

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**WAUPACA COUNTY NON-PROFESSIONAL
EMPLOYEES UNION, LOCAL 2771, AFL-CIO**

Involving Certain Employees of

WAUPACA COUNTY

Case 18
No. 55243
ME-892

Decision No. 20854-E

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of the Waupaca County Non-Professional Employees Union.

Godfrey & Kahn, by **Attorney James R. Macy**, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902, appearing on behalf of Waupaca County.

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

On May 16, 1997, the Waupaca County Non-Professional Employees Union, Local 2771, AFSCME, AFL-CIO, herein the Union, filed with the Wisconsin Employment Relations Commission a Petition to Clarify Bargaining Unit, by which it sought the inclusion of two Legal Secretary positions within the Corporation Counsel's office into an existing courthouse unit of Waupaca County employees. On August 12, 1997, Examiner Raleigh Jones scheduled a hearing in the matter for October 28, 1997. On September 5, 1997, the Union filed a supplemental Petition, by which it also sought the inclusion of the positions of Emergency Management Program Assistant and Confidential and Administrative Specialist. On October 10, 1997, Hearing Examiner Stuart Levitan, a member of the Commission staff, informed the parties that he would be conducting the hearing. On October 22, 1997, at the Union's request, Examiner Levitan cancelled the October 28 hearing.

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Hearing was thereafter held on May 21, 1998, in Waupaca, Wisconsin. During the hearing, the Union agreed the Confidential and Administrative Specialist was a confidential employe and withdrew its request that the position be included in the unit. A stenographic transcript of the hearing was available to the parties on June 22, 1998.

The Union filed written argument and reply on August 5 and August 7, 1998; the County filed written argument and reply on July 24 and August 19, 1998. The County resists the Union petition based on its belief that: (1) Corporation Counsel Legal Secretary Horn is a confidential, managerial and supervisory employe; (2) Corporation Counsel Legal Secretary Tews is a confidential, managerial and professional employe; and (3) Emergency Management Program Assistant Weir is a confidential and managerial employe who is also appropriately excluded based on the scope of the existing courthouse unit.

The Commission, now being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Waupaca County Non-Professional Employees Union, Local 2771, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices in care of Staff Representative Jeffrey J. Wickland, P.O. Box 44, Stevens Point, Wisconsin. At all times material, the Union has been the certified exclusive representative for collective bargaining for a unit described in the parties' 1996-1998 contract as:

...all regular full-time and regular part-time employees of the Waupaca County Courthouse, and custodial employees and truck drivers in Human Services, excluding supervisor, confidential, managerial, casual, seasonal, temporary and farm employees.

2. Waupaca County, herein the County, is a municipal employer with offices at 810 Harding Street, Waupaca, Wisconsin. There are approximately 500 County employes. Jeannette Helgeson is the County Personnel Director, supported by two unrepresented assistants, one of whom is the Confidential and Administrative Specialist, who the Union at hearing stipulated was a confidential employe.

There are seven collective bargaining units of County employes, five – courthouse professionals, courthouse non-professionals, Lakeview Manor, highway and patrol – being represented by AFSCME, and two – corrections officers and telecommunicators – being represented by the Labor Association of Wisconsin. The County retains Godfrey & Kahn, S.C., to assist in collective bargaining and contract administration, with Attorney James Macy representing the County in such proceedings. Corporation Counsel Siewert also provides the County with legal services in labor relations matters.

3. Terri Tews and Barbara Horn each hold the position identified as Confidential Legal Secretary, Corporation Counsel's Office, with the following position description:

TITLE: CONFIDENTIAL LEGAL SECRETARY
DEPARTMENT: CORPORATION COUNSEL'S OFFICE
LABOR GRADE: 8-NON-UNION
FUNCTION: REPORTS TO AND SUPERVISED BY CORPORATION COUNSEL

This responsible administrative assistant/clerical position requires the ability to master the policies and procedures of the County Corporation Counsel's office. This position must perform all clerical duties related to the activities of the office from initiation to disposition in a timely fashion and must be able to perform effectively in response to oral task assignments. Work will be done under general supervision with considerable opportunity for independent judgment, problem solving and decision making.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

1. Serve as administrative assistant/calendar clerk/receptionist for the Corporation Counsel's Office, make referrals, schedule appointments, take messages and furnish information to the public and County personnel.
2. Calendar and set up hearings, draft Motions, Orders and Stipulations for child support matters needing court actions (referred from the Child Support Agency).
3. Assist in calendaring, drafting paperwork and monitoring guardianships, protective placements, emergency protective placements, mental health emergency detentions and three-party petitions for alcohol and mental health commitments. (See attached for detailed descriptions of duties involved.)
4. Assist in establishment of paternity cases pursuant to time limits established by State Statute. (See attached for detailed description of duties involved.)
5. Assist in drafting of necessary documentation, coordinate with County Treasurer's Office, file tax liens and/or tax foreclosures; draft Judgment of Foreclosure; draft Quit Claim Deeds and Transfer Tax Returns upon sale of foreclosed properties.

6. Assist in researching, typing, filing and monitoring of civil lawsuits and or union grievances brought on behalf of or against Waupaca County.

7. Research, type, proofread and/or edit correspondence, memos, legal opinions, legal briefs, resolutions, ordinances, contracts and any other paper work related but not limited to labor law management/union disputes, tax foreclosure actions, and contract disputes.

8. Monitor bankruptcy cases filed as they relate to the Department of Human Services and the County Treasurer's Office; file Proofs of Claim with Bankruptcy Court as needed.

9. Supervise miscellaneous real estate transactions (purchases by County) including drafting Offers to Purchase, Deeds, Transfer Tax Returns and Closing Statements.

10. Prepare and file Small Claims Summons and Complaints for miscellaneous collections matters on behalf of the County.

11. Open and maintain files on cases of all types.

12. Open, sort and date stamp incoming mail.

13. Monitor and maintain office supplies.

14. Other duties as assigned by Corporation Counsel.

KNOWLEDGE & SKILLS:

A. Demonstrated knowledge of office and legal terminology, office procedures, office equipment, basic bookkeeping, business math and English;

B. Ability to attain thorough knowledge of regulations pertaining to the operation of the Corporation Counsel's office;

C. Word processing/typing (55 wpm minimum) skill required;

D. Demonstrated interpersonal skills in dealing with other County staff and the public;

E. Ability to interpret policies and to develop and implement office procedures;

F. Demonstrated ability to attain knowledge of legal terms, legal forms, court procedures and the interrelationships of the Courts, Clerk of Courts,

Police and Sheriff's Departments, District Attorney's Office, Department of Health and Human Services and other County Departments with the Corporation Counsel's office.

G. Skill in interviewing clients, gathering and verifying information from diverse sources.

EXPERIENCE:

Experience in complex clerical and office management work, preferably gained through progressive responsible work in a law office and completion of a standard high school course with supplementary business/technical school training or any other combination of training and experience which process the required knowledge, skills and abilities.

TOOLS AND EQUIPMENT USED:

Telephone, word processor/computer terminal, copy machine, calculator, typewriter and fax machine.

PHYSICAL DEMANDS:

While performing the duties of this job, the employee is required to spend the majority of the time sitting at a desk. Use of hands and arms is required to answer phones, type, sort files and operate a calculator. Limited walking between offices and/or court is also required.

WORK ENVIRONMENT:

This position operates in an office setting with a relatively low noise level. Frequent unhappy clients visiting the office and/or on the telephone makes the position stressful.

SELECTION GUIDELINES:

Formal application, rating of education and experience; oral interview and reference check; job related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related to a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee is and subject to change by the employer as the needs

of the employer and requirements of the job change.

ESTABLISHMENT OF PATERNITY

A. Conduct initial interviews (either walk-in clients referred by Child Support Agency or Economic Support Unit). Schedule by letter to mothers for interviews with normal referrals.

B. Open file – if child is unborn, hold in pending and monitor for birth of child – contact economic support workers for birth reports.

C. When child is born or if child is born when referral is made, do necessary cross-reference cards, labels and information sheets.

D. Draft Summons, Petition, Notice to Respondent and Waiver of First Appearance; schedule court date; file with Clerk of Courts, copy and send certified mail to respondent or arrange for personal service; make guardian ad litem appointments for minor mothers and public defender appointments for minor fathers; draft Orders appointing guardian ad litem for minors.

E. Based on Waiver forms received either Findings of Fact, Conclusions of Law and Judgment of Paternity based on admission, copy, file, remit to all parties and close file; schedule blood tests for all parties if requested and draft Orders and correspondence to all parties for blood tests.

F. Monitor files for blood tests results, when received copy, file and send to all parties; draft proposed Stipulation for respondent to admit paternity; schedule further proceedings if Stipulation is not accepted; if alleged father is excluded by blood tests, dismiss action and contact mother for further information regarding other possible fathers. Refile new case based on new information received.

G. Coordinate paternity court calendar, outline cases for Corporation Counsel, attend hearings, draft Findings of Fact, Conclusions of Law and Judgments of Paternity, Default Judgments or arrange blood tests per findings of hearings, file, copy, send to all parties and close file.

MENTAL COMMITMENTS

A. Receive and review Chapter 51 emergency detentions, coordinate with Department of Health and Human Services court liaison and mental health facilities; set for hearing within 72-hour time limit, arrange for public defender or court appointed attorney, arrange Sheriff's transport; draft paperwork, obtain Judge's signature, open file, copy and deliver paperwork to appropriate parties;

coordinate with court liaison for doctor's testimony at hearing. (See C below if being rolled to Chapter 55 at hearing.) Attend court hearing and take notes; draft 90-day Stipulation at probable cause or make arrangements for final hearing or change of venue, including scheduling with Court, drafting of paper work, arranging for two psychological evaluations and Sheriff's transport; copy and deliver paperwork to appropriate parties. Monitor file until final hearing date; attend hearing and take notes; draft Order of Commitment and deliver copies to appropriate parties.

B. Follow same procedures in A above for 3-party petitions for mental health and alcohol commitments, except in addition must coordinate affidavits of petitioners, ascertain information needed for petition, draft Order for Detention and Transport, coordinate pickup with Sheriff's Department, Department of Health and Human Services and facility.

C. Follow same procedures in A above for Chapter 51 to Chapter 55 rollovers. In addition follow procedures for Temporary Guardianship as in C under GUARDIANSHIP AND PROTECTIVE PLACEMENT below.

D. Maintain and monitor list of commitments with expiration dates with the Department of Health and Human Services; coordinate extension hearings with caseworkers; draft paperwork, assist in obtaining psychological evaluations, schedule hearings, obtain counsel, monitor file until hearing, attend hearing and take notes, draft Order for Extension of Commitment and deliver copies to appropriate parties.

E. Draft Petitions and Orders for transfer from facility to facility or from outpatient to inpatient status and Medication Orders on an as needed basis.

F. Monitor and draft dismissal Orders on 90-day Stipulations at expiration, obtain Judge's signature and send to appropriate parties.

GUARDIANSHIP AND PROTECTIVE PLACEMENT

A. Receive and review Petitions from facilities or social workers with Department of Health and Human Services.

B. Schedule court hearing, arrange for competency evaluation, obtain volunteer guardian where needed, appoint guardian ad litem; draft Notice of Hearing, Order Appointing Guardian ad Litem, Rights of Proposed Ward and Order for Competency Evaluation, Certificate of Service; open file, copy and send paperwork to all interested parties on timely basis; draft Affidavit of Mailing; draft letter to nursing home or facility with Certificate of Service on proposed ward; draft letter to proposed guardian enclosing brochure describing duties; draft

letter to guardian ad litem with instructions; draft letter to all other interested parties; monitor file until hearing, draft Determination and Order, Bond and Letters of Guardianship, attend hearing and take notes, finalize bond with signatures, obtain Judge's signature, draft letter and send final documents to appropriate parties.

C. Emergency Protective Placements – Receive and review petition, set for hearing within 72 hour time limit; appoint guardian ad litem; coordinate with Department of Health and Human Services and/or living facility or family for temporary guardian; draft paperwork, fax to facility if ward is not transported; coordinate with guardian ad litem as to waiver of appearance of ward; if not waived, arrange of transport of ward to hearing; coordinate telephone testimony of doctor re competency; draft Determination and Order, Bond and Letters of Temporary Guardianship; attend hearing and take notes, finalize Bond with signatures, obtain Judge's signature, and draft letter and send temporary documents to appropriate parties. This procedure is good for up to sixty days at which time the procedures in B above must be repeated for a final guardianship and protective placement.

D. Miscellaneous duties regarding review hearings, including arranging for evaluations, drafting Notices of Hearing and Motions and Orders for revision or dismissal of guardianships and protective placements.

4. Tews has held her position since January 1995, with her primary duties relating to mental health commitments, guardianships and paternity/child support issues. Tews has an office with the Corporation Counsel's office area. She holds a paralegal degree. At the time of hearing her hourly wage was \$13.72, pay grade eight.

She receives correspondence, phone messages and faxes relating to collective bargaining and contract administration, particularly involving the County's labor relations outside counsel, Macy. Tews assists Corporation Counsel Siewert in performing legal research relating to ongoing litigation, which from time to time involves confidential labor relations matters. When the County was involved in litigation over layoffs in its Highway Department, Tews was privy to confidential labor relations information to and from Macy.

There have been occasions on which Siewert would discuss with Tews the possibility of particular discipline or discharge, some of which the County did not ultimately impose. These discussions were held at various points in the office, including in Siewert's office with the door open. At the time of hearing the County was involved in litigation with an employe of the Human Services Division, about which litigation Tews had no particular knowledge. At the time of hearing, the County was also involved in potential litigation concerning another bargaining unit member, involving a claim of discrimination and a grievance, which has occasioned confidential correspondence between Macy and Siewert, which correspondence Tews did not

prepare. However, Tews has faxed to Macy confidential correspondence which Horn prepared. Macy has the practice of leaving detailed phone messages with Tews for Siewert, explicitly relaying and relating legal strategy for matters involving labor relations.

Tews is heavily involved in child support enforcement services, which in 1997 totaled over \$500,000. It was Tews who initially recommended to Siewert the retention of private outside counsel to handle aspects of this work, which recommendation ultimately led to County Board action allocating the necessary funds in an identified line item. Siewert, and not Tews, has the authority to transfer funds from another line item into this fund. Tews participated, with Siewert and the outside counsel, in the negotiations which set the rates the outside counsel receive. She does not have the authority to alter those rates. Siewert routinely accepts and implements her suggestions on policies and procedures for managing the child support enforcement function, including budget recommendations.

5. Horn has held her position since January, 1995, and functions as a *de facto* office manager in terms of office equipment, budget, scheduling cases and establishing a filing system. At the time of hearing her hourly wage was \$13.72.

She has the primary responsibility for typing all of Siewert's confidential labor relations material. She maintains the grievance files for Siewert, which include memoranda and correspondence, both internal and to and from outside legal counsel, regarding the County's legal strategy, investigations and potential settlement offers. Not all matters that she handles in this way are communicated to the employe or labor organization affected. She receives and relates fax and telephone messages between Siewert and outside legal counsel which sometimes relate to confidential labor relations matters.

Horn has primary responsibility within the office for guardianship matters, including a coming system of centralized receiving and disbursing. Horn has been helping Siewert with position descriptions for new positions that may be created, which Horn may then supervise. Horn makes effective recommendations for the ordering of office equipment, and has effectively recommended choosing to lease rather than purchase. The office computer system is arrayed in such a way that only the monitor on Horn's desk is connected to the internal County e-mail system; Horn, Tews and Siewert all have password access to the e-mail.

6. John Siewert has been the Waupaca County Corporation Counsel since January 1990. He has given Tews and Horn access to all items in his office, and routinely discusses with them and Attorney Macy legal strategy concerning litigation and grievances involving bargaining unit employes. Siewert does not serve as the County's primary spokesperson in collective bargaining, attending such sessions only occasionally; Macy and the County's Personnel Director hold the primary responsibility for collective bargaining. Although in the year prior to hearing, Siewert had not formally represented the County in any litigation relating to labor relations, he is routinely involved in the determination of the County's strategy in such matters. He did make appearances on such matters in the prior year.

7. Sue Weir is the Emergency Management Program Assistant, with the following position description:

WAUPACA COUNTY POSITION DESCRIPTION

Classification:Emergency Management Program **Grade:**
Assistant

Union: Non-Union

Location: Courthouse Annex

Position Summary:

This position under the direction of the Emergency Management Director, shall assist in maintaining emergency preparedness for manmade, natural or hazardous materials disasters which requires the handling of the Emergency Management's confidential information and the E911 Communications Center.

Supervision Received:

Works under the supervision of the Emergency Management Director.

Supervision Exercised:

Supervises as assigned and in the absence of the Emergency Management Director.

Essential Duties:

Processes final drafts and quarterly reports of grant applications.

Processes County Emergency Plan annexes as directed.

Processes SARA/EPCRA offsite plans as directed.

Coordinates and maintains filing system for Emergency Management operations.

Receives, stamps, and distributes incoming mail and processes outgoing mail.

Maintains and assists in procurement of office supplies.

Works closely with Emergency Management Director during disaster situations.

Composes, types and edits a variety of correspondence, reports, memoranda, confidential minutes and other material requiring judgement as to content, accuracy and completeness.

Maintains good working relations with officials and all appropriate agencies.

Peripheral Duties:

Performs other closely related activities as required and/or directed by the Emergency Management Director which may include:

Attending meetings, serving as messenger between Emergency Management Office and other County Departments, preparing memos and/or handling directives/information relative to the E911 Communications Center and the Emergency Management Office, and carrying out any other duties assigned by the Emergency Management Director.

Minimum Qualifications:

Education: Graduation from a high school or equivalent with specialized course work in general office practices, public administration or public relations.

Experience: 3 to 5 years of increasingly responsible related experience, or any equivalent combination of related experience and education.

Necessary Knowledge, Skills, and Abilities:

Working knowledge of civil government structure. Personal Computers (PC's), WordPerfect 6.0, and modern office procedures in order to organize and prioritize assigned projects; ability to communicate effectively orally and in writing, must be a self-starter and take initiative in work, including being imaginative and innovative in office procedures; must be able to handle stressful situations; must have valid Wisconsin drivers' license.

Tools and Equipment Used:

Copy machine, personal computer including related software, calculator, telephone, FAX machine.

Physical Demands:

The physical demands described here are representative of those that must be met by an employee to successfully perform the functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to sit and talk or hear. The employee is frequently required to sit for extended periods of time, stand and walk, use hands to handle or operate objects, tools, or controls, and reach with hands and arms. The employee must be able to lift and move up to 60 pounds. Specific vision abilities required by this job include close and distance vision, color vision, and the ability to adjust focus. Work hours will usually be normal office hours Monday through Friday; however, emergency situations may require being called in other times.

Work Environment:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually quiet with some background noise.

Selection Guidelines:

Formal application and screening, job related testing, reference check and oral interview.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

The Emergency Management Program, which encompasses the functions relating to both emergency response to disasters and emergency dispatch for more individual protective services, consists of Director Jeffrey Kubitz; Weir; three unrepresented supervisors and nine telecommunicator positions who are represented by the Labor Association of Wisconsin. Weir has been employed as Program Assistant since June 1996. At the time of hearing, her hourly wage was \$11.68. Her office is in the lower level of the Sheriff's Department, in a building

separate from but adjacent to the Waupaca County Courthouse. Weir's office adjoins Kubitz's; each has a separate lock and key. Technically on-call around-the-clock, her normal duty hours are 6:30 a.m. to 3:00 p.m.

Weir is responsible for the receipt and filing of correspondence between and among Kubitz, Macy and Helgeson concerning labor relations matters, including their shared responsibilities during the bargaining of a first contract upon the establishment of this unit. There has been discipline of LAW unit employees, and Weir has been responsible for correspondence between and among Kubitz and other County officials. Weir has also been made aware, and has prepared correspondence and other documents, relating to discipline which Kubitz considered but did not impose.

8. The Confidential Legal Secretaries, Corporation Counsel, have sufficient involvement with or access to confidential matters relating to labor relations to be deemed confidential employees.

9. The Program Assistant, Emergency Management Program, has sufficient involvement with or access to confidential matters relating to labor relations to be deemed a confidential employee.

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

CONCLUSIONS OF LAW

1. The two Confidential Legal Secretaries, Corporation Counsel, are confidential employees within the meaning of Sec. 111.70(1)(i), Stats.

2. The Program Assistant, Emergency Management Program, is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The positions of Confidential Legal Secretary, Corporation Counsel and Program Assistant, Emergency Government Program, shall remain excluded from the unit described in Finding of Fact 1.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of December, 1998.

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

WAUPACA COUNTY (COURTHOUSE)

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

POSITIONS OF THE PARTIES

The Union

In support of its contention that the three subject positions should be accreted into the unit, the Union contends the positions do not satisfy the statutory or case law criteria for exclusion as confidential or managerial positions. The Union states that, although the Corporation Counsel testified that he spends 20 percent of his time on labor relations matters, the subject positions are not privy to sensitive labor relations matters because the County retains outside legal counsel to conduct its negotiations, contract administration and litigation. The Union also notes that the County has a full-time Personnel Director, and states that there was no supporting testimony which evidenced the subject positions had access to confidential matters pertaining to labor relations.

The Union also argues that the *de minimis* confidential duties of the position within the Emergency Management area can be handled by other confidential employees without undue disruption. There is no reason, the Union states, that whoever does the confidential filing for the Sheriff cannot perform the same duties for the Director of Emergency Government.

The Union also states that efficiency does not justify the exclusion of two confidential employees in the Corporation Counsel's office. While cross-training may be a laudable device to increase office efficiency, the duties do not even justify one confidential exclusion.

The Union concludes that, under current circumstances, the positions in question are neither confidential, supervisory and/or managerial and argues that as is now routine in these types of proceedings, the employer has presented a revised job description and elicited testimony as to a supervisor's conjecture of future circumstances. But based upon existing circumstances, the two Legal Secretaries and the Program Assistant should be accreted to the bargaining unit.

The County

The County contends that the three subject position incumbents are properly excluded from the bargaining unit because they are all confidential and managerial employees. The County further contends there are additional grounds for exclusion in that one of the Legal Secretaries is also a supervisor, while the other Legal Secretary is a professional employee.

The County, noting that the Corporation Counsel testified that about one-fifth of his workload involves confidential labor relations, contends that Secretary Barbara Horn has access to or knowledge of its position and strategy with regard to labor relations, including collective

bargaining, contract administration, litigation, grievance handling or other similar matters. The Corporation Counsel regularly discusses strategies involving litigation or grievances with Horn, information that would not be available to the Union. The Corporation Counsel has significant labor relations responsibilities, and Horn's exposure to confidential labor relations information is more than merely *de minimis*. That hers is a confidential position is reflected in her position description. She prepares confidential correspondence for the Counsel, takes and conveys phone messages, maintains files, and has access to information and data. There is little doubt that she is a confidential employee properly excluded from the bargaining unit.

It is also the County's position that Horn's position is managerial, given her responsibilities in formulating, determining, and implementing various policies and programs relating to guardianship matters. The Corporation Counsel and Horn both testified that Horn is in charge of the office equipment, office budget, scheduling cases, and assigning attorneys for guardianships. Horn is also responsible for making decisions with regard to the budget and purchases for the Corporation Counsel's office. She has the authority to commit County resources in that she establishes the Corporation Counsel's budget, and she has the authority to allocate budgeted funds. There is little doubt that she is a managerial employee.

Finally, Horn's prospective authority to supervise other employees makes her a supervisor, and again properly excluded from the unit.

As to Legal Secretary Terry Tews, the County states that her access to and knowledge of confidential labor relations information makes her properly excluded as a confidential employee. For example, she has typed correspondence for the Corporation Counsel that contained confidential information; and she opens all incoming mail, relays phone messages, and prepares and receives faxes, some of which no doubt contain confidential labor relations information. Tews is also privy to confidential labor relations information as a result of conversations she is a party to within the office.

The County also contends that Tews is a managerial employee, in that she is responsible for formulating, determining and implementing policies relating to child support and paternity determinations. She has been responsible for contracting with outside private counsel, and has implemented various policies and programs for child support cases. She also has the authority to commit the County's resources in that she plays a significant role in setting the budget and allocating funds. There is little doubt she is a managerial employee and properly excluded from the unit.

Finally, the County contends that Tews is a professional employee, in that she has a paralegal degree, and performs work that is predominantly intellectual, involves discretion as well as judgment and is of the character that its output cannot be standardized in relation to a given period of time.

The County contends that the position of Emergency Management Program Assistant

should remain excluded from the bargaining unit because the position is managerial, confidential, and is outside the scope of the courthouse unit.

The County notes that the recognition clause of the collective bargaining agreement expressly limits the bargaining unit to employees of the “courthouse”; as the incumbent works in the lower level of the Sheriff’s Department, the collective bargaining agreement explicitly excludes her inclusion in the unit.

The County also states that the incumbent has access to or knowledge of confidential labor relations matters, including correspondence relating to collective bargaining and potential discipline, and is the only confidential employee available to the Director of Emergency Management.

The County also argues that the incumbent is responsible for formulating, determining and implementing programs and policies, making her a managerial employee as well. These duties have included the responsibility for committing the County’s resources, developing an office filing system, and having the independent authority to do all of the Department’s purchasing.

Accordingly, the County requests that all three subject positions remain outside the collective bargaining unit.

Union Reply Brief

The Union replies that the County’s position defies both logic and well-established precedent, and, aside from its verbiage, the facts indicate the County’s position cannot be taken seriously. It is astounding and simply unbelievable for Waupaca County to claim the need for two managerial employees in the same office.

The County’s presentation, which the Commission will readily accept as showing good faith, is self-serving speculation that shows how the Union can be ambushed at will by a manufactured, disingenuous case. The County takes the tactic of throwing out any argument, no matter how far fetched, to a new level by its revision of job descriptions for the express purpose of influencing the outcome of this case.

The County has alluded to future changes which may or may not occur. But the fact is that the major labor relations duties formerly performed by the former District Attorney have been transferred to officials other than the incumbent Corporation Counsel. The County has offered conclusions rather than hard evidence as to the amount of time devoted to sensitive labor relations matters, and misrepresents what labor relations matters really are. The County could not rebut the Union testimony that the Corporation Counsel has never participated in negotiations, grievance arbitration and the like.

The discontinuance of the use of the Legal Secretaries as a sounding board would not

cause undue disruption of the employer's operation.

Nor is the Emergency Management position needed for confidential duties, given the availability of other personnel to handle confidential matters.

County Reply

The Union errs in relying on the previous case involving these parties; since the facts have not materially changed, that decision supports continued exclusion of the subject positions. The Corporation Counsel has assumed the labor relations role formerly held by the District Attorney. Because of the demanding workload, the Counsel has two Legal Secretaries, both of whom have occasion to perform a significant amount of confidential labor relations work. Notwithstanding the role of consultants or outside labor counsel, the County is entitled to confidential clerical and support staff. Numerous Commission cases support the exclusion of legal secretaries on grounds of confidential status.

As a matter of law, the Corporation Counsel is responsible for determining how legal services are to be performed; the right of the Counsel to retain outside counsel has created a legitimate organizational need that requires the continued exclusion of two Legal Secretaries. For the Commission to determine otherwise would prove truly disruptive. The Corporation Counsel is entitled to confidential clerical and support staff as the Corporation Counsel determines. The Commission must then evaluate if a sufficient amount of responsibilities are assigned so as to meet the definition of confidential. For the Commission to determine otherwise would not only be counter-productive, but would violate state law. If case law allows the Commission to require the reassignment of duties, the Commission should reconsider that case law.

Finally, contrary to the Union's contention, the Courthouse unit is not the appropriate bargaining unit for the Emergency Management Program Assistant. That position is housed outside the Courthouse, and is a confidential employe.

DISCUSSION

It is well-established that for an employe to be held confidential, such employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must: (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88). While a *de minimis* exposure to confidential materials is generally insufficient grounds for exclusion of an employe from a bargaining unit, BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87) we have also sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management. CESA AGENCY No. 9, DEC. NO. 23863-A (WERC, 12/86). 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, TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85) and, similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, unless the confidential work can be assigned to another employe without undue disruption of the employer's organization. HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88). However, an employer clearly cannot 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. MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76). To do so would be to allow the employer to deprive said employes of their status as "employes" under the law. MENOMONEE FALLS JT. SCHOOL DISTRICT NO. 1, DEC. NO. 11669 (WERC, 3/73).

Information available to either the union or the employe is not considered to be confidential. DEPERE SCHOOL DISTRICT, DEC. NO. 25712-A (WERC, 10/90). For example, access to personnel files is not typically indicative of confidential status because the information contained therein is typically accessible to employes or their union, APPLETON AREA SCHOOL DISTRICT, DEC. NO. 22338-B (WERC, 7/87), and because the employer can limit access if it chooses. OREGON SCHOOL DISTRICT, DEC. NO. 28110-C (WERC, 4/96). Likewise, access to the information and records concerning employes' pay levels, health and life insurance benefits, unemployment compensation, leave, retirement, etc. does not exclude an employe as confidential unless such employe is also privy to the employer's decision-making process with respect to personnel and labor relations issues. OUTAGAMIE COUNTY, DEC. NO. 14062 (WERC, 10/75). In addition, providing information for use by the employer in collective bargaining or in responding to grievances, absent knowledge of the employer's grievance or bargaining strategy, generally does not render a position confidential within the meaning of the law. CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84). Finally, possible future confidential duties combined with current exposure to confidential matters may warrant a position's exclusion as confidential, MANITOWOC COUNTY, DEC. NO. 8152-J (WERC, 11/90), or such future duties and responsibilities may be too speculative or *de minimis* to warrant exclusion from the bargaining unit as confidential. WAUKESHA JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 10823-A (WERC, 3/81).

The Commission has held that, "the physical proximity of confidential and non-confidential employes or the effect of finding a confidential status or a non-confidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employes are confidential employes." MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76), cited in WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89).

However, an employer may have legitimate privacy concerns. In DUNN COUNTY, DEC. NO. 8170-A (WERC, 10/91), a Commission majority (Commissioners Hempe and Strycker) found such

a concern to be “significant when combined with the difficulty of rearranging the work load in a logical manner and the significant labor relations responsibility which the Administrative Coordinator holds.”

The record clearly establishes that Corporation Counsel Siewert does have ongoing confidential labor relations responsibilities. While many of those responsibilities are shared with outside labor counsel, there is no doubt that these shared responsibilities involve a significant amount of confidential communication between Siewert and outside counsel. Thus, although Siewert does not routinely formally represent the County in labor relations matters, he is routinely involved in the determination of the underlying County labor relations strategy.

Horn has the primary responsibility for providing clerical support as to communications with outside counsel and others through typing confidential labor relations documents and receiving confidential labor relations telephone messages and faxes. Based on these responsibilities, she is clearly a confidential employe.

Like Horn, Tews performs confidential labor relations clerical work for Siewert by relaying telephone messages from outside counsel, opening confidential mail and receiving confidential faxes. Significantly, given Tews paralegal training, Siefert has Tews assist him in performing legal research which from time to time involves confidential labor relations matters. While it might well be concluded that Horn could reasonably be expected to perform all of the clerical confidential labor relations support for Corporation Counsel Siewert without undue disruption of the office, only Tews has the training to perform the legal research duties assigned by the Corporation Counsel. While some of those research duties are clerical in nature (i.e. xeroxing cases etc.), Siefert credibly testified that Tews’ paralegal training allows him to have her conduct research with an eye toward advising him of the strengths and weaknesses of his position in matters which include labor relations disputes. Given her paralegal responsibilities and her clerical labor relations responsibilities, we conclude that Tews is also a confidential employe.

Turning to the Program Assistant, it is clear that Weir provides all of the confidential clerical support for Emergency Government Management Director Kubitz who, in turn, has substantial labor relations responsibilities as to the telecommunicator bargaining unit. Contrary to the Union, we believe it would be unduly disruptive of the County’s organization to have all of this confidential work performed by employes in the adjacent Courthouse. Thus, as the individual performing the clerical work for a management employe with significant labor relations responsibilities, Weir is appropriately excluded as a confidential employe.

In summary, all three disputed positions are held by confidential employes who are appropriately excluded from the unit on that basis. Given our conclusion, we need not address the alternative theories of exclusion raised by the County.

Dated at Madison, Wisconsin this 17th day of December, 1998.

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

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