

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO, LOCAL 1287 CH

Involving Certain Employees of

CITY OF WAUSAU

Case 27
No. 54801
ME-869

Decision No. 20916-F

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO, Local 1287 CH.

Ms. Therese M. Freiberg, Assistant City Attorney, City Hall, 407 Grant Street, Wausau, Wisconsin 54403-4783, appearing on behalf of the City of Wausau.

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

Wisconsin Council 40, AFSCME, AFL-CIO, Local 1287 CH filed a petition to clarify bargaining unit on August 20, 1997, with the Wisconsin Employment Relations Commission seeking to include the positions of Confidential Office Assistant to the Mayor, Assistant to the Mayor, Confidential Office Assistant to the Fire Chief, Confidential Administrative Specialist in Wausau Area Transit System, Confidential Administrative Specialist to Finance Director and Confidential Administrative Specialist to the Finance Director/City Clerk in an existing unit which Local 1287 CH represents. Hearing was held in Wausau, Wisconsin, on December 16, 1997, before Lionel L. Crowley, a hearing examiner on the Commission's staff. At the hearing the parties stipulated that the Assistant to the Mayor would continue to be excluded from the unit. The hearing was transcribed and the parties reserved the right to file post-hearing briefs. On February 17, 1998, Local 1287 CH, by letter, indicated it would not file a brief and the City filed a brief on March 13, 1998, and the record was then closed.

No. 20916-F

The Commission, having considered the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, Local 1287 CH, hereinafter referred to as the Union, is a labor organization which has its offices located at 7111 Wall Street, Schofield, Wisconsin 54476.

2. The City of Wausau, hereinafter referred to as the City, is a municipal employer which has its offices located at 407 Grant Street, Wausau, Wisconsin 54403-4783.

3. At all times material, the Union has been the certified exclusive bargaining representative for a unit described in the 1995-97 collective bargaining agreement as:

all regular full-time and regular part-time employees of the City employed in the City Hall and related buildings as described pursuant to W.E.R.C. Decision No. 20916, Case XXVII, No. 30999, ME-2175, but excluding department heads, supervisory, managerial, confidential, seasonal/temporary employees and all other City employees currently represented.

4. The position of Confidential Office Assistant to the Mayor has been occupied by Jennifer Youtsos for the past five years. She works half time and reports directly to the Mayor, who is the City's Chief Executive Officer and is involved in all labor matters pertaining to the City including labor negotiations, discipline, grievances and budgetary matters. The Mayor is the head of the Police and Fire Departments. Youtsos answers the telephones, opens the mail and is sometimes the only person in the Mayor's office. She keeps files which include confidential labor relations matters and closed personnel committee meeting minutes, she types correspondence with regard to confidential labor matters, she is kept informed of the status of labor negotiations and compiles information on confidential labor relations, including notes of the discussions between the Mayor and the City's Human Resources department.

Youtsos has sufficient access to and involvement in confidential matters relating to labor relations to make her a confidential employe.

5. The Confidential Office Assistant in the Fire Department has been excluded as a confidential employe since the inception of the bargaining unit. Tammy Friedrich occupies the position of Confidential Office Assistant and is the only clerical employe in the Fire Department. There are approximately 60 firefighters in the three stations and the firefighters are represented by a different labor organization than the Union. She performs her duties at the Central Fire Station which is located about a mile from City Hall. She opens all the mail

for the Fire Chief and other members of the management team at the Fire Department. She tracks sick leave usage and other absences and reports to the Assistant Chief any trends indicative of abuse of such leave. She gathers information for the Chief in responding to grievances and for disciplinary action by the Chief, makes all the payroll entries and maintains all personnel files. She types all correspondence for the management team (except for the Fire Chief who does his own typing) and answers the phone and takes messages in the absence of the Chief.

Friedrich has sufficient access to and involvement in confidential matters relating to labor relations to make her a confidential employe.

6. The position of Confidential Administrative Specialist in the Wausau Area Transit System has historically been excluded from the bargaining unit as a confidential employe and is the only clerical position in the Transit System. The position is occupied by Shirley Freiberg and the Transit offices are at the Mall in Wausau which is apart from City Hall. There are 31 represented employes in the Transit System and Freiberg is the only employe who does not have a commercial driver's license. When drug testing is required and the Drug Testing Program Manager and Transit Manager are in the same pool, Freiberg gets the confidential list of those to be tested and makes arrangements to carry it out. Freiberg opens the mail, takes phone calls, takes complaints about drivers from citizens, prepares correspondence and grievance responses. Freiberg attends all sessions of the Transit Commission and takes minutes of the monthly meetings, including closed sessions where the budget and the status of labor negotiations is discussed, and she prepares the minutes and keeps them in the office files.

Freiberg has sufficient access to and involvement in confidential matters relating to labor relations to make her a confidential employe.

7. The Confidential Administrative Specialist position in the Finance Department is presently occupied by Kelly Michaels-Saager who has been in the position for seven or eight years. She prepares budgetary documents including the preliminary reserves and estimates of salary and fringe benefits for particular bargaining units and is made aware of the possibility of eliminating positions or outsourcing. She provides spread sheets for information that Human Resources may be unable to access or have the expertise to prepare. She also performs duties of the Deputy City Clerk in the City Clerk's Office, and on occasion takes minutes of the City Council meetings, both open and closed sessions. The Finance Department has two vacancies, a printing specialist and a part-time clerical and both would report to the Confidential Administrative Specialist. At the present time, a temporary clerical employe is performing clerical duties under the direction of the Confidential Administrative Specialist.

Michaels-Saager has sufficient access to and involvement in confidential matters relating to labor relations to make her a confidential employe.

8. The Confidential Administrative Specialist position in the Clerk's Division of the Finance Department is currently occupied by Mary Ann Stieber. She functions as the Deputy City Clerk and attends City Council meetings, both open and closed, normally twice a month, and takes minutes and later transcribes them. Confidential labor relations matters are discussed during closed sessions. She acts as City Clerk in the absence of the City Clerk. She handles a majority of the mail and assigns work to a part-time temporary employe.

Stieber has sufficient access to and involvement in confidential matters relating to labor relations to make her a confidential employe.

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

CONCLUSION OF LAW

1. The Confidential Office Assistant to the Mayor, Confidential Office Assistant in the Fire Department, and the Confidential Administrative Specialist in the Wausau Area Transit System's Office, the Finance Department and the Clerk's Division are confidential employes within the meaning of Sec. 111.70(1)(i), Stats., and therefore are not municipal employes 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

The positions identified in Conclusion of Law 1 shall continue to be excluded from the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th of May, 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

CITY OF WAUSAU

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

In its petition, the Union seeks to include the positions of Confidential Office Assistant in both the Mayor's Office and the Fire Department and the Confidential Administrative Specialists in the Transit Office, Finance Department and Clerk's Division in the City Hall bargaining unit. The City opposes the petition asserting that all the positions are confidential and that the Confidential Administrative Specialists in the Finance Department and the Clerk's Division are also supervisors.

CITY'S POSITION

The City contends that Confidential Administrative Specialist positions in the Finance Department and Clerk's Division are both supervisory and confidential. It notes that both are Deputy City Clerks and are required to prepare all closed session minutes of the Common Council, including closed sessions pertaining to labor relations matters and management's position in labor relations. It argues that the Confidential Administrative Specialist in the Finance Division reports directly to the Finance Director, who has primary labor relations responsibility for the entire Finance Department, and that there is no other employe within the table of organization to whom confidential labor relations would be assigned without undue disruption.

The City asserts that these two positions also have some supervisory responsibility and this will increase as soon as two vacant positions are filled. It also points out that the two Specialists are sworn as Deputy City Clerks and perform the City Clerk's duties in his absence which includes exposure to confidential labor relations information and significant independent supervisory responsibilities. It concludes that both must remain excluded from the bargaining unit as they are not municipal employes.

The City asserts that the Confidential Office Assistant to the Mayor has historically been excluded because the Mayor has ultimate responsibility for labor negotiations as well as employment relations and it is crucial that his Office Assistant have interests aligned with management as the position is exposed to and compiles significant amounts of confidential labor relations materials. It submits that the Confidential Office Assistant is clearly privy to material regarding confidential matters. It also claims that she is the sole secretarial individual assigned to the Mayor's Office. It states that she is exposed by necessity to materials which are integral to the core functions of the Mayor's Office and is a confidential and not a municipal employe.

The City maintains that the Confidential Office Assistant in the Fire Department is confidential as she is the only individual available to perform necessary labor relations clerical functions for management personnel. It observes that the Fire Department is at least a mile away from City Hall and the Confidential Office Assistant provides reports and personal input with regard to management strategy in employe discipline and gathers information for a grievance response on behalf of the Fire Chief. It further notes that she is the only clerical in the Department, reports directly to the Chief and is the only employe with the ability to compile confidential labor relations materials in a timely manner. It concludes that the position is confidential.

The City argues that the Confidential Administrative Specialist in the Transit System is excluded from the unit for the same reasons as the Confidential Office Assistant in the Fire Department. It submits that she is the only clerical and reports to the Transit Manager who has significant labor relations responsibility. Also, it points out she takes the minutes of all Transit System meetings including closed meetings, is the only non-driver, is not subject to random drug testing, and is designated as a confidential designee for the drug testing program. The City asserts it would be unduly disruptive to exclude her from the unit and that it is crucial to maintain someone aligned with management rather than risk having someone with conflicting loyalties to handle the various confidential duties in the Transit System. It maintains the position is confidential.

UNION'S POSITION

The Union did not file a brief but generally asserts that none of the employes are confidential.

DISCUSSION

In order for an employe to be held confidential, that employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. Confidential information is that which is not available to the bargaining representative or its agents, and which deals with the employer's strategy or position in collective bargaining, contract administration, litigation or similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer. DANE COUNTY, DEC. NO. 22976-C (WERC, 9/88); VILLAGE OF SAUKVILLE, DEC. NO. 26170 (WERC, 9/89). In reviewing an allegation of confidential status, the Commission is mindful of the need to balance the statutory right of employes to engage in concerted activity with the right of employers to conduct labor relations through employes whose interests are aligned with management. CITY OF SEYMOUR, DEC. NO. 28112 (WERC, 7/94). In striking this balance, the Commission looks to, among other things, the amount of confidential work to be performed, the number of existing and

available confidential employees, and the degree of disruption that would be caused to the employer's operation if confidential work is rerouted to existing confidential staff. CITY OF SEYMOUR, SUPRA; CITY OF GREENFIELD, DEC. NO. 26423 (WERC, 4/90).

The Confidential Office Assistant to the Mayor is confidential. The Mayor is the Chief Executive Officer of the City and the Confidential Office Assistant is the only clerical employe in his office and she has access to written correspondence from Human Resources and the Mayor, minutes of the closed sessions of the Personnel Committee and background information required by the Mayor. The Confidential Office Assistant essentially performs the same duties as the Assistant to the Mayor in CITY OF RICHLAND CENTER, DEC. NO. 17950-A (WERC, 2/96) wherein we concluded the position was confidential. Thus, we conclude the Confidential Office Assistant to the Mayor is a confidential employe under Sec. 111.70(1)(i), Stats.

The Confidential Office Assistant in the Fire Department is the only clerical employe in the Department and performs work of a confidential labor relations nature for the management team. The evidence established that the Fire Chief typed his own correspondence but the Fire Chief was scheduled to retire on January 12, 1998, and the new Chief may not do his own typing. However, even if the Chief's typing preferences mean the Confidential Office Assistant will only do a de minimus amount of confidential work, the Fire Department is located at least a mile from the City Hall, and it would be unduly disruptive for the Fire Department's confidential work to be performed by someone from City Hall. CITY OF MANITOWOC, DEC. NO. 7667-C (WERC, 4/95). We conclude that this position remains confidential.

Similarly, the Confidential Administrative Specialist in the Wausau Transit System is the only clerical available to perform confidential duties in the Transit System which is located some distance from City Hall and the location of other confidential employees. This position does more than a de minimus of confidential work in that she takes minutes of the Transit Commission meetings including closed sessions where labor relations matters and strategy is discussed. Thus, we conclude that this position remains confidential.

The Confidential Administrative Specialist in the Finance Department has access to and knows the amount the City has budgeted for personnel costs, including the represented employe's salary and fringe benefits reserves. There are few matters more central to the employer's strategy in collective bargaining negotiations than the amount of money the employer is willing to spend pursuant to a voluntary agreement. Knowing precisely where that "bottom line" is would give the labor organization a significant tactical advantage. Thus, that knowledge is not made available to the labor organization, but is rightfully kept confidential. CITY OF GREENFIELD, DEC. NO. 18304-G (WERC, 10/93). Additionally, the position has access to information needed by the Human Resources Director for negotiations with labor organizations. We conclude that the position continues to be confidential.

The Confidential Administrative Specialist in the Clerk's Division is essentially the Deputy City Clerk. She attends the twice monthly meetings of the City Council and takes minutes of the meetings, both open and closed. The closed sessions deal with confidential labor relations matters. She types the minutes and keeps them on file in the Clerk's Office. We conclude that the position is confidential.

Given our conclusions, we need not resolve whether the Confidential Administrative Specialists in the Finance Department and the Clerk's Division are also supervisors.

Dated at Madison, Wisconsin, this 18th day of May, 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