

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

:

LINCOLN COUNTY : Case 42

: No. 50001 ME-677

Involving Certain Employees of : Decision No. 20687-F

:

LINCOLN COUNTY (SHERIFF'S DEPT.) :

:

Appearances:

Ruder, Ware & Michler, S.C., Attorneys at Law, by Mr. Dean R. Dietrich,
500 Third Street, P.O. Box 8050, Wausau, Wisconsin, 54402-8050, on
behalf of the County.
Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, 7111 Wall Street, Schofield, Wisconsin, 54476, on behalf
of Lincoln County Courthouse Employees, Local 332-A, AFSCME,
AFL-CIO.

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

Lincoln County filed a petition to clarify bargaining unit on October 22, 1993 with the Wisconsin Employment Relations Commission. A hearing was held at Merrill, Wisconsin on January 10, 1994 before Examiner Sharon A. Gallagher, a member of the Commission's staff. A stenographic transcript of the proceedings was made and received on February 11, 1994. The parties filed written briefs by March 21, 1994, which were exchanged by the Examiner. The Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Lincoln County, hereafter County, is a municipal employer which operates more than twenty departments including the Sheriff's Department. The Sheriff's Department currently employs two clerical employees, Ms. Diane Hanson and Ms. Fran Jeske, twenty-five sworn law enforcement employees including the Sheriff as well as sixteen full-time and part-time non-sworn jailer/cook/dispatch employees at its offices located in the basement and on the first floor of the County Safety Building at 1104 East First Street, Merrill, Wisconsin, which is across the street from the County Courthouse.

2. The Lincoln County Courthouse Employees, Local 332-A, AFSCME, AFL-CIO, hereafter Union, is a labor organization which represents inter alia the two Sheriff's Department clerical employees and the regular full-time and regular part-time non-sworn employees in the Department. The Union maintains its offices c/o Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476.

In the current collective bargaining agreement, the bargaining unit is described as follows:

. . . all regular full-time and regular part-time employees in the Lincoln County Courthouse and Safety Building (including Correctional Guards, Matrons and Solid Waste Department employees), the Merrill Courthouse Annex and the Tomahawk Courthouse Annex, as well as the Fiscal Clerk in the Highway Department, excluding elected officials,

supervisory, managerial, and confidential employees, professional employees and all other employees including those in existing bargaining units (Decision #20687, certified by the WERC).

3. The issue raised by the County petition is whether the occupant of the position of Clerical Assistant/Corrections, Diane Hanson, should be excluded from the bargaining unit as a confidential employe.

4. Sheriff Harvey Woodward was elected and took office on January 4, 1993. When the Sheriff took office, there was a part-time County Personnel Director but that person thereafter left County employment and from February to October of 1993, the County hired and employed a full-time Personnel Director. In October, 1993, this full-time Personnel Director also left County employment and was not replaced. During all times relevant hereto, the County has employed a full-time Corporation Counsel and a Personnel Department secretary who is a full-time confidential employe not included in any bargaining unit and whose office is in the basement of the Safety Building.

5. Beginning in approximately February, 1993, Sheriff Woodward began implementing plans to reorganize and restructure the Sheriff's Department. As a part of the reorganization, Sheriff Woodward named and promoted Robert Lee to the position of Chief Deputy and he promoted former Sergeant Proulx to the new position of Acting Lieutenant. Both the Chief Deputy and the Acting Lieutenant give their typing and filing work to Hanson as does the Sheriff. The Sheriff and Chief Deputy are Hanson's supervisors and have their offices on the first floor of the Safety Building. Hanson's office is also on the first floor of the Safety Building while the Lieutenant's office is in the basement.

6. Hanson spends about 75 percent of her average work week performing clerical duties with about 5 percent of her work week dealing with labor relations matters including typing and filing grievance answers and other personnel file documents, typing the Sheriff's strategy regarding grievances and pending litigation relating to labor relations, typing minutes taken by others (including minutes of closed sessions) at meetings of the Law Enforcement Committee, the Personnel Committee and the Civil Service Committee, typing correspondence to these committees from the Sheriff and sending and receiving faxes relating to labor relations. Hanson also opens the Sheriff's mail, types all notes and memos to the Corporation Counsel and all notes and memos relating to internal investigations of employe and County Board member misconduct. Hanson has access to personnel files kept locked in a filing cabinet in the Sheriff's office. Hanson is the only secretary allowed access to these files. Hanson spends the majority of her clerical work time transcribing investigatory reports regarding criminal cases, drug unit activities and juvenile matters.

7. In February, 1993, Hanson described her duties in a memo to the Sheriff as follows:

Transcribes reports, filing of all criminal cases and makes entries into the computer of same. Makes referrals to District Attorney.

Transcribes confidential reports concerning juvenile matters, drug investigations/activities.

Transcribes letters from Chief Deputy and/or Sheriff relating to grievances and disciplinary matters. Performs special assignments for Chief Deputy/Sheriff.

Composes correspondence relating to routine inquiries, etc.

TAC officer (Time Agency Coordinator) for Sheriff's Department, working closely with Chief Deputy to ensure officers are updated in training relating to Teletype.

Types agendas, minutes, budgetary reports for committee, and any other information needed.

Receipts for incoming payments of invoices (travel/service charges, accident report and criminal complaint charges, etc.)

Completes correspondence and First Injury reports for workman's compensation claims.

Assists the public in retrieving information/records, providing them with motor vehicle forms, etc.

Operates Communications upon request, acts as Correctional Officer when needed (transporting female prisoners, making cell checks, etc.)

Assists the public in taking complaints, statements, etc.

Compiles data to complete reports for special studies, Crime Victim Compensation Program, etc.

Conducts criminal records searches for District Attorney, Social Services, Military officials, etc.

Types reports, referrals to District Attorney for all officers.

Does everything else I failed to mention, except janitorial duties.

8. The Sheriff's Department has two unions representing its employes, the Union herein and the Labor Association of Wisconsin representing its sworn deputies and sergeants. In mid-1994 the labor agreements between these two unions and the County will be open for negotiation for the first time since Sheriff Woodward's election to office. The Sheriff and Chief Deputy who have not previously had the opportunity to be involved in negotiations will be on the County's bargaining team. Sheriff Woodward does not anticipate Hanson attending negotiation meetings but he does expect that Ms. Hanson will type all of his correspondence, notes, memos and strategies regarding these negotiations. The Sheriff is also considering proposing changes in the County civil service system affecting certain Sheriff's Department employes and he anticipates Hanson typing all correspondence regarding proposed changes.

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

CONCLUSION OF LAW

Diane Hanson is not a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and thus is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Clerical Assistant/Corrections shall remain included in the bargaining unit set forth in Finding of Fact 2.

Given under our hands and seal at the City of
Madison, Wisconsin this 12th day of July, 1994.

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

1/ (Footnote found on pages 5 and 6)

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.

(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.

(Footnote continued on page 6)

(Footnote continued)

(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.

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

Positions of the Parties:

The County filed the instant petition seeking to exclude the Clerical Assistant/Corrections position from the bargaining unit as a confidential employe. The County urged that even though Hanson's work on confidential labor matters amounts to only five percent of her work time, case law supports her exclusion citing, among others, Village of Saukville, Dec. No. 26170 (WERC, 8/91); Portage County, Dec. No. 14946 (WERC, 9/76); Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88) and Town of Madison, Dec. No. 13640-A (WERC, 2/79). The County contended that based upon the cited cases and due to Hanson's duties for the Sheriff and his recent reorganization of the Department as well as his "hands-on" approach to labor relations, Hanson is more closely aligned with management and its interests than she is with the bargaining unit.

The Union argued that the County currently has one full-time confidential employe, the Personnel Department Secretary, and that the Secretary's office is in the same building as the Sheriff's office. The Union noted that Hanson, at most, performs de minimis confidential duties for the Sheriff who has not to date been involved in any contract negotiations. The Union asserted that the five percent of the time that Hanson does confidential work for the Sheriff could easily be absorbed by the full-time Personnel Department Secretary without unduly disrupting County operations.

Discussion:

Under Commission precedent, an employe must generally have significant access to, knowledge of or participation in confidential matters relating to labor relations in order to be a confidential employe excluded from any bargaining unit. Confidential matters deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations which matters are not available to the bargaining representative or its agents. 2/

The confidential exclusion protects a municipal employer's right to conduct its labor relations 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. 3/ However, an employer will not be allowed to exclude an inordinately large number of employes by spreading the work of a confidential nature among such employes or giving them occasional tasks of a confidential nature. 4/

The record establishes the Sheriff will take a more active role than his predecessor in the upcoming collective bargaining involving the two units containing Department employes. The record further establishes that the Sheriff's reorganization of the Department has generated an increased level of grievance activity.

2/ Dane County, Dec. No. 22976-C (WERC, 9/88); Village of Saukville, Dec. No. 26170 (WERC, 9/89).

3/ Cooperative Educational Service Agency No. 9, Dec. No. 23863-A (WERC, 12/86).

4/ Marshfield Joint School District No. 1, Dec. No. 14575-A (WERC, 7/76).

We have held that where, as here, the employer has made a good faith decision to restructure the manner in which bargaining responsibilities have previously been allocated and where, as here, the result of that change has to our satisfaction given significant bargaining responsibility to a management employe, the clerical employe assigned to that management employe as his or her secretary will be found to be confidential even where the actual amount of confidential work is not significant unless the confidential work can be assigned to another confidential employe without undue disruption of the employer's organization. 5/ Applying this principle to the instant case, we are satisfied that it is not appropriate to exclude Hanson as a confidential employe because her confidential work can be assigned to the Personnel Department confidential employe without undue disruption.

The amount of routine confidential labor relations work at issue is approximately two hours per week. Virtually all of the work involves typing correspondence, memos, minutes from committee meetings, etc. We find nothing in the record which persuades us that the existing confidential secretary located one floor below the Sheriff cannot perform the work in question or that it would unduly disrupt the Sheriff's Department operations to have Hanson's confidential labor relations work transferred to that secretary. As a bargaining unit member, Hanson can continue to perform confidential work not relating to labor relations, i.e., transcription of reports and legal documents relating to criminal, juvenile, and drug activities of the Department, typing and filing routine workers Compensation correspondence and reports, and conducting criminal records searches without conflict with Sec. 111.70(1)(i), Stats.

Given the foregoing, we conclude that Hanson should continue to be included in the unit.

Dated at Madison, Wisconsin this 12th day of July, 1994.

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

5/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88); La Crosse School District, Dec. No. 15710-A (WERC, 5/79); See also City of Greenfield, Dec. No. 25646 (WERC, 8/88).