Assistant position was reclassified to Office Manager, there was a significant reduction in supervisory authority, accompanied by a substantial reduction in wages.

In its reply brief, the Union asserts that the County is attempting to persuade the Commission that the Deputy County Clerk is a confidential employe due primarily to her "auditing function" regarding the County's payroll. The auditing functions performed by the Deputy County Clerk do not deal with the County's strategy or position in collective bargaining, contract administration, litigation or similar matters pertaining to labor relations and grievance handling and do not involve information not available to the bargaining representative or its agents. Therefore, the function does not meet the two-pronged test for finding confidential duties. The Union asserts that the payroll of any employer would be audited for compliance with payroll standards regardless of union affiliation, and that reporting payroll issues to management for directives as to how to process a matter is routine in any payroll. Regardless of union affiliation, employes are subject to discipline if they do not abide by the employer's rules and regulations including reporting unusual payroll issues. Further, employes in payroll or otherwise, do not unilaterally establish past practices in labor relations. Citing, HOW ARBITRATION WORKS, ELKOURI AND ELKOURI (BNA, FOURTH ED.) P. 439. Payroll records are not confidential and providing payroll information to the County for use in bargaining does not make it confidential, as it is also available to the Union. MANITOWOC COUNTY, DEC. NO. 8152-C (WERC, 6/79). Similarly, providing information compiled from payroll records for the County's use in bargaining or contract administration is not confidential information per se, since it does not constitute "sensitive labor relations material". CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84). The Union also disputes the claim that the Deputy County Clerk has access to the County's strategy in collective bargaining and contract administration. Confidential employes are those who have access to sensitive labor relations information and confidential status is not found in those situations where the information is provided by a resource person with specialized knowledge who merely reveals alternatives to the employer without being privy to the full range of considerations bearing upon the employer's ultimate choice of a course of action in bargaining and grievance handling. MARATHON COUNTY, DEC. NO. 19130-E (WERC, 2/88); CITY OF MADISON, DEC. NO. 23183 (WERC, 1/86). The Union asserts that the County is attempting to expand the definition of confidential status beyond those with access to sensitive labor relations matters and into areas that are irrelevant such as monitoring employe records for potential abuse. Further, the Commission has not found either the quoting of, or the access to, budget information to be confidential in nature. In order to be found confidential, the employe must be privy to the employer's "deliberations over the proposed budget, or to the Employer's strategy in deciding how the money in the various accounts. . . will be spent." APPLETON AREA SCHOOL DISTRICT, DEC. NO. 22338-B (WERC, 7/87). The assertion that the Deputy County Clerk has access to or needs to know the County's strategy in bargaining pursuant to her budgetary duties is contrary to the direct testimony of the County's Personnel/Insurance Coordinator, Thomas Renne.

The Union also asserts that the County has mistakenly relied upon the Commission's decision in APPLETON AREA SCHOOL DISTRICT, *supra*, and CITY OF MAUSTON, DEC. NO. 21424-E (WERC, 11/93). In both cases, confidential status was found due to the incumbent's access to the employer's strategies in collective bargaining and contract administration. Without

access to the sensitive labor relations matters, there cannot be a finding of confidential status. Further, the Commission's finding in PIERCE COUNTY, DEC. NO. 9616-C (WERC, 10/92) can also be distinguished from the instant case. Unlike the case in PIERCE COUNTY, the Deputy County Clerk in Clark County has no role in the costing of wages and fringe benefit proposals and counterproposals during the course of negotiations, as was evident from Renne's testimony. That testimony also made clear that the Deputy County Clerk is not privy to the County's strategy in collective bargaining, and that any confidential duties the Deputy Clerk may have do not include access to the employer's strategy and grievance handling and contract administration, other than the "auditing function". Lastly, the Union asserts that there would be no disruption in the County's operation if the Deputy County Clerk position is included in the bargaining unit. When asked what questions he had directed to the Deputy County Clerk in the past that he would no longer be able to direct to her if the position was included in the bargaining unit, Renne responded, "Off the top of my head, I can't think of anything like that." The Union asserts that in those rare instances where the Deputy County Clerk is called upon to substitute for the Executive Secretary of the Sheriff's Department to take closed session minutes for the Law Enforcement Committee, or where the Deputy County Clerk is expected to take the minutes of the closed sessions of the Public Property Committee, where those agendas might pertain to sensitive labor matters, it would not be unreasonable to expect the County to utilize another confidential employe in those instances.

### County

The County takes the position that the Deputy County Clerk position should remain excluded as confidential.

The County notes that it has approximately 625 employes and a Personnel/Insurance Coordinator, Thomas Renne, who is essentially a department of one without any clerical support. The County does not have an auditor or an administrator, nor does it have a finance department. Therefore, the responsibility for auditing payroll matters and voucher requests for compliance with the County's six or seven collective bargaining agreements rests with the County Clerk's office, specifically with the Deputy County Clerk position. The County Clerk and Renne testified that they do not have time to perform the auditing function and that there is no one available to perform that function other than the Deputy County Clerk, upon whom the other departments in the County have come to rely on to perform the auditing function to ensure that the collective bargaining agreements are properly administered. The auditing function involves reviewing timesheets and vouchers to ensure compliance with the provisions of the various collective bargaining agreements, i.e., contract administration. This function is performed by the Deputy County Clerk from a management perspective and takes approximately six to eight hours per week for auditing payroll and three to four hours per month auditing expense reports and travel vouchers. Additional time is spent on other contract administration questions which arise. The Deputy County Clerk is essentially a "gatekeeper" with respect to contract administration matters relating to payroll issues and if she does not "red flag" issues that arise

during the auditing process, no one will. Those issues may either involve a timesheet or voucher which is clearly not in compliance with the relevant agreement, or may involve gray areas which are not clearly addressed in the agreement. As to the latter, the Deputy County Clerk views the issue from a management perspective. While the incumbent in the position had only been in the position for approximately seven months, she had flagged a number of issues that had arisen during her brief tenure relating to holiday pay, sick leave payment, longevity payments, breaks, expense reports and whether the Union pay raise also applied to hours worked by an LTE. When such issues arise, the usual procedure is for the Deputy County Clerk and the Personnel Coordinator to discuss the issue and reach a decision on how it should be handled, with the Deputy County Clerk providing effective input into the final decision. On at least one occasion, the Deputy County Clerk went back to Renne and convinced him that a decision they had previously made regarding the contract interpretation issue should be reversed. The Deputy County Clerk has the discretion to discuss issues with the Personnel Coordinator without first asking the County Clerk's permission. The County also asserts that the issues that arise during the auditing function are typically questions of first impression, and the decisions on how they should be handled are the initial step toward establishing a past practice. Thus, the Deputy County Clerk's action/inaction on an issue is critical, for she is in a position to be able to develop and establish a past practice with respect to issues relating to contract administration and interpretation. It would be unrealistic and unworkable to expect a bargaining unit member to effectively police fellow bargaining unit members. In that regard, the County cites the Commission's decision in HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88):

"The confidential exclusion protects a municipal employer's right to conduct its labor relations through employees whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from other bargaining unit members."

The County asserts that the Deputy County Clerk also plays a role in collective bargaining and grievance handling. She gathers information for use by the County during negotiations and also advises the County about information which the Union has requested for use in negotiations. As an example, the Deputy County Clerk testified that upon learning that the WRS contribution rates were going down, she relayed that information to Renne because she felt that it would be important for the County to have it during bargaining, but she did not provide that information to the Union. She has also had discussions with Renne regarding ways to improve contract language in future negotiations. The County Clerk also testified that for the ten years she has been Clerk, she has consistently consulted with the Deputy County Clerk regarding issues for consideration in bargaining or bargaining proposals for the County. Since the Deputy County Clerk is the only confidential employee in the office, she is aware of the County's bargaining strategy by virtue of the type of information the County's negotiations committee requests from her and the way the information is put together. Renne testified that

during negotiations, the Personnel Committee estimates anticipated wage increases for organized employees. That amount is not identified in the budget as wages, but is placed in the general fund, and only the Personnel Committee, the County's labor attorney, the County Clerk, the Deputy County Clerk and Renne are made aware of that information. In the most recent round of negotiations, the Deputy County Clerk, in conjunction with the County Clerk, provided the County's negotiation committee with costing information regarding mileage. Such information was not provided to the Union. Other than the County Clerk, the Deputy County Clerk is the only other person in that office who is privy to the County's budget strategy. The Deputy County Clerk assists Renne researching issues relating to grievances and discusses alternatives with Renne and the potential impact of the alternatives. As with negotiations, she has become aware of the County's strategy in dealing with grievances by the type of information the County asks her to research. The Deputy County Clerk also takes the minutes of the County's Public Property Committee and has prepared the minutes of a closed session which involved an employe evaluation. Minutes of closed sessions are filed in the County Clerk's office and only the County Clerk and the Deputy County Clerk have access to those minutes. The Commission has consistently excluded employees with such duties on the basis that they are confidential employees. In APPLETON AREA SCHOOL DISTRICT, DEC. NO. 22338-B (WERC, 7/87), the Commission excluded a number of positions on the bases that they had access to documents involving information on bargaining strategy, access to the employer's course of action before such information is provided to the union, access to preliminary recommendations regarding contract negotiations, involvement in discussions relating to possible proposals, access to the content of employe evaluations and involvement in discussions regarding the impact of certain proposals. While those duties were spread across a number of positions deemed to be confidential in the APPLETON case, the one position of Deputy County Clerk is involved in all of those duties. The County also cites CITY OF MAUSTON, DEC. NO. 21424-E (WERC, 11/93) and PIERCE COUNTY, DEC. NO. 9616-F (WERC, 10/92), as excluding positions from the bargaining unit based in part on their role in processing grievances and access to and knowledge of information dealing with contract administration, where such information is not available to the union. Further, IN PIERCE COUNTY, the Commission ruled the position was confidential even though that resulted in two confidential positions in the County Clerk's office.

The County also asserts that the Deputy County Clerk's role in contract administration is not de minimis, and that there would be a substantial impact on the County's operation if the position were added to the bargaining unit. The Clerk testified that she would no longer use the position for developing proposals in negotiations, and Renne testified he would no longer request certain information from the Deputy County Clerk relating to negotiations or grievances. Renne further testified that no one else is in a position to make the sorts of contract administration decisions the Deputy County Clerk has been called upon to make, and that it would not only be unduly disruptive to transfer those duties to another position, it would not be practical, since there is no one else who could assume those duties.



With regard to the Business Office Manager (BOM), the County first contends the position is confidential. The County notes that its other confidential employees are either located at facilities outside of the Courthouse or are on floors of the Courthouse other than where the Health Department is located. Only the larger departments in the Courthouse have confidential secretaries and there are several smaller departments that do not. The County concludes from this that it cannot be viewed as overreaching in desiring to retain the confidential status of the BOM in the Health Department.

While the incumbent has only held the position since January of 1996, she has been involved in a number of confidential duties. Although all of the contracts were settled when the incumbent began in her position, as part of her budgetary duties, she would be aware of wage rate increase estimates while other employees would not have such knowledge. The incumbent and the Department's Director, as part of the budget process, discuss staffing levels for the coming year, information not available to other employees, and at times not available to other supervisors in the Department. The incumbent would also be consulted by the Director with regard to ideas for initial bargaining proposals. Since the incumbent is also the direct supervisor of two secretaries, she has a role in contract administration as she would deal with any grievances filed by these employees. The position also prepares the minutes of closed sessions for the Board of Health and opens all of the Department's mail, including any mail relating to labor relations. Since the BOM is the only non-union clerical position in the Department, there is no one else available to perform those confidential duties. The testimony of the Department's Director and Renne established that it would be impractical and unduly disruptive to attempt to assign those confidential duties to other confidential employees in the Courthouse on the "catch-as-catch-can" basis implied by the Union. The Commission has consistently held that where the employee is the only person available to perform the confidential duties, that employee will be excluded from the bargaining unit as confidential, even if that employee's confidential duties are de minimis. Citing, CITY OF PORT WASHINGTON, DEC. NO. 18654-B (WERC, 4/82). The County notes that it is only asking to retain its single confidential position in the 26-person department.

The County also takes the position that the BOM should be excluded from the bargaining unit as a supervisor and/or a managerial employee. The County cites the applicable criteria considered by the Commission in determining managerial or supervisory status and notes that the Commission has held that not all of the factors it considers in determining supervisory status need be present, but that an employee will be deemed to be supervisory if a sufficient number of the criteria exist. Citing, CITY OF RICE LAKE, DEC. NO. 20791 (WERC, 6/83). In CITY OF MAUSTON, DEC. NO. 21424-B (WERC, 10/86), the Commission held that it was not necessary to separately analyze whether a position is managerial or supervisory:

It is not necessary to artificially separate the supervisory and managerial elements of a position to determine if its occupant can appropriately be considered a municipal employee under ss. 111.70(1)(i). To determine whether the interests of a position are more aligned with management than with the bargaining unit, any supervisory and managerial authority possessed by the occupant of the position may be considered in conjunction.

With regard to the position's managerial duties, the County asserts that it is one of four middle-management supervisors and managers in the Health Department who report directly to the Director. All four of the positions are viewed by the Director as having equal authority, and they are the only non-unit positions in the Department. The Director holds bi-weekly meetings with the four supervisors and, on an alternating basis, bi-weekly meetings with the individual supervisors. In these meetings, issues relating to the Department's programs and goals, as well as issues relating to job performance of individual Department employees are discussed. The BOM also has substantial authority with respect to the Department's budget. She and the Director review the budget requests from the Department, and decide what should be put into the next year's budget, and she has access to budget development information before the other supervisors in the Department. The Director testified that she weighs the BOM's budget recommendations very heavily in developing the Department budget. Once the budget has been developed, it is the BOM who oversees it. She has the authority to sign vouchers authorizing purchases and possesses, and has exercised, the authority to deny such requests. She also has authority to move money from one line item in the budget to another without prior approval of the Director or the Board of Health. The BOM has the authority to deal with problems with vendors on behalf of the Department, and to resolve such problems, and makes the determination as to when the problem has been satisfactorily resolved. The BOM also has responsibility for assisting the Director in the preparation of grant applications and grant budget proposals. The BOM attends all meetings of the Board of Health. The BOM possesses and exercises the authority and responsibility for developing and implementing Department-wide policies, and has done so without seeking the Director's prior approval. The Commission has found employees with similar authority and responsibilities to be managerial. Citing, CITY OF MILWAUKEE, DEC. NO. 17741-B (WERC, 1/91) and JACKSON COUNTY, DEC. NO. 17828-F (WERC, 4/95).

With regard to the BOM's supervisory duties, the County asserts that she is the immediate supervisor of the Department's two bargaining unit clerical employees. The BOM meets weekly with them to assign their duties, at which time she also checks on their progress from the prior week, and tells them what is expected for the upcoming week. While the clerical employees also perform work for other supervisors, that work is assigned and prioritized by the BOM. At the end of the week, the BOM meets with the clerical employees and evaluates both the quantity and quality of their work product for the week. The BOM performs the formal evaluations of the clerical employees, and despite only having been in the position since January of 1996, she had already formally evaluated one of the employees by the date of hearing. The BOM drafts the evaluation and meets with the employee to discuss it and does not review the evaluation with the

Director prior to discussing it with the employe. The job description for the BOM position states that the position shall make final recommendations regarding the hiring, firing and discipline of the clerical staff. The BOM has already been involved in the hiring of a Secretary II, which included screening the applicants to determine who would make it to the interview phase, asking questions in the interviews and making the final recommendation. The Director testified that the BOM's opinion regarding a hiring decision would "weigh heavily" in her decision. The BOM testified that she would expect that the Director would follow her recommendation regarding hiring or firing just as she would follow her recommendations regarding the budget. The BOM has formally reprimanded one of the clerical employes and her authority to reprimand and suspend employes was confirmed by the Director's testimony. The BOM also has the authority to terminate probationary employes. The Director testified that while she and the BOM would discuss the situation, 99% of the time she would approve the BOM's decision. The Director also testified that in the event of a termination of a non-probationary employe, the BOM's recommendation would be given "a lot of weight". The BOM reviews and signs the clerical employes' time sheets and has the authority to authorize overtime without the Director's approval and has done so. She is also responsible for approving vacation and leave requests from the clerical employes without consulting with the Director. Unlike the two clerical employes, the BOM has her own office, and is a salaried employe with an equivalent hourly rate of \$11.42, substantially higher than the wage rates of the clerical positions. The BOM is also allowed to use compensatory time, unlike the bargaining unit employes, and also receives more vacation time than bargaining unit employes. The County concludes that the BOM position clearly meets the criteria for exclusion as a supervisor.

### **DISCUSSION**

In seeking inclusion of positions which have been excluded on the grounds of confidential, supervisory and/or managerial status, the parties pose questions in well-settled areas.

It is established that for an employe to be confidential, the employe must have significant access to, knowledge of, or participation in confidential matters related to labor relations. Information is confidential when it: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations or grievance handling between the bargaining representative and the employer; and (2) is not information which is available to the bargaining representative or its agents. See, e.g., CITY OF GREENFIELD, DEC. NO. 26423 (WERC, 4/90), and PORTAGE COUNTY, DEC. NO. 6478-D (WERC, 1/90). While a de minimis exposure to confidential materials is insufficient grounds for exclusion of an employe from a bargaining unit, the purpose of the exclusion is to protect a municipal employer's right to conduct its labor relations confidentially through employes whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. HOWARD-SUAMICO SCHOOL DISTRICT, DEC.

NO. 22731-A (WERC, 9/88). Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work. See, CITY OF GREENFIELD, supra, and PORTAGE COUNTY, supra. However, an employer will not be allowed to exclude an inordinately large number of employes by spreading the confidential work among employes or giving them occasional tasks of a confidential nature. See, HOWARD-SUAMICO SCHOOL DISTRICT, supra.

The Union cites CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84) in support of its argument that the Deputy County Clerk's involvement with payroll does not make the position confidential. We find the County's reliance on PIERCE COUNTY, DEC. NO. 9616-G (WERC, 10/92) more persuasive.

In CUDAHY, the Cost and Records Clerk maintained the books and records of the Department of Public Works; prepared the payroll; provided the Director and the labor negotiator information on the utilization of task rates, driving time and sick leave for their use in the preparation of bargaining proposals, which proposals the Director discussed with the Clerk, even though her duties did not require such access to information; provided, upon request from the Director, information to respond to grievances; had payroll duties which included the routine application of the collective bargaining agreement on such topics as overtime and classifications, with any questions or uncertainty resolved by the Director, and responded to the Director's request that she call to his attention "unusual things" regarding sick leave usage. The Commission also found that the prior incumbent had twice questioned the task slips turned in by unit members, but that the current incumbent had not been directed to monitor employe use of task rates to detect abuse; that the Director reviewed and approved the payroll which the Clerk prepared, as well as leave slips submitted by employes.

In holding the position to be that of a municipal employe, the Commission relied on understandings that the Clerk's awareness of the employer's bargaining strategy was solely due to the Director's decision to share such information, that the payroll duties involved routine application of the agreement, and that the Clerk's monitoring of leave usage was ministerial in nature.

We feel a closer parallel to the instant facts comes from PIERCE COUNTY, where the Payroll Clerk/Office Assistant tracked employe leaves and notified the County Clerk when she felt usage violated leave policies or was not consistent with the applicable agreement or past practice; participated in a contract interpretation to deny certain benefits, which led to a grievance; prepared employer exhibits in grievance arbitrations, and on one occasion advised the Clerk that her review of payroll records led her to conclude that a practice, adverse to the employer's interests, had been established. In removing the position from the bargaining unit, we explained that the incumbent's role in contract administration and grievance handling was

substantial, and that the incumbent had access to confidential information not otherwise available to employees or the union.

A similar conclusion is appropriate here. The Deputy County Clerk, Dux, has substantial involvement in the payroll administration such that she has persuaded the Personnel/Insurance Coordinator to reverse a decision on payment to a terminated employee and to reconsider an initial determination to make a payment Dux believed would compromise the County's position in a related grievance; has prevented the payment of overtime she determined was not proper under the bargaining agreement, and refused to process a health insurance application she believed was inappropriate. Clearly, both the County and the incumbent have treated the position as one with interests more closely aligned with management than with the Union. Placement of the position in the bargaining unit would deprive the County of the key component in its program of auditing payroll and personnel activities.

In a county such as Clark, where the County Clerk performs the full range of administrative tasks which elsewhere are frequently borne by a county administrator, auditor or finance department, and where the Personnel/Insurance Coordinator does his own typing because he has no clerical support staff, it is reasonable to allow the employer a confidential employee to assist them in their duties. The County may continue to use the Deputy County Clerk for that function, free from the conflicts attendant upon the position being in the unit

We turn now to the Health Department's Business Office Manager, starting our consideration with claimed supervisory status.

Section 111.70(1)(o)1, Stats., defines a supervisor as:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

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 employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. MILWAUKEE PUBLIC SCHOOLS, DEC. NO. 6595-C (WERC, 5/96).

Despite the Union's assertion to the contrary, we find that the record contains sufficient evidence to establish the position's supervisory status. The incumbent's active and meaningful participation in the hiring of a secretary and the performance evaluation of the clerk typist; her authority to make work assignments, and especially her clear authority to discipline all reflect supervisory status. The small size of the pool of employes she supervises is not a disqualification, as we have found supervisory status in other, similar situations. VILLAGE OF NECEDAH, DEC. NO. 28192-B (WERC, 10/95).

Having found the Business Office Manager to be a supervisor, we need not address the issues of claimed managerial or confidential status.

Dated at Madison, Wisconsin this 8th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**ENDNOTES**

1/ The Union originally sought the inclusion of five positions, two of which the parties resolved prior to hearing, and one - Executive Secretary in the Sheriff's Department - as to which the Union withdrew its petition.

2/ County personnel policies require evaluations of employes every twelve months, to be performed and signed by the appropriate supervisor. The evaluations are to track and improve performance, but do not affect wage rates governed by collective bargaining agreements. Continuing substandard evaluations have triggered discipline in the Child Support Department and the County Clerk's office.

