

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

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WISCONSIN COUNCIL 40, AFSCME, AFL-CIO : Case 2

: No. 47180 ME-565

Involving Certain Employes of : Decision No. 21424-E

:

CITY OF MAUSTON :

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Appearances:

Mr. Michael Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, appearing on behalf of the Union.
Godfrey & Kahn, S.C., Attorneys at Law, by Mr. Jon E. Anderson, 131 West Wilson Street, P.O. Box 1110, Madison, Wisconsin 53701-1110, appearing on behalf of the City.

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

Wisconsin Council 40, AFSCME, AFL-CIO, filed, on August 14, 1992, a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of certain employes of the City of Mauston, by determining whether the positions of Deputy Treasurer, Deputy Clerk/ADA Officer and Confidential Secretary should be included in that bargaining unit. A hearing on the petition was conducted in Mauston, Wisconsin, on October 12, 1992, February 24, 1993 and April 26, 1993. The hearing was transcribed. The parties submitted post-hearing briefs, the last of which was received August 9, 1993. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization which has its offices located at 5 Odana Court, Madison, Wisconsin 53719.
2. The City of Mauston, hereinafter the City, is a municipal employer which has its offices located at 303 Mansion Street, Mauston, Wisconsin 53948.
3. On November 7, 1983, the Union filed with the Commission a petition for election involving certain employes of the City. The City and the Union ultimately filed a "Stipulation For Election Involving Municipal Employees." That stipulation was received by the Commission on February 17, 1984, and stated "(t)he collective bargaining unit agreed upon as appropriate for such

election": thus: "All regular full-time and regular part-time employees of the City of Mauston, excluding managerial, supervisory, confidential and library employees." Also received by the Commission was a list of City employees stipulated by the Union and the City to be included in the bargaining unit and eligible to vote in the election. The Commission conducted the election on March 23, 1984, and the Union was selected by the majority of the voters to be their collective bargaining representative. The Commission certified the results of the election in Decision Number 21424, issued on April 25, 1984. The unit description from that certification decision reads thus: "all regular full-time and regular part-time employees of the City of Mauston, excluding managerial, supervisory, confidential and library employees." Since that certification, the Union and the City have been parties to a number of collective bargaining agreements, one of which is, by its terms, in effect for a period from January 1, 1991, to December 31, 1992. Article I of that agreement is headed "RECOGNITION." Section 1 of that Article is headed "Bargaining Unit and Representation" and reads as follows:

The City recognizes the Union as the exclusive bargaining representative for all regular full-time and regular part-time employees of the City, but excluding managerial, supervisory, confidential and library employees, and excluding temporary or casual part-time employees, as identified in Article 1, Section 4.

4. On August 14, 1992, the Union filed a unit clarification petition requesting that the positions of Deputy Treasurer, Deputy Clerk/ADA Officer and Confidential Secretary, currently held by Eileen Powers, Renee Hazelton and Diane Kropiwka, respectively, be included in the existing bargaining unit described in Finding of Fact 3 above. The City contends that the three positions in question should be excluded from the unit. In support of exclusion, the City first argues that the Deputy Treasurer is a confidential, managerial and supervisory employee. The City next argues that the Deputy Clerk/ADA Officer is a confidential and managerial employee. Finally, the City argues that the Confidential Secretary is a confidential employee.

5. The City, located in central Wisconsin, has a population of 3,480 people. It is governed by an elected Mayor and Council but employs a City Administrator. The City has up to 75 employees on payroll at any one time. There are two (2) unions representing employees of the City; the Union herein and Labor Association of Wisconsin. The City Administrator position is formally known as "Administrator-Clerk-Treasurer-Comptroller" within the City Ordinances. The City does not employ a Personnel Director or Finance Director.

6. Joan Boyer began her employment as the City Administrator on January 1, 1992. Under her guidance, the City was reorganized effective on or about August 31, 1992 to provide for more effective and efficient operations. The reorganization was both within the central office or Department of Administration of the City as well as outside. As part of the reorganization, the City reorganized the central office, creating the positions of Deputy Treasurer, Deputy Clerk/ADA Officer and Confidential Secretary. These positions were not created as part of the bargaining unit. Among the positions eliminated was a bargaining unit position of Utility Clerk/Secretary occupied by Susan Bosgraaf.

7. Eileen Powers currently occupies the position of Deputy Treasurer. Previously, she held the position of Deputy Clerk Treasurer, a position that was not within the bargaining unit. Her job is located in the Department of Administration. Her major work function is essentially serving as the City's bookkeeper to manage, collect, disburse, receipt and account for all City funds under the direction of the City Administrator. Major duties and responsibilities include performing a wide range of tasks relating to Accounting, Elections, Payroll and other related duties as noted below.

8. Eileen Powers has many accounting duties and responsibilities. Some examples include: investing City funds and transferring funds between financial institutions; preparing various financial reports; helping to prepare the annual budget; tracking receipt of all monies; preparing and issuing checks; tracking all bond issues; keeping track of all revenues and expenditures; preparing and collecting taxes and assisting with any audits by the State. She approves expenditures in the City Administrator's absence. She has almost complete responsibility for all aspects of the election process, including the kind and number of temporary employes to be used in running elections. She provides interpretation of the City's rules and ordinances regarding zoning and provides high-level administrative services to the City's Zoning Board of Appeals. She works closely with the City Administrator on matters of budget, administration, labor relations, personnel, levy and various City services, and often serves as a "sounding board" for the City Administrator. She organized and supervises the office staff including the Deputy Clerk/ADA Officer and Confidential Secretary.

Eileen Powers also helps the City Administrator respond to grievances by researching the grievants' personnel files, by looking at past grievances, by strategizing with respect to the City's position on grievances and possible replies, by voicing her opinion when asked by the City Administrator with respect to the merits of a grievance and by helping the City Administrator draft replies to grievances. Powers has been involved in several grievances to date, but does not get involved in every grievance. Powers also is involved in other aspects of the City's labor relations. In this regard, she works on budget issues pertaining to labor relations; she retrieves budgetary financial information which the Union may not be aware of; she initiates discussion on issues like health insurance, costs out different proposals like self-funding, and discusses alternatives with the City Administrator that are not presented to the Union; she has knowledge of the City's strategy, and participates in discussions with the City Administrator regarding other Union and personnel issues such as retirement, layoffs or contracting out of services like garbage and trash pickup; she costs out offers in negotiations, and presents this information to the City Administrator but not necessarily to the Union; she is aware of, has knowledge of and participates in the formulation of the City's goals and strategies in labor relations and negotiations particularly with respect to the financial impact of same. Eileen Powers participates in matters involving the consideration of confidential information relating to labor relations and has access to and knowledge of confidential information relating to labor relation. As noted above, this confidential information deals with the City's strategy and position in collective bargaining, contract administration, litigation and other similar matters pertaining to labor relations and grievance handling between the City and the Union and is generally unavailable to the Union. Based on the foregoing, Eileen Powers has sufficient access to, knowledge of and participation in confidential labor relations matters so as to render her a confidential employe.

Eileen Powers exercises a great deal of independent judgment in supervising the office staff in assigning, prioritizing and coordinating virtually all work in the Administration Department. She also effectively recommends in the hiring of all of the City's office positions, and is involved in all phases of the City's hiring process in this area except for the actual interview which is conducted by the City Administrator. She evaluates the performance of the office employes, and has primary responsibility for their training. She has the authority to effectively recommend discipline. She is compensated at a "significantly greater" level than the two (2) employes she supervises. Eileen Powers does possess and exercise supervisory duties and responsibilities in sufficient combination and degree to render her a supervisory employe.

9. Renee Hazelton currently occupies the position of Deputy Clerk. Her major work function is the processing of purchase orders and claims, invoicing, utility billing, special assessment billing and recordkeeping. She also performs other related duties such as receptionist, ADA Officer, clerical, machine operator, etc. Hazelton spends approximately 67% of her time on duties relating to purchasing and claims, and over 25% of her time on billing functions. The remaining eight percent of her time is spent on all her other

duties including functioning as the City's ADA (Americans With Disabilities Act of 1990) officer.

Although Renee Hazelton has "complete" responsibility for developing and implementing the City's ADA policy and program, she has not taken much action in this area yet other than to measure some doorways and washrooms to see if they meet ADA standards. Hazelton also apparently developed an American With Disabilities Grievance Procedure which provides for the ADA officer to attempt to resolve complaints at the first step. Her responsibilities under the ADA also include the authority to make recommendations on all physical facilities in the City to make sure they comply with ADA requirements, the authority to make recommendations on reasonable accommodations, and the authority to make recommendations regarding hiring to comply with the ADA. With respect to her other duties and responsibilities, Hazelton makes recommendations on some matters like collections and utility rates which ultimately are decided by the Public Service Commission. She might bring to the City Administrator's attention issues or problems relating to the sewer rates, energy and water conservation ideas, and sewer and water service. However, except for supplying information and ideas on these issues to her supervisor, Eileen Powers, the City Administrator, special auditors and possibly others, including various City Committees and the Council, Hazelton does not have authority to take action on her own in these areas. Finally, Hazelton has authority to sign paychecks, and maintains the executive session minutes (which are typed by Diane Kropiwka, the Confidential Secretary). Renee Hazelton does not participate in a sufficiently significant manner in the formulation, determination and implementation of management policy or have sufficient authority to commit the City's resources so as to render her a managerial employe.

Renee Hazelton handles complaints at the first step of the ADA grievance procedure as noted above. These responsibilities as well as her other responsibilities regarding the ADA noted above may at times be in conflict with the terms and conditions of the parties' collective bargaining agreement. In most instances, however, Hazelton's efforts at reasonable accommodation such as providing equal access generally would not affect changes in terms and conditions of employment. In a de minimus number of instances, she might affect changes in employment practices that would affect such matters as, for example, seniority or job classifications, and these actions might impact terms and conditions of employment. Hazelton will play an integral part in developing the City's strategy in responding to ADA matters either by resolving the problem on her own or making recommendations to the City Administrator or ADA Compliance Committee. However, although Hazelton has the responsibility to ensure that people with disabilities are not discriminated against in the City's hiring process, she is not directly involved in making the decision as to who is hired. She does not supervise employes or handle grievances under the parties' collective bargaining agreement. The only information she could identify at hearing that she would be required to keep confidential is medical records pertaining to her responsibilities as ADA officer. Except for the first step, all other steps of the American with Disabilities Grievance Procedure are public. Hazelton testified that she could appeal ADA complaints beyond the City Council if she was not satisfied with the result; however, neither the aforesaid ADA grievance procedure or her job description or the record contains any persuasive evidence that she has this responsibility. In addition, Hazelton testified that she was unsure about her role before the EEOC. Finally, the Deputy Clerk/ADA Officer has no responsibilities whatsoever with respect to the collective bargaining process. Hazelton does not have sufficient access to, knowledge of, or participation in confidential labor relations matters to render her a confidential employe.

10. Diane Kropiwka currently occupies the position of Confidential Secretary located in the City Administration Department. Kropiwka performs a wide range of administrative, secretarial and office duties primarily for the

City Administrator, but also for the Mayor, other City officials and various City Committees and the Council. Kropiwka opens all mail relating to confidential labor relations matters from the City's labor attorney to the City Administrator; she helps the City Administrator prioritize this information and she may file certain information or help the City Administrator compile a response. She is involved in the City's response to various grievances by sometimes doing research on different grievances, discussing with the City Administrator various responses to grievances, helping to draft grievance responses, typing grievance responses, maintaining personnel and grievance records and typing minutes from closed sessions of the City Council, Personnel Committee, Police and Fire Commission and other committees regarding personnel matters, labor relations and lawsuits. Kropiwka also types correspondence, and has knowledge of confidential information regarding collective bargaining. She types notes from collective bargaining sessions which are not available to the Union. She did research and retrieved documents and information to help prepare the City's position on a lawsuit filed by the Union over health insurance carriers. She attends joint budget meetings with various representatives from the City and the Unions. She types confidential information for the Mayor. Her work station is physically separate from other offices and is located in the City Administrator's office suite. She is the main person assigned to perform clerical work for the City Administrator who has significant managerial, supervisory and confidential duties and responsibilities for the City. Kropiwka has sufficient access to, knowledge of, and participation in confidential labor relations matters so as to render her a confidential employe.

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

CONCLUSIONS OF LAW

1. Eileen Powers, the occupant of the Deputy Treasurer position in the City, is a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats. and a confidential employe within the meaning of Sec. 111.70(1)(i), Stats. and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. Renee Hazelton, the occupant of the position known as Deputy Clerk/ADA Officer, is neither a confidential nor managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., properly included with the bargaining unit noted in Finding of Fact 3.

3. Diane Kropiwka, the incumbent Confidential Secretary, is a confidential employe within the meaning of Sec. 111.70(1)(i), Stats. and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issued the following

ORDER CLARIFYING BARGAINING UNIT 1/

1. The position known as Deputy Clerk/ADA Officer is hereby included in the bargaining unit noted in Finding of Fact 3.

2. The positions of Deputy Treasurer and Confidential Secretary continue to be excluded from the bargaining unit described in Finding of Fact 3 above.

Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of November,

1/ Footnote found on pages 7 and 8.

1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CITY OF MAUSTON

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

The background facts, procedural development and basic positions taken by the parties in this case are as stated in the preface and Findings of Fact.

POSITIONS OF THE PARTIES

The Union

The Union basically argues that the City is entitled to have no more than two (2) exclusions in the Department, i.e., the City Administrator and one (1) confidential employe. The Union believes the City should have chosen one (1) confidential exclusion, but "for whatever reason did not do so." Since the City was unable to make the decision, the Union feels the Commission should make the confidential selection for it. In this regard, the Union contends that the Deputy Treasurer can easily perform, both from a skill and time standpoint, all the confidential tasks for the City.

With respect to the other issues raised by the City in support of its position that the three (3) employes in dispute should be excluded from the applicable bargaining unit, the Union argues that neither the Deputy Treasurer nor the Deputy Clerk are managerial employes due mainly to the overriding control exercised by the City Administrator over City operations. In addition, the Union argues that the City has embellished the authority and involvement of the Deputy Clerk/ADA Officer in policy and management decisions. Nor, according to the Union, do ADA responsibilities automatically confer confidential and managerial status on the Deputy Clerk. Finally, the Union argues that Eileen Powers does not act as a supervisor or have sufficient authority to do so simply by "acting in the absence of" the City Administrator.

The Union concludes that the City's operations would not be unduly disrupted by the designation of one (1) confidential employe, preferably Eileen Powers; that the City's actions in assigning the only available employe to perform certain confidential duties as well as its other actions in assigning duties and conferring so-called responsibilities on the employes in dispute were designed to erode the bargaining unit; and that the Commission should include the other two employes in the existing bargaining unit because there is no basis in the record for excluding them.

The City

The City argues in summary that the Deputy Treasurer is a confidential, managerial and supervisory employe, that the Deputy Clerk/ADA Officer is a confidential and managerial employe and that the Confidential Secretary is a confidential employe. Contrary to the Union's assertion, the City maintains that the reorganization and allocation of job duties was undertaken primarily to put in place a system of checks and balances to maintain the integrity of the City's finances and to provide the maximum efficiency in performing the office functions of the City. Based on the entire record and applicable legal

standards, the City contends that the Commission should exclude all three (3) positions from the bargaining unit.

DISCUSSION

The Commission will, on the basis of the record and job content, place each position at issue in the applicable bargaining unit or exclude said position from the unit if it is found to be a statutorily-excluded position.

In determining whether a position is supervisory, managerial or confidential, the Commission will rely upon the following criteria and policies.

Supervisory Status

In determining if a position is supervisory, the Commission considers the following criteria:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 2/

It is not necessary that all the indicia of supervisory status be present to find a position to be supervisory in nature, however it is necessary that those factors should be present in sufficient combination and degree to clearly establish such supervisory status. 3/ Moreover, minor supervisory duties, such as participating in employment interviews and adjusting vacation schedules,

2/ Wood County, Dec. No. 9140-B, (WERC, 5/92); Muskego-Norway School District, Dec. No. 1085-A, (WERC, 12/91); Kenosha County (Brookside Care Center), Dec. No. 19435-C (WERC 9/91); City of Lancaster, Dec. No. 27180, (WERC, 2/92).

3/ Id.

will not in and of themselves elevate a position to supervisory status. 4/ A conclusion that a position is supervisory may be based upon the incumbent's exercise of such authority over non-unit personnel. 5/ Job descriptions may well be helpful in the determination of employment duties, but of greater weight in determining supervisory status, are the actual duties performed. 6/

Managerial Status

In determining whether a position has managerial status, the Commission considers the degree to which individuals participate in the formulation, determination and implementation of management policy and/or possess the authority to commit the employer's resources, either by playing a significant role in the creation of a budget or by allocating funds for differing program purposes within a budget. Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Kewaunee County v. WERC, 141 Wis.2d 347 (CtApp 1987).

Participation in the formation, determination and implementation of policy must be ". . . at a relatively high level of responsibility" for such participation to qualify an individual as a managerial employe. Village of Jackson, Dec. No. 25098 (WERC, 1/88), and cases cited therein. See also, Portage County, Dec. No. 6478-C (WERC, 10/87); Town of Conover, Dec. No. 24371-A (WERC, 7/87); Marathon County, Dec. No. 19130-E (WERC, 2/88) at p.5; Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88), and cases cited therein.

For an employe to be managerial based upon his/her ability to allocate the employer's resources, the employe's activities must significantly affect the nature and direction of the employer's operations. Village of Jackson, supra. If the employe's input into making/drafting an original budget is not merely routine or ministerial, the employe's budgetary involvement will not warrant his/her exclusion as a managerial employe. See, e.g., Village of Jackson, supra; Portage County, supra.

Confidential Status

The Commission has established that, for an employe to be held confidential, the employe must participate in matters involving the consideration of confidential information relating to labor relations, or must have access to or knowledge of confidential information 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 unavailable to the bargaining representative. 7/

Deputy Treasurer

The Deputy Treasurer, Eileen Powers, is paid at a "significantly greater" level than the two employes that she supervises. She has complete authority to supervise said employes and exercises a great deal of independent judgment in assigning, prioritizing and coordinating virtually all their work. She has effectively recommended hiring these employes, and been responsible for their

4/ City of Milwaukee, Dec. No. 16483 (WERC, 8/78).

5/ City of Two Rivers (Police Dept.), Dec. No. 21959-A (WERC, 2/91); and City of Lake Geneva, Dec. No. 18507 (WERC, 3/81).

6/ City of Cudahy (Library), Dec. No. 26680, (WERC, 11/90).

7/ Crawford County, Dec. No. 16931-B (WERC, 9/89); Nicolet Area Technical College, Dec. No. 23366-C (WERC, 3/93).

training. She evaluates their performance, and has the authority to effectively recommend discipline. Contrary to the Union's assertion, the Deputy Treasurer does not only exercise this authority in the City Administrator's absence. Based on the foregoing criteria, the Commission finds that the Deputy Treasurer possesses or exercises supervisory authority in sufficient combination and degree to be deemed a supervisor within the meaning of the Municipal Employment Relations Act.

Likewise, we find that Powers is a confidential employe. As more specifically outlined in Finding of Fact 8, through her role in budget preparation and costing, Powers has access to and knowledge of information dealing with the City's strategy in collective bargaining, which information is not available to the Union. The record also indicates that Powers has initiated discussions on collective bargaining issues which had the potential to save the City money, and discusses various alternatives with the City Administrator, not all of which are shared with the Union. Powers also helps the City Administrator respond to various grievances by researching the grievant's personnel file and past grievances, by strategizing with the City Administrator with respect to the City's position on grievances and possible replies and by helping the City Administrator draft replies to grievances.

Given the foregoing we find it unnecessary to determine whether Powers is also a managerial employe.

Deputy Clerk/ADA Officer

The City argues that the Deputy Clerk, Renee Hazelton, has sufficient confidential and managerial duties to exclude her from the bargaining unit. The record, however, does not support that finding.

Concerning her alleged managerial duties and responsibilities, the record indicates the Deputy Clerk/ADA Officer has responsibility for developing and implementing the City's ADA policy and program. Yet, she has not taken any significant action in this area as of the date of the hearings except apparently to develop an ADA grievance procedure and to measure a few doorways, and sidewalks. In addition, any proposed changes relating to ADA must go through, at a minimum, the City Administrator, the appropriate City committee, and the Council for approval through an ordinance change before becoming in effect. Hazelton's responsibilities as part of the ADA grievance procedure are only at the "first step." Hazelton testified that she had responsibility for deciding how individual complaints would be handled, and that she could appeal beyond the Council to a higher level if she was not satisfied with the Council's decision. However, the City's ADA grievance procedure does not spell out this responsibility nor does Hazelton have any idea what her role before the EEOC (or higher "court") would be. Hazelton is not an attorney, and, therefore, could not represent a complainant on an ADA matter in a court of law. Hazelton makes recommendations on physical facilities, on reasonable accommodations and on eliminating discrimination in hiring practices. However, despite the importance of the ADA, on balance, we are persuaded that the Deputy Clerk/ADA Officer's role is primarily one of providing practical expertise to the City in terms of complying with the ADA's requirements rather than allocating the City's resources in a manner which significantly affects the nature and direction of the City's operation. We reach a similar conclusion with respect to Hazelton's other duties. She spends the vast majority of her time on duties relating to billing, purchasing and claims. She comes up with ideas to promote energy and water conservation, and gathers information regarding same, but it is left to others like special auditors, the City Administrator, and the appropriate city committees to implement same. She has some responsibility for recommendations on utility matters which ultimately end up before the Public Service Commission, but these recommendations go through a chain of command starting with her supervisor, Eileen Powers, and through the City Administrator up to the City Council. Based on all of the foregoing, we find that the Deputy Clerk/ADA Officer does not possess sufficient managerial authority to be found to be a managerial employe.

Likewise, we find that the Deputy Clerk/ADA officer does not function as a confidential employe. She does not participate in collective bargaining or grievance processing as a City representative under the City's collective bargaining agreements. She does not supervise employes or discipline employes within the meaning of the parties' collective bargaining agreement. The only confidential information that she maintains, according to her testimony, is medical records and a person's disability. The City's main claim with respect to confidential status for Hazelton is her confidential duties relating to the ADA. In this regard, the City argues that in resolving claims Hazelton will play an integral part in developing the City's strategy in responding to the situation, and that this information is not available to the Union. However, Hazelton has not acted in this capacity to date. Nor did the City give many specific, concrete examples where these conflicts would occur which would necessarily conflict with the City's collective bargaining relationship with the Union. In this regard, it should be pointed out that accommodations such as putting a desk on blocks, providing a ramp, providing an opteq (visual enhancement tool for printed materials), and a voice synthesizer for computer or word processor use which allow disabled employes to perform the same job in a different fashion than other employes, generally would not be changes in terms and conditions of employment. A change that is inconsistent with an established employment practice such as a seniority system, defined job classifications or a disability plan would more likely affect a term or condition of employment. There is no persuasive evidence in the record that the ADA Officer would be faced with these kind of changes more than occasionally, and a de minimus amount of this work would not qualify the Deputy Clerk/ADA Officer as a confidential employe. In the event this conclusion causes a problem for the City, the City could always delegate certain ADA responsibilities to one of the two other confidential employes designated herein. Finally, it should be pointed out that the City's ADA grievance procedure is public at every step beyond the first step or conciliation stage where the Deputy Clerk/ADA Officer plays a role in attempting to resolve the complaint. Therefore, it is not clear how confidential the City's strategy in resolving ADA complaints would be given the public nature of the ADA grievance procedure. Based on the foregoing, we find that Hazelton's duties relating to the ADA law are either too speculative at this point to determine what, if any, of those responsibilities are confidential in relation to matters involving the City's labor relations or involve a de minimus amount of confidential work. Accordingly, we conclude that the Deputy Clerk/ADA Officer position is not confidential, and appropriately included in the aforesaid bargaining unit.

Confidential Secretary

The Union argues that the City is distributing confidential labor relations responsibilities among the three (3) employes in question in order to diminish the Union. The Union contends that there is only a need for one (1) confidential employe. Consequently, the Union requests that the Commission designate one (1) employe as confidential based on the City's failure to make a designation and suggests the Deputy Treasurer as its preferred designee. However, the record does not support a finding that the City acted to diminish the size of the bargaining unit herein. To the contrary, the record indicates that the City had sound fiscal and administrative reasons for its reorganization and assignment of duties to the aforesaid three (3) employes. Where, as here, the City had legitimate reasons for its action ". . . some allowance must be made for the right of the employer to organize and structure its labor relations functions." 8/

The record indicates the Confidential Secretary, Diane Kropiwka, through

8/ City of Appleton, Dec. No. 12917-B (Knudson Sec. 227.46(3)(a) final agency decision, 9/82).

her role in grievance processing, has access to and knowledge of information dealing with contract administration and grievance handling, which information is not available to the Union. In addition, the Confidential Secretary is the only clerical employe assigned as the City Administrator's secretary. The City Administrator has significant labor relations responsibility, and the Confidential Secretary is the primary clerical employe available to her. In this capacity, the Confidential Secretary is privy to confidential labor relations materials. The City has approximately 75 employes and two unions representing a portion of its employes. The record indicates a very significant amount of confidential work, within the meaning of that term, exists in the City. 9/ Nor does the record indicate it would be feasible to transfer the Confidential Secretary's confidential duties to the Deputy Treasurer given her broad responsibilities and many duties or to the Deputy Clerk/ADA Officer since we have found her to lack confidential status. Making the City Administrator responsible for her own typing and filing, under the circumstances, constitutes an undue disruption of the City's organization. Where a management employe has significant labor relations responsibility, the clerical employe assigned to the employe 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. 10/

Accordingly, based on the above, we have found the Confidential Secretary to be confidential, and thus excluded from the bargaining unit.

SUMMARY

Based on all of the above, the Commission concludes that the position of Deputy Clerk/ADA Officer is occupied by a regular full-time municipal employe and is appropriately included within the bargaining unit described in Finding of Fact 3 above. The Commission also concludes that the position of Deputy Treasurer has supervisory and confidential authority sufficient to justify her exclusion from said bargaining unit and that the Confidential Secretary is a confidential employe and on that basis also should be excluded from the bargaining unit.

Dated at Madison, Wisconsin this 29th day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

9/ Tr 1, p. 20; Jt. Ex. No. 12.

10/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).