

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of  
CITY OF PORT WASHINGTON CITY  
HALL EMPLOYEES UNION LOCAL  
108, WCCME, AFSCME, AFL-CIO

Case 23  
No. 32262 ME-2283  
Decision No. 21205-A

Involving Certain Employees of  
CITY OF PORT WASHINGTON  
-----

In the Matter of the Petition of  
CITY OF PORT WASHINGTON  
Involving Certain Employees of  
CITY OF PORT WASHINGTON  
-----

Case 24  
No. 32434 ME-2300  
Decision No. 21206-A

Appearances:

Mulcahy and Wherry, S.C., Attorneys at Law, 607 Plaza Eight, Suite 610,  
Sheboygan, Wisconsin 53081, by Mr. Jon E. Anderson, on behalf of the  
City of Port Washington.

Ms. Helen Isferding, District Representative, 2323 North 29th Street,  
Sheboygan, Wisconsin 53081, on behalf of the Local 108, City of Port  
Washington, AFSCME Council 40, AFL-CIO.

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

On September 29, 1983, City of Port Washington City Hall Employees Union Local 108, WCCME, AFSCME, AFL-CIO, hereinafter the Union, filed a petition with the Wisconsin Employment Relations Commission, herein Commission, wherein it requested the Commission to determine whether the position of Secretary/Receptionist, Engineering Department, should be included in a collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of Port Washington, in its City Hall and Police Department, excluding professional employees, elected officials, department heads, supervisory, managerial, executive, confidential employees, library employees and employees in other recognized bargaining units. Thereafter, on November 7, 1983, the City of Port Washington filed a petition with the Commission, wherein it requested the Commission to determine whether the position of Administrative Secretary/Police Department should be excluded from the aforesaid unit on the basis that the employee occupying the position is either a confidential and/or supervisory employee. Upon the request of the City, and without objection from the Union, the Commission, on November 21, 1983, consolidated the two petitions for the purpose of hearing. Hearing was held on December 9, 1983 by Coleen A. Burns, an Examiner on the staff of the Commission. A transcript was prepared and the parties completed their briefing schedule by February 23, 1984, whereupon the record was closed. 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. That City of Port Washington City Hall Employees Union Local 108, WCCME, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its principal offices located at 2323 North 29th Street, Sheboygan, Wisconsin 53081.

No. 21205-A  
No. 21206-A

2. That the City of Port Washington, hereinafter the City, is a municipal employer having its principal offices located at 100 West Grand Avenue, Port Washington, Wisconsin 53074.

3. That the Union is the certified exclusive bargaining representative of all regular full-time and regular part-time employees of the City of Port Washington, in its City Hall and Police Department, excluding professional employees, elected officials, department heads, supervisory, managerial, executive, confidential employees, library employees and employees in other recognized bargaining units.

4. That on April 2, 1982, Examiner Amedeo Greco, acting with final authority on behalf of the Commission, issued Dec. No. 18654-B which excluded from the bargaining unit the position of Secretary/Receptionist in the Engineering Department, occupied by Beverly Burczyk; that the Examiner excluded the Secretary/Receptionist position on the basis that the employee occupying the position was a confidential employee within the meaning of the Municipal Employment Relations Act (MERA); and, that the Examiner, rejecting the City's argument that Mary Johnson, the employee occupying the position of Administrative Secretary/Police Department, was a supervisory employee, included the position of Administrative Secretary/Police Department in the bargaining unit.

5. That since the issuance of Examiner Greco's decision, Burczyk has been reclassified to Administrative Secretary/Department of Public Works; that the Union, in its petition, claims that the duties of Burczyk have changed since the issuance of Dec. No. 18654-B such that Burczyk is no longer a confidential employee and, therefore, is appropriately included in the bargaining unit represented by the Union; that the City, in its petition, contends that Johnson, who continues to occupy the position of Administrative Secretary/Police Department, is a confidential and/or supervisory employee and, therefore, appropriately excluded from the bargaining unit; and that the City, at hearing, amended its original petition to include the allegation that the employee occupying the position of Administrative Secretary/Police Department should also be excluded from the collective bargaining unit on the basis that she is a managerial and/or executive employee.

6. That Beverly Burczyk has occupied the position of Administrative Secretary/Department of Public Works since 1982; that prior to 1982, Burczyk was employed by the City as a Secretary/Receptionist in the Engineering Department; that from January, 1983 through August, 1983, Burczyk assisted the City Administrator in his labor contract negotiations function by typing memoranda and correspondence, City bargaining proposals, summaries of negotiations sessions, and minutes of closed sessions of the City's personnel committee; that some of the material prepared by Burczyk contained information on the City's bargaining strategy which was not available to the Union; that the duties performed by Burczyk for the City Administrator occupied a de minimis portion of Burczyk's work time; that Burczyk's work day is primarily devoted to providing secretarial assistance to Robert Dreblow, the Director of Public Works; that Burczyk also provides secretarial assistance to the Street Commissioner and the Water/Wastewater Superintendent; that Burczyk assists Dreblow in the preparation of the DPW budget by typing worksheets from Dreblow's handwritten notes, verifying mathematical calculations, and typing that draft of the budget which is presented to the City Administrator for approval; that, at times, two or more work sheets are prepared for a single line item, each representing a different level of services; that in 1983, work sheets were prepared which reflected the budgetary impact of changing from the existing two-man garbage collection system to a one-man system; that the City decided not to implement the change; that the City Common Council, which must approve the DPW budget, deleted the amounts which had been appropriated for wages on the basis that contract negotiations had not been completed; that Burczyk maintains the DPW personnel files; that individual employees have access to their own personnel files; that as a result of the most recent contract negotiations, the position of Director of Public Works has been removed as a step in the DPW contract's grievance procedure; that Dreblow, however, expects the Street Commissioner and the Water/Wastewater Superintendent, who are contractually responsible for the first step grievance response, to meet with him to discuss and decide the response; that Burczyk provides data which is utilized by the Director in determining the grievance response, e.g., employee use of sick leave or vacation; that

Burczyk types the grievance response, a copy of which is made available to the Union and the affected employee; that Burczyk does not attend the meetings in which the DPW's representatives discuss and determine the grievance response; that since 1981, Burczyk has typed one grievance response; that employee complaints generally have been resolved without recourse to the grievance procedure; that Dreblow, the Street Commissioner, and the Water/Wastewater Superintendent were members of the City's committee which negotiated the most recent DPW contract; that Burczyk did not prepare any negotiations material for Dreblow, but did file material in his personal negotiations file; that Dreblow's negotiation file contained material which Dreblow prepared and received during the course of negotiations, such as his handwritten notes and memos from the City Administrator; and that Dreblow's negotiations file contained copies of material which was made available to the Union, as well as material which was not made available to the Union, i.e., costing data and bargaining strategy.

7. That in January, 1983, Steve Stapleton assumed the position of the City's first City Administrator; that Stapleton's duties include those of Personnel Director and Chief Labor Contract Negotiator; that prior to 1983, the City's labor negotiations were conducted by an outside consultant; that within a week or two of his employment, Stapleton commenced contract negotiations with all three of the City's collective bargaining units, i.e., the DPW, the City Hall, and the Police Officers; that contract negotiations were completed in August, 1983; that Stapleton prepared the vast majority of his labor negotiations material without clerical assistance; that when clerical assistance was utilized, it was primarily provided by Burczyk; that when Burczyk was unavailable, the City Administrator utilized an employee who was a member of the collective bargaining unit, but who is no longer employed by the City; that in June, 1983, Rosemary Rowe assumed the newly created position of Administrative Secretary to the City Administrator, a position which the parties agree is appropriately excluded from the unit as confidential; that Rowe gradually assumed the duties which had been previously performed by Burczyk; that if Rowe had been available throughout the negotiations process, she, and not Burczyk, would have provided clerical assistance to Stapleton; that Stapleton intends to delegate to Dreblow responsibility for costing the City's DPW proposals and for providing background information to be utilized in the preparation of bargaining proposals; that Stapleton also intends that handwritten notes and memos, which were commonly utilized by City negotiators during the most recent contract negotiations, will be typewritten; that Burczyk, as the only DPW secretary, will be responsible for typing any negotiations material prepared by Dreblow, as well as filing any negotiations material prepared or received by Dreblow; and that Dreblow expects Burczyk to assist him in costing City proposals and in obtaining background data for bargaining proposals.

8. That Mary Johnson, Administrative Secretary/Police Department, has been employed in the Police Department for thirteen years; that the Police Department is a self-contained unit located within the City Hall; that with the exception of Edward A. Rudolph, Jr., the Police Chief, Police Department employees are members of either the City Hall bargaining unit or the Police Officer bargaining unit; that Johnson and the Dispatchers are included in the City Hall bargaining unit; that Johnson works Monday through Friday, 8:00 a.m. to 5:00 p.m.; that a Dispatcher is on duty 24 hours per day; that Dispatchers work one of three shifts and have a five/two, four/two workweek; that the Police Chief is a member of the City team which negotiates the Police Officer contract; that the Police Chief does not negotiate the City Hall contract; that the City Administrator, who negotiates the City Hall contract, advises the Police Chief of the progress of negotiations and solicits the Chief's opinion with respect to matters affecting Police Department employees; that the Police Chief has poor handwriting and, therefore, following meetings and discussions with other City representatives, the Chief dictates his notes to Johnson for typing and filing in his labor negotiations file; that the notes include information on City bargaining strategy which is not available to the Union; that the Chief will discuss proposals affecting Police Department employees with Johnson and solicit her opinion regarding the same; that Johnson's primary responsibility is to provide secretarial assistance to the Police Chief; that Johnson has access to all material received by the Chief; that Johnson maintains Police Department personnel files; that Johnson, as requested by the Chief, monitors employee use of fringe benefits and reports suspected abuse to the Chief; that on one occasion Johnson informed the Chief that a Sergeant had signed for

vacation to which he was not entitled; that during the most recent contract negotiations Johnson conducted a survey of municipalities to determine use of ambulance personnel and calculated the financial impact of the City's wage position; that Johnson accepts employment applications for the positions of Dispatcher and Police Officer; that Johnson verifies information on employment applications; that Johnson has access to the written and oral examination scores of Police Officer applicants and attends oral interviews for the purpose of taking notes; that Johnson interviews Dispatcher applicants, as well as conducts voice testing and written exams; that Dispatcher applicants are also interviewed by the Police Chief, which interviews are attended by Johnson; that Johnson, the Sergeant and the Police Chief jointly discuss the qualifications of the Dispatcher applicants; that the Chief asks Johnson for a recommendation as to which applicant should be hired; that the Chief and Johnson have never disagreed as to which applicant should be hired; that the Chief recommends to the Police and Fire Commission the applicant to be hired; that the Police and Fire Commission has final authority with respect to hiring, disciplining, and discharging Police Department employees; that Johnson and the Dispatcher on duty share a common work area; that Johnson will tell the Dispatcher to answer the phone if it rings too long; that if Johnson observes that Dispatcher work, such as filing, is accumulating, she will ask the Dispatcher the reason for the backlog; that Johnson reads reports which are typed by the Dispatchers; that Johnson returns to the Dispatchers reports which are not properly completed; that Johnson also returns work for correction of punctuation and spelling; that the Dispatchers correct the work which is returned by Johnson; that Johnson has counseled Dispatchers about poor job performance; that, on one occasion, Johnson sent a memo to the Dispatchers inquiring why they could not complete their work in a timely manner; that the Dispatchers submitted their resignations to the Chief, who refused to accept the resignations; that Johnson does not discipline the Dispatchers, but rather reports unresolved problems to the Sergeant or the Police Chief; that a complaint from Johnson will result in an interview with the Dispatcher and Johnson; that the Chief considers Johnson's opinions when determining whether to discipline a Dispatcher; that the Chief, and not Johnson, determines whether or not it is appropriate to impose discipline; that Dispatcher work, in general, is routine and is performed without instruction from others; that when the day Dispatcher is unable to complete needed work, Johnson will leave a note instructing the oncoming Dispatcher(s) to complete the work; that Johnson instructs new Dispatchers in office procedures, as well as explains changes in office procedures to all Dispatchers; that the Dispatchers train new Dispatchers; that the Sergeant prepares the Dispatcher work schedule, which is approved by the Chief; that Johnson informs the Chief as to whether Dispatcher vacation and compensatory time off requests require payment of overtime to replacements; that the Chief approves or disapproves the request; that Johnson records use of compensatory time by Police Officers and, upon request of the Police Officer, will bank the compensatory time rather than pay it out; that Police Department employees are not allowed to carry vacation into the following year; that, at the end of the year, Johnson notifies employees that they have vacation which must be taken; that, prior to the submission of a written grievance, the Police Chief will meet with the Officers involved to discuss their complaint; that Johnson attends the meetings for the purpose of taking notes; that the Chief then reviews the contract with Johnson to determine whether she agrees that the contract was violated; that upon receipt of a citizen complaint against a Police Officer, Johnson assists the Chief in the investigation by reviewing Police Department records, such as logs of Police calls; that Johnson attends meetings between the Chief and the Police Officer for the purpose of taking notes; that Johnson types any correspondence or memoranda generated by the Chief's investigation, including the Chief's report to the Fire and Police Commission; that not all of the material is shared with the Union; that the Chief solicits Johnson's opinion as to whether his response to the complaint is equitable; that, although Johnson does not normally attend meetings of the Police and Fire Commission, she types the minutes of such meetings, including those of closed sessions; that closed sessions generally involve discussions relating to hiring, disciplining or discharging Police Department employees; that currently there is one Dispatcher classification; that, in the past, there were two Dispatcher classifications, with movement from one classification to the next contingent upon completion of prerequisite time and training; that Johnson notified the City Clerk's office when a Dispatcher had fulfilled the requirements of time and training, thereby setting in motion the necessary payroll adjustments; that Johnson assists the Chief in the

preparation of the Police Department budget by calculating current expenditures and projecting end of year balances; that Johnson utilizes her projections and information regarding anticipated price increases to recommend that specific accounts be increased or decreased; that Johnson can effectively recommend that the Chief budget monies for the purchase of minor office items; that Johnson has authority to expend monies for the purpose for which the money was allocated; that purchases over \$200 must be approved by the City Administrator; that, on occasion, when the Police Chief is unavailable, Johnson will attend management meetings on behalf of the Police Chief; and that Johnson takes notes at such meetings and, if asked and she knows, will state the Chief's position on matters pertaining to the Police Department.

9. That as a result of the reorganization of the City's labor relations function there has been a change in circumstances which warrants a reconsideration of whether Burczyk remains a confidential employee; that there is a confidential employee available to perform the confidential work which Burczyk has performed for the City Administrator; that Burczyk presently performs only a de minimis amount of confidential work for the Director of Public Works, i.e., filing sensitive labor relations material in his personal labor negotiations file; and that, therefore, Burczyk is no longer a confidential employee.

10. That there has not been a change in circumstances which warrants a reconsideration of whether Johnson is a supervisory employee and, therefore, the Commission does not reconsider or alter Examiner Greco's conclusion and order to the effect that Johnson is not a supervisory employee.

11. That the issues of whether Johnson is a confidential, managerial, and/or executive employee were not before Examiner Greco and, therefore, are appropriately considered herein.

12. That Johnson has access to sensitive labor relations material which reveals the City's strategy with respect to collective bargaining and contract administration, which information is not available to the Union or its agents and, therefore, is a confidential employee.

13. That Johnson does not participate to a significant degree in the formulation, determination and implementation of management policies, nor does she have significant authority to commit the City's resources and, therefore is not a managerial employee.

14. That Johnson does not have overall responsibility and authority for the management of any City agency or major department and, therefore, is not an executive employee.

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

#### CONCLUSIONS OF LAW

1. That the position of Administrative Secretary/Department of Public Works, occupied by Beverly Burczyk, is not confidential in nature and, therefore, Burczyk is a municipal employee within the meaning of MERA and appropriately included in the bargaining unit described in Finding of Fact 3 above.

2. That the position of Administrative Secretary/Police Department, occupied by Mary Johnson, is not managerial, executive, or supervisory, but the position is confidential in nature and, therefore, Johnson is not a municipal employee within the meaning of MERA.

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

ORDER CLARIFYING BARGAINING UNIT 1/

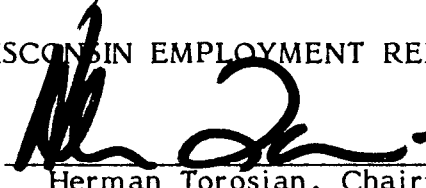
1. That the position of Administrative Secretary/Department of Public Works, occupied by Beverly Burczyk, is included in the collective bargaining unit described in Finding of Fact 3 above.

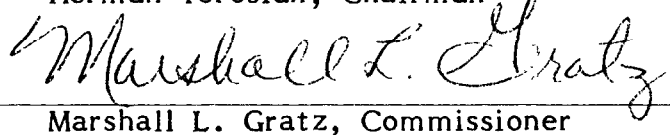
2. That the position of Administrative Secretary/Police Department, occupied by Mary Johnson, is excluded from the collective bargaining unit described in Finding of Fact 3 above.

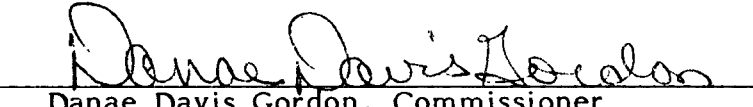
Given under our hands and seal at the City of  
Madison, Wisconsin this 12th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

---

1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, petitions for review under (Footnote 1 continued on Page 7)

1/ (Continued)

this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

(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. 227.20 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.

CITY OF PORT WASHINGTON

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

ADMINISTRATIVE SECRETARY/DPW

Beverly Burczyk has occupied the position of Administrative Secretary in the Department of Public Works since 1982. Prior to that time, she was employed by the City as a Secretary/Receptionist in the Engineering Department. On April 2, 1982, Examiner Greco issued a decision on behalf of the Commission in which he determined that Burczyk's duties as a Secretary/Receptionist in the Engineering Department required that she be excluded from the collective bargaining unit as a confidential employee. 2/ In the discussion of his findings, Examiner Greco stated as follows:

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

The Commission has consistently held that in order for an employee to be considered a confidential employee, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes it must be the type of information which: 1) deals 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 2) is not information that is available to the bargaining representative or its agents. 3/ The question to be determined is whether, as the Union argues, circumstances have changed since the issuance of the decision such that a reconsideration of whether Burczyk is a confidential employee is warranted.

Prior to 1983, labor contract negotiations were handled by outside consultants. In January, 1983, however, Steve Stapleton assumed the newly created position of City Administrator, the duties of which included acting as the City's Personnel Director and Chief Labor Contract Negotiator. Shortly after assuming the City Administrator position, Stapleton commenced labor contract negotiations with all three of the City's collective bargaining units. Negotiations were completed in August, 1983. Stapleton prepared the vast majority of his labor negotiations material without clerical assistance. Prior to June, 1983, when clerical assistance was utilized, such assistance was generally provided by Burczyk, who typed memoranda and correspondence, City bargaining proposals, summaries of negotiations sessions, and minutes of closed sessions of the City's

---

2/ City of Port Washington, Dec. No. 18654-B (Greco, 4/82).

3/ City of Cudahy, Dec. No. 21887, (WERC, 8/84).



personnel committee. 4/ Although the majority of the typewritten material was made available to the Union, some of the material contained information on the City's bargaining strategy and was not available to the Union. In June, 1983, Rosemary Rowe assumed the newly created position of Administrative Secretary to the City Administrator, a position which both parties agree is confidential. Although Burczyk continued to assist Stapleton in his labor relations function throughout the balance of the negotiations, Rowe gradually assumed primary responsibility for providing such assistance for Stapleton. According to Stapleton, Rowe would have performed the majority of the work he had assigned to Burczyk if Rowe had been available.

While it is true that Burczyk did perform duties for the City Administrator which provided her with access to information which is confidential within the meaning of MERA, Rowe is available to perform such duties in the future. Consequently, Burczyk's work for the City Administrator does not warrant her continued exclusion as a confidential employee. The Commission, however, must also address the issue of whether Burczyk's secretarial duties for the Director of Public Works, the Street Commissioner, and the Water/Wastewater Superintendent warrant her continued exclusion as a confidential employee.

Burczyk has, in the past, assisted the Director of Public Works in the preparation of the DPW budget by typing work sheets from the Director's handwritten notes, verifying mathematical calculations, and typing the draft of the budget which is submitted to the City Administrator. At times, two or three work sheets are prepared for a single line item, each representing a different level of services. In 1983, work sheets were prepared which reflected the budgetary impact of changing from a two-man garbage collection system to a one-man system. Inasmuch as she typed the work sheets, Burczyk certainly knew that a one-man collection system was being evaluated and, further, she had knowledge of the City's anticipated costs. Assuming arguendo, that the City, after analyzing the cost impact of the alternative collection systems, decided to implement a one-man collection system, 5/ the typing of the alternative work sheets does not reveal the strategy which the City intended to employ when bargaining the impact of the change on the wages, hours, and working conditions of DPW employees. Further, budget allocations which are subject to the collective bargaining process cannot be said to be finalized until the bargain is made. Until such time as the bargain is made, such budget allocations are "guesstimates," and do not necessarily reflect the City's financial capabilities, or ultimate bargaining position. 6/ While it may be true that the work sheets and the budget draft which are typed and mathematically verified by Burczyk are not available to the Union, the Commission is not persuaded that Burczyk's access to the work sheets and budget draft provide her with information on the City's strategy or position with respect to collective bargaining, contract administration, or other sensitive labor relations matters. Consequently, Burczyk's budget preparation duties are not confidential within the meaning of MERA.

- 
- 4/ When Burczyk was unavailable, the City Administrator utilized the services of a clerical employee who was a member of the bargaining unit represented by the Union. Apparently, however, such use was infrequent. The clerical worker is no longer an employee of the City.
- 5/ The City, in fact, decided to continue the two-man collection system. The record fails to establish that Burczyk was privy to the discussion and analysis which resulted in the City's decision to continue the two-man system.
- 6/ The City Council did delete the wage appropriations which had been developed by the DPW Director and the City Administrator. Since the labor contract was unsettled, the City Council decided that the budget should not reflect any increase in wages.

As the City argues, Burczyk does maintain the Department of Public Works' personnel files. Employees, however, have access to their own personnel files and, therefore, such files are not confidential within the meaning of MERA. 7/

During the most recent contract negotiations, the Director of Public Works was removed as a step in the grievance procedure. According to the Director, however, the Street Commissioner and the Water/Wastewater Superintendent, who are contractually responsible for providing the first step grievance response, will meet and confer with the Director prior to formulating their response. As in the past, Burczyk will provide any background data which is necessary to formulate the response, e.g., use of sick leave or vacation. Burczyk will also continue to type the Department's response to the grievance.

Data retrieved from DPW records, such as employee use of sick leave or vacation is not sensitive labor relations material. Although the Director may utilize such information in the discussion of sensitive labor relations matters, i.e., strategy underlying the City's response to the grievance, Burczyk does not participate in such discussions. Further, the grievance material which she types, the grievance response, is made available to the Union and the grievant. 8/ Consequently, Burczyk's grievance duties do not involve access to information which is confidential within the meaning of MERA.

During the most recent labor contract negotiations, the Director of Public Works, the Street Commissioner and the Water/Wastewater Superintendent, were members of the management team which assisted the City Administrator in the negotiation of the DPW contract. 9/ Although Burczyk did not prepare any negotiations material for the Director of Public Works, she did maintain his negotiations file. 10/ The file contains material which the Director prepared and received during the course of negotiations, for example, the Director's handwritten notes and memos from the City Administrator. To be sure, the file contains material which was made available to the Union. The file, however, also contains sensitive labor relations material which was not made available to the Union, i.e., costing data, and memos and notes containing the City's bargaining strategy. Burczyk's filing duties, therefore, do provide her with access to information which is confidential within the meaning of MERA. The Commission, however, is satisfied that such filing duties are de minimis and do not warrant Burczyk's exclusion as a confidential employee.

Although Burczyk did not prepare any negotiations material for the Director of Public Works during the most recent contract negotiations, both the City Administrator and the Director of Public Works anticipate that Burczyk will be preparing such material in future negotiations. Further, memos and notes which are circulated among the City's DPW Negotiations Committee will be expected to be typewritten rather than handwritten. 11/ According to the City Administrator, his secretary, Rowe, will not have time to provide clerical assistance to other City

- 
- 7/ As the City further argues, Burczyk has typed minutes of closed sessions of the Personnel Committee. The Administrator testified, however, that his secretary, Rowe, currently does the typing for the Personnel Committee.
- 8/ Since 1981, she has typed one grievance response. Historically, employee complaints have been resolved without recourse to the formal grievance procedure.
- 9/ The Union seeks to include Burczyk in the City Hall unit. The Director of Public Works, the Street Commissioner and the Water/Wastewater Superintendent do not negotiate the City Hall contract.
- 10/ The record is silent with respect to whether Burczyk prepared any negotiations material for the Street Commissioner or Water/Wastewater Superintendent.
- 11/ During the recent contract negotiations, handwritten notes and memos were prevalent. According to the City Administrator, the handwriting created problems and that, in the future, he expected the material to be typewritten.

Departments. Consequently, any clerical assistance required by the Director of Public Works, the Street Commissioner, and the Water/Wastewater Superintendent will have to be provided by their own secretary, Burczyk. Such speculation, however, in the instant circumstance, does not suffice as a basis for excluding an employe from the bargaining unit.

#### ADMINISTRATIVE SECRETARY/POLICE DEPARTMENT

The City, contrary to the Union, asserts that Mary Johnson, the Administrative Secretary/Police Department, should be excluded from the collective bargaining unit on the basis that she is not a municipal employe within the meaning of MERA. The City asserts, in turn, that Johnson is a confidential, supervisory, managerial and/or executive employe.

#### Supervisory

In a prior unit clarification proceeding involving the status of Johnson, Examiner Greco, exercising final authority for the Commission, was presented with the issue of whether Johnson was a supervisory employe. 12/ Examiner Greco found that Johnson was not a supervisory employe, but rather, was an employe within the meaning of MERA. As a result, Examiner Greco ordered the inclusion of Johnson's position in the collective bargaining unit. The question to be determined, therefore, is whether Johnson's duties have changed such that a reconsideration is warranted. We find no such change has occurred. Consequently, there is no basis for reconsidering the previous decision that Johnson is not a supervisory employe. Since the issues of whether Johnson is a confidential, managerial and/or executive employe were not before Examiner Greco, there is no impediment to the consideration of such issues herein.

#### Confidential

As discussed above, a confidential employe is one who has access to, knowledge of, or participates in, confidential matters involving sensitive labor relations. Confidential matters are those to which the Union, or its agent, does not have access. Sensitive labor relations matters include, but are not necessarily limited to, those which reveal the employer's strategy or position with respect to collective bargaining and contract administration.

With the exception of the Police Chief, Edward A. Rudolph, Jr., Police Department employes are subject to either the Police Officer's contract or the Union's City Hall contract. Although the Police Chief is a member of the City team which negotiates the Police Officer's contract, he is not responsible for negotiating the Union's City Hall contract. The Chief, however, is advised of the progress of the City Hall negotiations and is asked to comment upon matters affecting Police Department employes. The Chief dictates to Johnson notes of discussions that he has had with other City representatives regarding contract negotiations. Johnson types and files the notes in the Chief's labor relations file. The notes contain information on the City's bargaining strategy which is not available to the Union. The Chief also discusses the City's bargaining proposals with Johnson and solicits her opinions regarding the proposals.

When citizens complain about the conduct of a Police Officer, Johnson assists the Chief's investigation by checking Department records, e.g., she may check the log to see where the Officer was located at the time of the alleged incident. Further, Johnson types any correspondence or memoranda generated by the Chief's investigation, not all of which is shared with the affected employe.

The Police Chief makes recommendations to the Police and Fire Commission with respect to the hiring, discipline and discharge of Police Department employes. The final authority for such decisions, however, is vested in the Fire and Police Commission. Although Johnson does not normally attend the meetings of the Fire

---

12/ City of Port Washington, Dec. No. 18654-B (Greco, with final authority, 4/82).

and Police Commission, she types the minutes of their meetings, including closed sessions. Closed sessions generally involve discussions relating to the hiring, discipline and/or discharge of Police Department employees.

The Police Chief and the Fire and Police Commission are integral components of the City's labor relations function. In performing secretarial duties for the Police Chief and the Fire and Police Commission, Johnson has access to material which is not available to the Union and which reveals the City's strategy and position with respect to collective bargaining and contract administration. Consequently, the Commission is satisfied that Johnson is a confidential employee within the meaning of MERA.

#### Managerial

A managerial employee is one who participates in the formulation, determination, and implementation of policy to a significant degree or who possesses effective authority to commit the employer's resources. 13/ Johnson assists the Police Chief in the preparation of the budget by calculating current expenditures and projecting future costs. On the basis of current utilization and anticipated price increases, she will recommend that specific accounts be either increased or decreased. Further, she can effectively recommend appropriations for minor office items, such as blinds. Once the budget is established, she can expend monies for the purpose for which the money was allocated. Purchases over \$200.00, however, must be approved by the City Administrator. Johnson's authority to commit the City's resources is, therefore, de minimis and does not warrant a finding that she is a managerial employee.

Likewise, the record fails to establish that Johnson has any significant participation in the formulation, determination and/or implementation of management policies. While it is true that the Police Chief solicits Johnson's opinion on City bargaining proposals, she functions more as a "sounding board" than as a formulator of policy. To be sure, the Chief has respect for Johnson's opinions and may be influenced by them. The Chief, however, and not Johnson, is the decision maker. Although she has, on occasion, attended management meetings when the Chief was unavailable, such attendance was for the purpose of keeping the Chief informed, rather than providing assistance with the formulation of management policy. Further, contrary to the assertion of the City, Johnson's responsibility for the dispatch operation is ministerial in nature, and does not involve the determination of management policy. 14/

#### Executive

An executive employee, as that term is used in Sec. 111.70(1)(i), is the individual who has overall responsibility and authority for the management of an agency or major department of the employer. 15/ Clearly, it is the Police Chief, and not Johnson, who possesses overall responsibility and authority for the management of the Police Department.

#### Conclusion

On the basis of the above and foregoing, the Commission is satisfied that Burczyk is no longer a confidential employee within the meaning of MERA. The position of Administrative Secretary/Department of Public Works, occupied by Burczyk, is therefore appropriately included in the collective bargaining unit

---

13/ Kewaunee County (Highway Department), Dec. No. 21344, (WERC, 1/84).

14/ Johnson is primarily concerned with ensuring that the Dispatchers complete their work promptly and, further, that they utilize correct spelling and punctuation.

15/ City of Oak Creek, Dec. No. 17633 (WERC, 3/80).

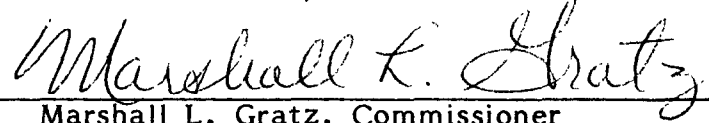
represented by the Union. Johnson, however, is a confidential employee. Consequently, the position of Administrative Secretary/Police Department, occupied by Johnson, is appropriately excluded from the aforesaid collective bargaining unit.


Dated at Madison, Wisconsin this 12th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner