

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Involving Certain Employees of
CITY OF DODGEVILLE

Case 4
No. 54951
ME-876

Decision No. 22169-A

Appearances:

Mr. David White, Staff Representative, 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.

Mr. Bradley Glass, City Attorney, City of Dodgeville, 100 East Fountain Street, Dodgeville, Wisconsin 53533, appearing on behalf of the City of Dodgeville.

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

Wisconsin Council 40, AFSCME, AFL-CIO, which is referred to below as the Union, filed a petition on February 28, 1997, requesting that the Wisconsin Employment Relations Commission clarify a bargaining unit of certain employees of the City of Dodgeville, which is referred to below as the City, by including the position of Deputy Clerk-Treasurer. The City opposes the petition, contending the Deputy Clerk Treasurer is a confidential employee.

Hearing on the matter was thereafter scheduled and postponed three times. On March 19, 1998, a hearing in the matter was held in Dodgeville, Wisconsin, before Examiner Raleigh Jones, a member of the Commission's staff. Afterwards, the parties filed briefs, whereupon the record was closed April 24, 1998.

No. 22169-A

The Commission, having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization which has its offices located at 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717.

2. The City of Dodgeville, herein the City, is a municipal employer which has its offices located at 100 East Fountain Street, Dodgeville, Wisconsin 53533. The City has about 50 full-time employes.

3. The Union is the certified exclusive bargaining representative for all regular full-time and regular part-time employes of the City of Dodgeville, excluding supervisory, managerial, confidential, craft, professional and law enforcement employes. There are about 27 employes in this bargaining unit.

4. There are currently two collective bargaining units in the City of Dodgeville: the unit referenced in Finding of Fact 3 and a unit of police officers. There are eight employes in the police officer unit.

5. Prior to January, 1997, the City had a full-time Clerk and a full-time Treasurer. Neither the Clerk nor the Treasurer were included in the bargaining unit. The office of the City Clerk was separate from the office of the City Treasurer. One of the longstanding problems that existed with this office arrangement was that when one of the two officials was away from work, the other could not perform the statutory duties of the absent official. This caused the work to pile up until the absent person returned to the office.

In 1996, the Treasurer announced her forthcoming retirement. Afterwards, the City Council appointed a committee to recommend if changes should be made to the offices of Clerk and Treasurer. That committee ultimately recommended creating the office of Clerk-Treasurer, combining the positions of Clerk and Treasurer into a single position of Clerk-Treasurer, and creating a new Deputy Clerk-Treasurer position. On January 20, 1997, the City Council formally adopted these recommendations and consolidated the offices of City Clerk and City Treasurer into the office of Clerk-Treasurer, combined the positions of Clerk and Treasurer into a single position of Clerk-Treasurer, and created a new Deputy Clerk-Treasurer position. The City also approved job descriptions for the positions of Clerk-Treasurer and Deputy Clerk-Treasurer.

6. Four people now work in the office of Clerk-Treasurer: the Clerk-Treasurer, the Deputy Clerk-Treasurer, a full-time clerical and a part-time utility clerk. The latter two employees are included in the bargaining unit while the first two are currently excluded from same. The Clerk-Treasurer oversees the other three employees in the office. The Clerk-Treasurer is the top administrative officer of the City. The City does not have a city manager and none of the City's elected officials (including the Mayor) work full-time in that capacity.

7. The Clerk-Treasurer performs all the duties mandated by state statute for the office of City Clerk and City Treasurer. This essentially involves maintaining the City's and Water and Sewer Utility's financial and accounting records, reports and statements. The Deputy Clerk-Treasurer works directly under the Clerk-Treasurer and performs the same work duties as the Clerk-Treasurer. Thus, the Clerk-Treasurer and Deputy Clerk-Treasurer share work duties. Although the Clerk-Treasurer has primary responsibility for the work performed, the Clerk-Treasurer and the Deputy Clerk-Treasurer are capable of performing all the work duties done in the office. The Deputy Clerk-Treasurer has access to any information which the Clerk-Treasurer has, including labor relations information. When the Clerk-Treasurer is absent, the Deputy Clerk-Treasurer is in charge of the office. It is anticipated that in 1998, the Clerk-Treasurer will be gone about ten weeks for vacation, training and conferences.

8. The City has negotiated labor agreements with the Union since 1985. Historically, this has occurred about every two years. Each time bargaining occurred, the City's bargaining team consisted of elected city council members (specifically the City's Personnel Committee) and several City administrators. One of the City administrators who was on the City's bargaining team during this entire time period was City Clerk (and now Clerk-Treasurer) Cheryl Menon. Menon's involvement in the bargaining process has been as follows: she has compiled bargaining information about wages and benefits from other municipalities; she has attended closed sessions of the City Council when negotiations were discussed; at these meetings, her advice concerning bargaining proposals has been solicited by council members; at these meetings, she has helped formulate City bargaining proposals; she has reviewed bargaining proposals made by the Union; she has typed City bargaining proposals; and she has had access to minutes and faxes which related to bargaining. In addition to her involvement in bargaining, Menon has been involved in the handling of union grievances. Her involvement in same has been as follows: she has attended closed meetings of the City Council wherein grievances were discussed; she has been the City Council's contact person to determine past practice; she has typed answers to grievances and sent them to the Union; and she has performed investigations which resulted in employee discipline. Menon also assisted the City Council in making unit determination decisions in 1985 when the bargaining unit was formulated. She played a similar role in a subsequent decertification election.

9. The new Deputy Clerk-Treasurer position was first filled by an existing City employe who had been the office's utility clerk. That person worked in the job for five months whereupon she was terminated. After her termination, the City wrote new job descriptions for the positions of Clerk-Treasurer and Deputy Clerk-Treasurer. The new job description for the Deputy Clerk-Treasurer provides in pertinent part:

Performs clerical, administrative and information gathering tasks and deals with confidential information involving the City's strategy or position in collective bargaining, contract administration, litigation or other similar matters relating to labor relations and grievance handling between the City and Union representatives.

10. The current Deputy Clerk-Treasurer, Linda Correy, was hired October 27, 1997. For the first several months of her employment, she was immersed in tax matters which took about 90 percent of her time. As of the date of the hearing, she was spending most of her time doing accounts payable, payroll and bookkeeping. In January, 1998, she attended two meetings of the Personnel Committee wherein the City's bargaining strategy for the forthcoming negotiations was discussed. Afterwards, she drafted the City's preliminary offer and sent it to the Union. When she did so, she used a version of this document that was already on the City's computer. It took Correy one hour to complete this task. As of the date of the hearing, she was compiling wage and benefit information from other municipalities for the City's use in negotiations.

11. The Deputy Clerk-Treasurer has sufficient access to and involvement in confidential matters relating to labor relations so as to render her a confidential employe.

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

CONCLUSION OF LAW

The occupant of the position of Deputy Clerk-Treasurer 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.

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

ORDER CLARIFYING BARGAINING UNIT

The Deputy Clerk-Treasurer shall continue to be excluded from the collective bargaining unit noted in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 24th day of June, 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 DODGEVILLE

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

POSITIONS OF THE PARTIES

The Union argues that the newly-created Deputy Clerk-Treasurer position has *de minimis* involvement in duties Commission case law identifies as confidential. In the Union's view, Correy's involvement with those matters is simply too minimal to meet the Commission's case law standards defining confidential status. Apart from that, the Union notes that the City has another confidential employe in that office, namely the Clerk-Treasurer. According to the Union, the Clerk-Treasurer has primary responsibility for performing the vast majority of the City's confidential duties. The Union avers that the Clerk-Treasurer could perform the confidential duties that Correy is now performing without undue disruption to the City's operation. Finally, the Union submits that while Correy currently has access to all the information contained in the City's computer system, that access could be limited by changing the password. The Union therefore requests that Correy be found to be a municipal employe and included in the bargaining unit.

The City argues that the newly-created Deputy Clerk-Treasurer position is confidential. It notes at the outset that in adopting the Clerk-Treasurer system, it did not add any additional unit exclusions: there were two exclusions in its administrative office before the restructuring (i.e. the Clerk and the Treasurer), and there are still two exclusions (i.e. the Clerk-Treasurer and the Deputy Clerk-Treasurer). The City submits these are the only two employes in the City which it has designated to handle confidential information. In its view, two confidential employes is not an inordinately large number given the total number of employes in this unit (i.e. 27).

Next, the City avers that the Deputy Clerk-Treasurer's job duties and responsibilities are interchangeable with the Clerk-Treasurer. It notes that in the past, the Clerk-Treasurer has been involved in setting strategy for collective bargaining, grievance handling, contract administration and elections, and the City intends for the Deputy Clerk-Treasurer to handle the same matters as well. The City argues that the Deputy Clerk-Treasurer should be found to be a confidential employe despite her limited amount of confidential work performed between her date of hire and the hearing. According to the City, Correy's involvement in confidential matters will expand over time.

Next, the City submits that as evidenced by the Clerk-Treasurer's schedule in 1998, the Clerk-Treasurer will be out of the office for an extended periods of time each year. It avers that when the Clerk-Treasurer is out of the office, the only person available to do confidential work is the Deputy Clerk-Treasurer. The City asserts that if the Deputy Clerk-Treasurer is included in the unit, the City would be in the position of having no confidential employees at all to handle its labor relations matters during the Clerk-Treasurer's absence.

Finally, the City contends that if the City's confidential labor relations work has to be performed solely by the Clerk-Treasurer, it would hamper her ability to manage the office's work flow and disrupt the City's administrative organization. According to the City, it would place an excessive burden on the Clerk-Treasurer, who could not perform that work together with her other work during normal working hours. The City therefore requests that the Deputy Clerk-Treasurer be found to be a confidential employee and excluded from the bargaining unit.

DISCUSSION

In order for an employee to be held confidential, the employee 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 employees to engage in concerted activity with the right of employers to conduct labor relations through employees 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).

Applying these general principles to this case, we find that the Deputy Clerk-Treasurer is a confidential employee and appropriately excluded from the bargaining unit. Our analysis follows.

It is noted at the outset that the Clerk-Treasurer is responsible for maintaining the City's and Water and Sewer Utility's financial and accounting records, reports and statements. In addition, she functions as the City's top administrative officer. In this capacity, she has close and continuing access to the City's confidential labor relations information. Specifically, she has attended meetings wherein she helped formulate the City's strategy for collective bargaining, had access to

related to bargaining, assembled data for negotiations and assisted in the investigation and processing of grievances.

When the City created the position of Deputy Clerk-Treasurer, it decided that person would perform the same work duties as the Clerk-Treasurer. It did this because it wanted to ensure that both the Clerk-Treasurer and the Deputy Clerk-Treasurer could do all the work duties done in the office so that one could do the work in the other's absence. The record indicates that the Clerk-Treasurer and the Deputy Clerk-Treasurer do, in fact, share work duties.

Since being hired, the Deputy Clerk-Treasurer has spent the bulk of her time doing taxes, accounts payable, payroll and bookkeeping. Thus, the vast majority of her work to date has been unrelated to labor relations. That said, the Deputy Clerk-Treasurer has still performed some confidential labor relations work. Specifically, she has attended two meetings of the Personnel Committee where the City's bargaining strategy was discussed, she drafted the City's preliminary offer, and she assembled data for negotiations. While her confidential duties thus far can certainly be characterized as minimal, she nonetheless has access to information that relates to the City's negotiating strategy and is not known to the Union. In fact, she has access to the same labor relations information as the Clerk-Treasurer does.

Although the amount of confidential work which the Deputy Clerk-Treasurer has done to date is minimal, this is not a situation where the employer has increased the number of bargaining unit exclusions by simply redistributing the City's confidential labor relations responsibilities. This is because there were two employees available to perform confidential work before the reorganization of the Clerk's and Treasurer's office and there are still just two individuals. All that has changed is the identity of the two employees which has evolved from the Clerk and the Treasurer to the Clerk-Treasurer and the Deputy Clerk-Treasurer.

Aside from that, we believe that the strength of the City's position is that the work done by the Clerk-Treasurer and the Deputy Clerk-Treasurer cannot be physically or functionally separated, and thus the Deputy Clerk-Treasurer is inevitably aware of anything the Clerk-Treasurer is aware of - including confidential labor relations information. It is also noteworthy that the Clerk-Treasurer will be absent for significant periods of time (approximately 10 weeks in 1978). This

being so, we find that it would be unduly disruptive to the City's organization to assign all confidential labor relations work to the Clerk-Treasurer. Thus, we find that the Deputy Clerk-Treasurer is a confidential employe and properly excluded from the bargaining unit.

Dated at the City of Madison, Wisconsin this 24th day of June, 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