

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 35**

Involving Certain Employes of

OZAUKEE COUNTY

Case 12
No. 52644
ME-774

Decision No. 22667-F

Appearances:

Cullen, Weston, Pines & Bach, by **Attorney Linda Harfst**, 20 North Carroll Street, Madison, Wisconsin 53703, on behalf of Office and Professional Employees International Union, Local 35.

Davis & Kuelthau, S.C., by **Attorney Roger E. Walsh**, 111 East Kilbourn Street, Suite 1400, Milwaukee, Wisconsin 53202, on behalf of Ozaukee County.

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

On May 24, 1995, Office and Professional Employees International Union, Local 35 filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing certified bargaining unit of certain employes of Ozaukee County to determine whether the Account Clerk I in the County Clerk's office, the Dispatch Supervisor in the Sheriff's Department and seven Car Drivers should be included in said unit.

On June 5, 1995, Local 35 filed an amended petition seeking to include (along with the Account Clerk I, Dispatch Supervisor and Car Drivers) the Account Clerk II, the Accounting Supervisor and the Payroll Technician in the existing unit.

Examiner Stuart Levitan conducted one day of hearing on October 9, 1995, in Port Washington, Wisconsin. The case was then held in abeyance.

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On October 15, 1997, the County filed a petition to clarify the unit by excluding the Deputy Treasurer, the Deputy Register In Probate, Deputy Register of Deeds and Deputy Clerk of Juvenile Court.

Examiner Sharon A. Gallagher conducted additional days of hearing on November 3 and November 4, 1997 and on January 19, 20 and 21, 1998.

During the hearing before Examiner Gallagher, the parties agreed to include the Car Driver positions into the unit, and to exclude the Dispatch Supervisor from the unit as a supervisor. As to the disputed positions, the County opposes the Local 35 petition and argues that the Account Clerk I and Account Clerk II positions are confidential and/or managerial; and that the Accounting Supervisor and Payroll Technician positions are confidential, supervisory and/or managerial. In support of its own petition, the County argues the four Deputy positions should be excluded from the unit by operation of law because they are Chief Deputies or, in the alternative, if the Chief Deputies are not excluded by operation of law, the Deputy Treasurer and Deputy Register of Deeds should be excluded because they are supervisors. Local 35 contends that all of the disputed positions are held by municipal employees who should be included in the bargaining unit.

Stenographic transcripts of all days of hearing were made and received by February 2, 1998. The parties completed their initial briefing schedule on May 6, 1998.

During the pendency of the matter before the Commission, the statute regarding the County Treasurer's power to appoint deputies (Sec. 59.25, Stats.) was amended. The Commission sought and the parties filed supplemental written argument regarding the impact of the statutory change on this proceeding, the last of which was received by July 7, 1998. Having given prior notice to the parties, the Commission hereby takes official notice of the legislative Drafting File relative to amended Sec. 59.25, Stats.

The Commission, having considered the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The Office and Professional Employees International Union, Local 35, herein the Union, is a labor organization with offices at 633 South Hawley Road, Suite 106, Milwaukee, Wisconsin 53212. The Union is the collective bargaining representative for Ozaukee County employees in the following bargaining unit as described in the parties' 1994-1996 agreement:

all regular full-time and regular part-time employees of Ozaukee County, including professional employees, excluding elected officials, supervisors, administrative, managerial, casual and confidential employees, including but not limited to register

in probate, bailiffs, jury commissioners, emergency government employees, employees of other certified or recognized bargaining units, and employees of the Lasata Nursing Home pursuant to the provisions of Sec. 111.70 (Wis. Stats.)

2. Ozaukee County, herein the County, is a municipal employer with its principal offices located at the Ozaukee County Courthouse, Port Washington, Wisconsin.

3. In 1985, when the Union became the collective bargaining representative of the unit, the County Clerk's office employed the following employees:

Karen Makoutz, Accounting Supervisor
Theresa Ito
Payroll Technician/Personnel Technician
Mary Bley (Marchese), Secretary

At that time, the parties entered into a stipulation to exclude all three of these employees from the bargaining unit as confidential employees.

The following are the current employees of the County Clerk's office with their current collective bargaining unit status listed next to their name and position:

County Clerk, Harold Dobberpuhl (excluded)
Deputy County Clerk, Mary Bley Marchese (excluded)
Accounting Supervisor, Patty Brill (excluded)
Payroll Technician, Carol Reisimer (excluded)
Account Clerk II, Lisa Melichar (excluded)
Account Clerk I, Marilyn Geissler (excluded)
Switchboard Operator Debbie Kowalski (unit employe)
Printer/Microfilm Operator, Marie Strauss (unit employe)

The position which Carol Reisimer occupies is similar to that formerly occupied by Theresa Ito, and the position occupied by Patty Brill is the successor to the Accounting Supervisor position once held by Karen Makoutz.

The County hired Carol Reisimer, current incumbent of the Payroll Technician position in October, 1987. Thereafter, the County Clerk's office hired Account Clerk II Lisa Melichar in 1990 and in 1994, it hired Marilyn Geissler, the Account Clerk I. Upon hire, Melichar was a 50% employe, while Geissler at hire was a 70% employe. Prior to January, 1997, Melichar's position became a 70% position and effective January 1, 1997, Geissler became a full-time employe. In 1992, Karen Makoutz's former position became organized as the Accounting Supervisor position and Parveen Hughes was hired. In approximately 1992, Mary Bley Marchese became the Deputy

County Clerk, which position has never been a part of this existing collective bargaining unit and is not in dispute herein. In mid-April, 1997, Parveen Hughes left the Accounting Supervisor position and on May 30, 1997, Patty Brill was hired into that position.

4. There are four collective bargaining units of County employes: Highway Department, Law Enforcement, Lasata Nursing Home, and the Union's professional/clerical unit. Approximately 650 of the County's 750 employes are included in these four units. Prior to the formation of the County's Personnel Department in 1990, the County Clerk performed all administrative and personnel functions for the County including collective bargaining negotiations and grievance handling. Since approximately 1994, the Personnel Department of the County (the Personnel Director and two confidential employes) has been responsible for the collective bargaining of labor agreements.

5. The position description for the Accounting Supervisor in the County Clerk's office reads in relevant part as follows:

REPORTS TO:

County Clerk

PURPOSE OF POSITION:

The Accounting Supervisor maintains the central computerized accounting system of Ozaukee County, including posting and reconciliation of all general ledger accounts, assist with preparation of the annual county budget, and work with other accounting personnel to develop and revise the accounting systems and procedures.

ESSENTIAL FUNCTIONS:

1. Control, maintain, and balance accounts in County General Ledger and monitor, analyze, and research account balances.
2. Review and process invoices for payments.
3. Prepare and enter journal entries required for accounting system.
4. Prepare and monitor budget of various departments.
5. Receive and record receipts issued by County Treasurer.
6. Determine need for fund transfers and make appropriate entries.

7. Design or revise various accounting procedures.
8. Distribute reports and instruct others in interpreting financial statements.
9. Prepare budget for Finance Committee based on department's requests and monitor expenditures monthly.

OTHER REQUIRED FUNCTIONS:

1. Maintain and control numeric file of checks and check registers.
2. Reconcile claims fund account.
3. Provide auditors with information required to complete annual audit.
4. Determine accounts payable and receivable at end of year.
5. Perform counter work, answer telephone, issue hunting and fishing licenses, and complete marriage license applications.
6. Reconcile insurance claims fund account.
7. Complete W-9 forms and insure that forms, including 1099's, are filed.

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EQUIPMENT USED TO PERFORM THE ESSENTIAL FUNCTIONS:

1. Typewriter, calculator, copy machine, computer terminal, FAX machine, and telephone.

EDUCATION/LICENSE/CERTIFICATION REQUIRED TO PERFORM THE ESSENTIAL FUNCTIONS:

1. High school diploma or equivalent.
2. College degree in accounting, finance or business.

KNOWLEDGE AND SKILLS REQUIRED TO PERFORM THE
ESSENTIAL FUNCTIONS:

1. Read, write, add and subtract.
2. Ability to read and understand State Statutes, ordinances, procedures and write letters.
3. Work with minimum supervision.
4. Knowledge of advanced accounting procedures.

COLLECTIVE BARGAINING AGREEMENT:

Non-Union position.

MEDICAL:

Applicants may be required to submit to a medical examination prior to appointment consistent with requirements of the position.

SALARY AND BENEFITS:

Wages and benefits are determined by the current county ordinances and resolutions in effect.

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The Accounting Supervisor oversees the entire accounting function for the County and it is her job to organize that accounting function and answer any questions relating thereto. The County does not employ a Comptroller or Finance Director.

Effective January 1, 1996, the County established a new accounting system, and the Accounting Supervisor had a significant role in the selection and implementation of that new system, including investigating various types of systems that were available, narrowing the selection down to two accounting system vendors and organizing demonstrations of these two systems to County employees and traveling to other counties to view their computer systems in operation (along with the Account Clerk II). The Accounting Supervisor, with input from the Account Clerk II, recommended the vendor that was ultimately utilized for the new accounting system, and after that provider (JDE) was selected, the Accounting Supervisor and Account Clerk II actively implemented the new system and trained other departmental personnel in the utilization of the new system. Only a portion of the new system is functioning at this time, so that several modules of the new system will have to be implemented in the future with the Accounting Supervisor and Account Clerk II expected to have extensive roles.

The Accounting Supervisor is also responsible for the overall organization of the County's budget. She establishes the timelines for budgetary data to be sent in, instructs department heads with regard to those timelines and other specific items in their individual budgets, answers any questions that department heads may have, and is responsible for having the appropriate departmental worksheets completed and the total budget document in good shape for presentation to the County Board in a timely fashion. The Accounting Supervisor has assisted department heads in small departments by helping them prepare their budgets and she has checked all budgets for accuracy.

The Accounting Supervisor participated in the selection of a new auditing firm after the 1993 audit when the prior auditors indicated they were no longer willing to perform work in the governmental sector. At this time, the Accounting Supervisor and County Clerk conducted meetings with potential audit firms, reviewed proposals that were submitted, and narrowed the applicants down to two firms. The Accounting Supervisor then prepared a list of pros and cons regarding the two firms and made a recommendation as to which firm should be selected, which recommendation was followed. The Accounting Supervisor has complete access to all detailed budgetary documents used by the County, including those that disclose the County's proposed budget for wage and benefit increases under their collective bargaining agreements. No grievances have been filed or processed in the County Clerk's office since the creation of the Accounting Supervisor and Payroll Technician positions, although the County has a grievance procedure for non-represented employees.

Patty Brill is the incumbent Accounting Supervisor. Along with the Payroll Technician, she directs the work of a part-time (75%) Account Clerk II (pay grade 6-top wage rate \$12.11 per hour) and a full-time Account Clerk I (pay grade 5-top wage rate \$11.07 per hour). Her pay range has a maximum rate of \$20.63 per hour.

The Accounting Supervisor has independent disciplinary authority over the Account Clerks up to and including discharge.

In conjunction with the Payroll Technician, the Accounting Supervisor effectively recommends who should be hired to fill Account Clerk vacancies.

In conjunction with the Payroll Technician, the Accounting Supervisor independently evaluates the job performance of the Account Clerk and approves leave requests. The Accounting Supervisor has independent authority to require the Account Clerks to work additional hours.

The Accounting Supervisor has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

6. The position description for the Payroll Technician in the County Clerk's office reads in relevant part as follows:

REPORTS TO:

County Clerk

PURPOSE OF POSITION:

Performs payroll functions as related to county employees.

ESSENTIAL FUNCTIONS:

1. Adjust and enter time card hours, distribute hour registers and input necessary corrections.
2. Perform necessary payroll maintenance and verify corrections.
3. Compare bi-weekly hours register to weekly register bi-weekly and pre-edit report against edit reports, and verify Highway and Lasata gross wages against edit report amounts.
4. Insure that everything is in balance and request check printing.
5. Balance amounts due retirement system on a monthly basis and request check issuance.
6. Balance amounts due for Federal and State withholdings as required each month and request checks.
7. Twice monthly check and verify employee sick, vacation and comp time, and distribute reports.
8. Quarterly balance and file reports for Internal Revenue Service and Unemployment Compensation.
9. Complete all year and payroll function reports and distribute W-2 forms.
10. Assist Personnel Department reconcile year-end retirement report.
11. Complete manual adjustments to payout accrued sick leave and calculate amounts due.
12. Annually calculate amounts due for employees for longevity pay.
13. Maintain court ordered Child Support deductions.

14. Work cooperatively with departments to insure efficient operation of payroll procedures.
15. Complete applications for marriage licenses.
16. Issue hunting and fishing licenses.
17. Answer telephone calls, and assist individuals as necessary.

OTHER REQUIRED FUNCTIONS:

Other duties as assigned by the Clerk of Courts.

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EQUIPMENT USED TO PERFORM THE ESSENTIAL FUNCTIONS:

1. Typewriter, calculator, copy machine, computer terminal, FAX machine, and telephone.

EDUCATION/LICENSE/CERTIFICATION REQUIRED TO PERFORM THE ESSENTIAL FUNCTIONS:

1. High school diploma or equivalent.
2. One to two years additional education at a university community college, college, business school, trade or technical school.
3. One year payroll record keeping experience.
4. Any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

KNOWLEDGE AND SKILLS REQUIRED TO PERFORM THE ESSENTIAL FUNCTIONS:

1. Major life activities.
2. Understand and follow directions, understand required reading and be able to follow directions with minimum supervision.

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3. Read, write and perform simple arithmetic. Able to read statutes, ordinances, contracts, procedures and write occasional letters.

4. Input data with use of a CRT.
5. Knowledge of how computers can be used to complete required work.

COLLECTIVE BARGAINING AGREEMENT:

Non-Union position.

MEDICAL:

Applicants may be required to submit to a medical examination prior to appointment consistent with requirements of the position.

SALARY AND BENEFITS:

Wages and benefits are determined by the current county ordinances and resolutions in effect.

Carol Reismer is the incumbent Payroll Technician. Her pay range has a maximum of \$15.74 per hour.

The Payroll Technician is responsible for all payroll functions of the County. This involves doing all timekeeping, timecards, payroll processing, monthly reports to the Wisconsin Retirement System, and quarterly reports to the Internal Revenue Service and State income and unemployment agencies. The Payroll Technician is also responsible for adopting policies by which the payroll function of the County will operate if those policies are not already covered by ordinance or collective bargaining agreements. The Payroll Technician can, and has, made suggestions for revisions in existing ordinances and collective bargaining agreements dealing with the County's payroll functions. Any questions or interpretations of payroll functions are handled by the Payroll Technician, who has been delegated the payroll function by the County Clerk for all County departments. The Payroll Technician also must oversee the payroll function and check that various departments and individuals are filling out their payroll documents in a timely and appropriate fashion. In this part of the Payroll Technician's duties, the Account Clerk II assists the Payroll Technician. The Payroll Technician monitors sick leave, vacation, compensatory time, and holiday time off to assure that County employees are taking these leaves in accordance with County policy and/or collective bargaining agreements. The Payroll Technician is also responsible for ensuring that the appropriate medical certifications have been received when those are required for eligibility for sick leave. The Payroll Technician was contacted by department heads as to how to handle the timecard of an employe who misused his/her worktime, and the Payroll Technician advised the

department head without checking with the County Clerk beforehand. The Payroll Technician also attended the demonstrations by the two proposed vendors of the new County computing system and recommended the vendor ultimately selected. The Payroll Technician was also

involved in adapting the new JDE timekeeping system to County needs, although that system has not been implemented because of the large amount of work necessary to adapt and implement the other JDE systems implemented since January 1, 1996.

The Payroll Technician has independent disciplinary authority over the Account Clerks up to and including discharge.

In conjunction with the Accounting Supervisor, the Payroll Technician effectively recommends who should be hired to fill Account Clerk vacancies.

In conjunction with the Accounting Supervisor, the Payroll Technician evaluates the job performance of the Account Clerks and approves leave requests.

The Payroll Technician has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

7. Lisa Melichar has been employed by the County as the Account Clerk II in the County Clerk's office since June of 1990. When Melichar was hired into this position it was part-time approximately 18 $\frac{3}{4}$ hours per week; over time, the position has grown to a 70% position, or 26 $\frac{1}{4}$ hours per week.

During evaluations of Melichar, the Accounting Supervisor and Payroll Technician developed the following Performance Plan, which accurately details her job duties and the percentage of time she spends on each:

General Accounting 30%

The major objective for general accounting is the recording and maintaining of the general ledger in order to produce monthly/yearly financial statements for end users and for financial reporting purposes.

Lisa's job responsibilities are that of the following:

- * Month-end and year-end general ledger closings
- * Preparation & review of monthly recurring and non-recurring journal entries
- * Determining the appropriate account classifications for propriety for JE's entered into JDEdwards before final posting

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- * Monthly reconciliation of subledger accounts to the general ledger. Specifically - cash, accounts payable, accounts receivable
- * Verification of the Treasurer's receipts to department transmittals for accuracy and correct account distribution
- * Preparation of quarterly financial reports for the anti-drug grant for state reporting purposes

- * Reporting and preparation of quarterly sales tax returns
- * Reconciliation & distribution of worker's compensation claims (costs) to the respective department
- * Maintains and updates general ledger master account changes and additions for the County departments
- * Reviews, approves, and posts general ledger transactions on a daily basis
- * Maintains the County's general ledger filing system, so that a financial audit can be performed yearly
- * Assists external auditors relating to our fiscal year-end during interim and final audit periods
- * Resolves on a daily basis accounting issues and related decisions in the accounting supervisor's transition and absence
- * Makes supervisor aware on a timely basis (sic) accounting issues and potential problems, so that the supervisor can implement any necessary changes or corrections to policy
- * Ensures ordinances, policies & procedures established by the County Board are followed

Accounts Payable Cycle

32%

The major objective of the accounts payable cycle is to ensure all County vouchers are authorized and that our obligations are paid in a timely fashion.

Lisa is responsible for the entire accounts payable cycle which encompasses:

- * Reviews, approves, and posts voucher payable batches submitted by departments and the Account Clerk I
- * Verification of the accounts distribution, payment terms, and proper approval for (sic) authorized
- * Creation of payment groupings for check generation on a weekly basis
- * Reconciliation of check registers and posting edit reports for audit purposes
- * Processes numerous recurring accounts payable voucher batches on a monthly basis

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- * Creation of voucher reports to departments for committee approval
- * Maintains a spreadsheet of vouchers entered and paid through the JDEdwards system for final reconciliation purposes
- * Handles vendor and departmental correspondence regarding voucher payments
- * Maintains the vendor master file ensuring information is complete and accurate for 1099 tax reporting

- * Submits W-9 requests to vendors for 1099 tax filings
- * Reviews and resolves budget overages (and if necessary consults accounting supervisor) regarding issues of concern
- * Ensures proper accounting policies and procedures are followed with respect to the accounts payable cycle

Accounts Receivable/Cash Receipt Cycles

5%

The major objective for the accounts receivable and cash receipts cycles is the timely recording and processing of the County's receipts.

Lisa has recently assumed responsibility for these two processes.

- * Reviews, approves, and posts accounts receivable/cash receipts to the general ledger submitted by departments
- * Verification of account distribution, customer allocation, services rendered match invoice, and proper approval was authorized
- * Maintains customer master file ensuring complete and accurate information
- * Reconciliation of errors or differences noted from general ledger postings
- * Assistance to departments in reconciling general ledger balances for state reporting purposes
- * Creation of receivable reports and statement generation
- * Maintains the receivable filing system for documentation and audit purposes
- * Keeps supervisor informed of any concerns relating to receipts and notices received regarding uncollectible accounts receivable
- * Ensures departments follow policies and procedures for accounts receivable and cash receipts

Payroll

18%

The major objective regarding the payroll cycle is that of timely wage payments to County employees, and proper recording of payroll accounts to the general ledger.

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Lisa assists the payroll technician and performs the following:

- * Reviews time cards and enters all necessary payroll information
- * Verification of payroll journal entries and corrects errors related to invalid account distribution
- * Assists payroll technician with bi-weekly and monthly general ledger reconciliation
- * Reviews, approves, and posts necessary payroll accruals related to

- future obligations
- * Provides essential back-up in the absence of the payroll technician -- completes the payroll process and ensures accurate general ledger account balances

JDEdwards System

13%

The major objective is to maintain the accounting system for the County

Lisa is the most knowledgeable County employee with respect to the JDEdwards general ledger accounting system

- * Creates and updates procedural manuals for department users
- * Establishes procedures relative to the general ledger
- * Assists department personnel with procedural questions and how to account for specific complex transactions
- * Trains County personnel . . .
- * Ensures policies and procedures are followed especially with respect to safeguarding the access to the system

General Government

11%

The major objective is to service the general public

- * Provides assistance by answering questions at the County Clerk's counter and in-coming phone calls
- * Issues DNR licenses and receives applications
- * Completes marriage licenses in a timely manner
- * Follows the policies and procedures implemented by the County Clerk

Melichar, along with the Accounting Supervisor, attended the presentations given by the two vendors from whom the County was considering buying its new computer system. Both the Accounting Supervisor and Melichar recommended that the County purchase the JDE system. This

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decision, however, was made by the Information Services Director and the County Board. Melichar was selected as program leader for the Accounts Payable module and was assigned to assist in the implementation thereof. Melichar also helped fine-tune the JDE program to fit County needs. In this regard, Melichar has created many forms to either replace existing forms which had become outmoded due to the computerization change or she has new created forms to facilitate the passage of work from one department to another. In doing this, Melichar often used the models submitted by JDE in its manuals. Melichar created an Accounts Payable manual for the County by adapting the JDE manual on Accounts Payable and rewriting it to

include particulars necessary for County business. The forms which Melichar created were all reviewed by the Accounting Supervisor before they went into effect but no changes were made by then-Accounting Supervisor Parveen Hughes to those forms.

Melichar was also involved in the implementation and training of County departments reviewing the new payroll system offered by JDE. She attended presentations and training by JDE, she did some set-up work and went to troubleshooting meetings and did side-by-side testing in the County to assure that the program was working properly. Melichar also trained Carol Reismer, Payroll Technician, in this area.

Melichar has created several forms for the Payroll Technician which were adopted without change by the Payroll Technician for use in the County. In 1994 or 1995, Melichar wrote an integrated time system manual but this manual is not being used by the County as that portion of the computerization has been delayed.

After Parveen Hughes left, both Carol Reismer and Melichar filled in for the Accounting Supervisor before the County hired Patty Brill on May 30, 1997. During this interim, both Reismer and Melichar received an interim pay increase for their increased duties. The Deputy County Clerk, Makoutz, turned all training over to Melichar including the training of Patty Brill when she was hired.

As a general rule, Melichar is responsible for Accounts Receivable (AR), updating the AR manual, reviewing all cash receipts and AR batches and posting these to the County Clerk's ledger, dealing with questions and problems department employees may have, and overseeing Accounts Payable (AP) activities of the County. Melichar also handles time cards and checks and assists Reismer in payroll duties. Melichar can stand in for the Accounting Supervisor and the Payroll Technician if they are absent.

Melichar went through all applications for Hughes' successor and, with the County Clerk and an outside auditor, she sat in on the interviews of three or four candidates. Melichar asked questions regarding the AP area and Melichar recommended the hire of Patty Brill but that decision was made by the County Clerk.

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In the past, two department heads have questioned Melichar regarding their employees' abilities in the AP area but there was no evidence that Melichar's comments were used in the evaluations of those two employees. Melichar has nothing to do with the County's negotiations posture on wages or its labor relations strategy and this information is not on the computer to which Melichar has access. Only Personnel Department employees have access to such matters. It is not part of Melichar's job to calculate the level of employee wages in an upcoming contract year from the hard copy of the budget that she receives. Melichar has nothing to do with processing grievances; she has not attended County Board or Personnel or Finance Committee meetings; and she has not attended any negotiation sessions during her tenure with the County.

The Account Clerk II in the County Clerk's office does not have sufficient access to and knowledge of confidential matters relating to labor relations to be a confidential employe.

The Account Clerk II in the County Clerk's office does not participate in the formulation, determination and implementation of management policy to a sufficiently high degree or have sufficient authority to commit the County's resources to be a managerial employe.

8. The Account Clerk I position has been occupied by Marilyn Geissler since 1994.

In 1997, the Accounting Supervisor and Payroll Technician created the following Performance Plan covering Geissler's Account Clerk I position which accurately reflects her current duties:

General Accounting 30%

The major objective for general accounting is the recording and maintaining of the general ledger in order to produce monthly/yearly financial statements for end users and for financial reporting purposes.

Marilyn's job responsibilities are that of the following:

- * Verification that the accounts payable processing entries are in balance with the general ledger by creating the voucher edit report
- * Preparation and data entry to the general ledger for accounts payable, journal entries, and budget adjustments
- * Maintaining the vendor master information in the general ledger
- * Makes supervisor aware of possible issues and/or problems
- * Matches departmental receipt transmittal forms to the Treasurer's receipt information
- * Updates monthly journal entries and filing system for the County
- * Assists in tax receipt reconciliation

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- * Ensures departments follow County Board policies and procedures
- * Inquiries through JDEdwards in order follow-up on questions and accounting issues

Accounts Payable Cycle 65%

The major objective of the accounts payable cycle is to ensure all County vouchers are authorized and that our obligations are paid in a timely fashion.

Marilyn's responsibility is that of timely expediting of the accounts payable voucher package to the Account Clerk II.

- * Proper matching of the purchase order to the receiving packing slip and vendor invoice
- * Verification of proper approval for the voucher package before invoice is entered into the general ledger
- * Recalculation of the vendor's invoice to ensure the County is invoiced correctly
- * Determining the appropriate amount and vendor classifications for propriety
- * Matching sequential check copies to the voucher package for documentation purposes
- * Maintaining the filing system for the accounts payable voucher packages for audit purposes
- * Handles (sic) vendor/departmental concerns regarding the accounts payable voucher packages
- * Maintaining the County's central master vendor file
- * Determination of vendors for tax reporting 1099 purposes
- * Assisting with 1099 tax filing
- * Ensuring departments follow County policies and procedures

Payroll

8%

The major objective regarding the payroll cycle is that of timely wage payments to County employees, and proper recording of payroll accounts to the general ledger.

Marilyn assists the payroll technician and performs the following:

- * Performs bi-weekly and time card data entry for County employees
- * Filing (sic) of confidential personnel payroll master information
- * Sorts and stores the micro-fiche filing system for payroll

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General Government

11%

The major objective is to service the general public

...

- * Back-up the Deputy County Clerk in her absence; performing numerous administrative duties such as

- initiating purchase orders

- preparing committee agendas
- and licensing

- * Providing assistance by answering questions relative to County government at the counter and in-coming phone calls
- * Issues DNR licenses and receives applications
- * Completes marriage license applications in a timely manner
- * Follows the necessary policies and procedures implemented by the County Clerk

Central Services

6%

The major objective is to provide back-up for the central services department

- * Maintains the 5 in-coming line switchboard for the County in absence of regular full-time employee -- vacation, lunch, misc. breaks
- * Types certificates of marriage
- * Assists with the in-coming and out-going (sic) mail distribution for the County departments

As a general matter, Geissler assists Patty Brill in her Accounting Supervisor duties 3.5 days per week, while she assists Carol Reisimer in her Payroll Technician duties 1.5 days per week. Geissler works with Patty Brill, Lisa Melichar, and Carol Reisimer in their various areas of responsibility, makes financial entries, adjustments and corrections to accounts, performs various other general accounting duties and prepares transmittals and forms. She assists the Payroll Technician in processing timecards, work hours, vacation, compensatory time, and preparing reports thereof. Geissler also answers questions at the counter, takes marriage applications, answers telephones, and distributes mail in the office.

Geissler has no access to County bargaining strategy or to personnel records.

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The Account Clerk I in the County Clerk's office does not have sufficient access to and knowledge of confidential matters relating to labor relations to be a confidential employee.

The Account Clerk I in the County Clerk's office does not participate in the formulation, determination and implementation of management policy to a sufficiently high degree or have sufficient authority to commit the County's resources to be a managerial employee.

9. Ronald Voigt is the Register of Deeds and has designated Pamela Bares as the Chief Deputy Register of Deeds. Aside from Voigt and Bares (pay grade 7-top rate \$13.43 per hour), the Register's office includes Debbie Weyker (Assistant Real Property Lister-pay grade 6-top rate \$12.11), Karen Hinrichs (Clerk Typist III-pay grade 6), Amy Wiebe (Clerk Typist I – pay grade 3-top rate \$9.51 per hour), Damon Anderson (Land Information Coordinator- pay grade 11-top rate \$21.35 per hour), and Chris Brophy (part-time, temporary). With the

exception of Voigt and Brophy, all of these employees are currently in the bargaining unit.

Voigt has a private office while Bares, Weyker, Hinrichs and Wiebe have desks in common office space.

Bares is responsible for the operation of the Register of Deeds office in Voigt's absence, which in the year prior to hearing was approximately seven weeks. When Voigt is present, she has general responsibility for the direction of the work of Weyker, Hinrichs and Wiebe. She can independently approve overtime requests and internally records the use of employee leave time. Voigt approves leave requests.

She has independent authority to impose verbal reprimands and is consulted by Voigt before he imposes more severe discipline.

When an office vacancy is filled by transfer from within the bargaining unit, Bares generally assists Voigt in the selection of the successful applicant. On the very infrequent occasions in the past when there was a need to hire temporary clerical help, Bares effectively recommended who to hire. When non-clerical temporary employee Brophy was hired, Bares played no role and Voigt used Land Information Coordinator Anderson to assist him in the hiring process.

There are no evaluations of employees in the Register's office.

The Chief Deputy Register of Deeds does not have supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

10. Kathleen Everix has been Chief Deputy in the Treasurer's Office since 1979. Her current job description states the following:

OZAUKEE COUNTY
DEPUTY COUNTY TREASURER

GENERAL STATEMENT OF DUTIES: Performs a wide variety of responsible clerical-accounting duties in the office of the County Treasurer;

DISTINGUISHING FEATURES OF THE CLASS: The Deputy County Treasurer is responsible for the accounting and processing of receipts and maintenance of fiscal records. The duties of the position allow some discretion within the limits of departmental rules, policies and procedures; however, situations outside of these limits are referred to the County Treasurer. Reports and records are reviewed by the County Treasurer and by periodic inspections by the State Auditor. Acts in the absence of the County Treasurer.

EXAMPLES OF WORK: (Illustrative only)

- . Receives real estate tax payments;
- . Prorates principle and interest on partial tax payments;
- . Receipts monies received and posts to various ledgers and journals;
- . Performs tax searches – description of property, names of owners, dates of tax payment, assessed value of land and etc.;
- . Certifies tax payments and property values for probating of estates as requested;
- . Posts and balances general and subsidiary ledgers;
- . Closes out cash register daily and deposits funds in bank;
- . Receives and receipts monies received from other County departments;
- . Makes out vouchers and mails payment checks;
- . Prepares financial and activities reports;
- . Types and prepares correspondence as needed;
- . Works at counter and expedites telephone requests;
- . Files and performs clerical and other office work as required;
- . Acts in the absence of the County Treasurer;

REQUIRED KNOWLEDGES, SKILLS, AND ABILITIES: Thorough knowledge of modern clerical and accounting practices; some knowledge of the principles underlying State and County laws and regulations pertaining to county government; ability to follow complex oral and written directions and to prepare complex fiscal reports; ability to plan and supervise the work of others.

The Treasurer's office is staffed by the Treasurer (Karen Makoutz), Everix, and Account Clerk I's Marge Mills and Denise Jacoby.

When Jacoby transferred into an Account Clerk I position, Makoutz and Everix went through the six to eight internal employe transfer applications together. They then selected the two best internal applicants and interviewed them. Everix recommended that Jacoby receive the position. When Jacoby's probationary period ended, Everix did a written evaluation of Jacoby at Makoutz' request, recommending that Jacoby be retained in the position. Everix was not present when Makoutz met with Jacoby to discuss the evaluation.

Everix has criticized employes' work to Makoutz as well as discussing work problems with the employes themselves. However, if a performance issue could not be resolved informally by Everix, she would refer the matter to Makoutz. Neither Everix nor Makoutz formally disciplined any employes.

No employe has been hired while Everix has been Chief Deputy.

Makoutz is out of the office for approximately seven weeks per year, during which time Everix functions as Treasurer. Everix trains employes in her office and assigns them work. Makoutz grants and denies leave requests, although she consults with Everix when determining whether work load issues warrant denying vacation requests.

During tax time in 1997, Everix saw the need for overtime, and she talked to the other office employes and then asked Makoutz if the three of them could work over lunch periods to get the work out. Makoutz agreed to this request, and each employe received time and one-half after they had worked forty hours during that time period.

No grievances have ever been filed in the Treasurer's office.

The Chief Deputy Treasurer does not have supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

11. The County employs a Chief Deputy Register in Probate and a Chief Deputy Clerk of Juvenile Court.

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

CONCLUSIONS OF LAW

1. The occupants of the positions of Accounting Supervisor (Incumbent Brill) and Payroll Technician (Incumbent Reisimer) are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats. and therefore are not municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

2. The occupants of the positions of Account Clerk I (Incumbent Geissler) and Account Clerk II (Incumbent Melichar) in the County Clerk's office are neither managerial nor confidential employees within the meaning of Sec. 111.70(1)(i), Stats., and therefore they are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

3. The Chief Deputy Treasurer (Incumbent Everix) and the Chief Deputy Register of Deeds (Incumbent Bares) are not supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.

4. The Chief Deputy Treasurer, Chief Deputy Register in Probate, Chief Deputy Register of Deeds, and the Chief Deputy Clerk of Juvenile Court are not excluded as a matter of law from municipal employe status by virtue of their being Chief Deputies.

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

ORDER CLARIFYING BARGAINING UNIT

1. The positions/employees identified in Conclusion of Law 1 shall continue to be excluded from the bargaining unit described above in Finding of Fact 1.

2. The positions/employees identified in Conclusion of Law 2 are hereby included in the bargaining unit described above in Finding of Fact 1.

3. The position(s)/employees(s) identified in Conclusion of Law 4 shall continue to be included in the bargaining unit described above in Finding of Fact 1.

Given under our hands and seal at Madison, Wisconsin, this 12th day of January, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

I concur.

James R. Meier /s/

James R. Meier, Chairperson

OZAUKEE COUNTY (LASATA NURSING HOME)

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

POSITIONS OF THE PARTIES

In support of its petition, the Union asserts that the Account Clerk I, Account Clerk II, Accounting Supervisor and Payroll Technician are all municipal employees and are neither supervisory, confidential nor managerial and thus should be included in the Union's existing collective bargaining unit. The Union urged that due to changed circumstances in the County, these positions and their incumbents must be included in the existing unit.

The County contends that the Account Clerk I and Account Clerk II are confidential and/or managerial employees; that the Accounting Supervisor and the Payroll Technician are confidential, supervisory and/or managerial employees; and that all four Chief Deputy positions should be excluded from the bargaining unit as a matter of law while the Chief Deputy Treasurer and Chief Deputy Register of Deeds should also be excluded on the basis that they are supervisors.

DISCUSSION

Exclusion of Chief Deputies As a Matter of Law

When responding to the County's argument that under COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 Wis. 2D 298 (Ct.App. 1994) and WINNEBAGO COUNTY V. COURTHOUSE EMPLOYEES ASSOCIATION, 196 Wis. 2D 733 (Ct.App. 1995), one deputy for each elected official is to be automatically excluded from the bargaining unit, it is useful to review the evolution of the relevant judicial precedent.

In KEWAUNEE COUNTY, 142 WIS.2D 347 (CT. APP. 1987), the Court was confronted with the argument that it was inappropriate to allow registers in probate, probate registrars and probate court commissioners to exercise rights under collective bargaining agreements as municipal employees because the exercise of such rights would violate the separation of powers doctrine, interfere with a judge's statutory authority to appoint and discharge, and disrupt working conditions. The Court held at pages 358-359 that:

Here, MERA can be harmonized with the separation of powers doctrine and a court' statutory authority to appoint persons to and discharge them from the offices of register in probate, probate registrar, and probate court commissioner. Provisions in a labor contract that are contrary to law are unenforceable, WERC V. TEAMSTERS LOCAL NO. 563, 75 WIS.2D 602, 612, 250 N.W.2D 696, 701 (1977).

Thus, any provision in a collective labor agreement between the union and the county that hampers a court in its operation or interferes with its constitutional functions would be void. Furthermore, any contractual provision that conflicts with the authority vested in a judge to appoint or remove someone from such a position would also be void. Reimer may invoke her rights under MERA and negotiate with the county on those labor matters not entrusted to the courts.

As evidenced by the above-quoted portion of the Court's decision, harmonization of MERA with other doctrines and statutory provisions produced a conclusion that the employees in question could continue to be included in a bargaining unit but that provisions of a collective bargaining agreement which conflicted with the constitutional functions or statutory appointment or removal powers were void.

In *IOWA COUNTY V. IOWA COUNTY COURTHOUSE*, 166 WIS.2D 614 (1992) the Wisconsin Supreme Court also addressed the question of whether contractual provisions could override the authority of a circuit court judge to appoint and remove a register in probate who was included in the bargaining unit. The Court concluded the circuit court judge's appointment and removal power could not be overridden by contractual provisions. The Court held at page 620 that:

. . . In entering into a collective bargaining agreement, the county as a municipal employer may limit its own power with respect to registers in probate, but it could not put restrictions on the hiring of a register in probate because it was not within its power to begin with. If the provisions of the collective bargaining agreement were found to be binding, these provisions would effectively transfer the circuit court judge's statutory power to the county. . . .

In *CRAWFORD COUNTY*, 177 WIS.2D 66 (CT.APP. 1993), the Court followed the reasoning of *IOWA COUNTY* and concluded as to deputy clerks of court and deputy registers of deeds that the statutory power of the clerk of court and register of deeds to appoint and discharge deputies could not be bargained away by the municipal employer. However, the Court noted that bargaining over the pay and other conditions of employment of deputies was appropriate. The Court stated at pages 78-79 that:

We conclude, therefore, that while the county has the authority to establish the pay and regulate other conditions of employment of its employees, and thus the authority to bargain collectively with the union on those subjects, that authority does not extend to bargaining away the statutory power of the clerk of court and register of deeds to appoint and discharge deputies. (footnote omitted)

. . .

As in IOWA COUNTY, the express powers of the register of deeds and the clerk of courts to appoint and discharge deputies are separate from those of the county.

No authority is granted to the county to influence the appointment decision [in these instances]. In entering into a collective bargaining agreement, the county as a municipal employer may limit its own power with respect to [these deputy positions], but it could not put restrictions on the[ir] hiring . . . because it was not within its power to begin with. . . . If [the union] were to prevail here, the [clerk of court's and register of deeds'] power to appoint [deputies] would be transferred to the county, a result totally in conflict with the statute[s], IOWA COUNTY, 166 WIS.2D AT 620-21, 480 N.W.2D AT 502.

Thus, following the issuance of CRAWFORD, the law continued to be the same as established by the Court in KEWAUNEE and IOWA COUNTY. The appointive and removal power of elected officials governed over conflicting provisions of collective bargaining agreements but the appointed employees continued to be municipal employees under MERA who could be included in a collective bargaining unit and whose pay and conditions of employment could be the subject of collective bargaining.

In COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 WIS.2D 298 (CT.APP. 1994) the Court was confronted with a factual scenario in which virtually all employees in the Clerk of Court and Register of Deeds offices were “deputies.”

The Clerk of Court office consisted of the elected Clerk of Court, a “chief deputy” who was not included in the bargaining unit, and 16 deputies who were included in the bargaining unit. The County discharged one of the deputies in the Clerk of Court's office and took the position that under CRAWFORD, the just cause disciplinary provisions of the existing bargaining agreement were inapplicable to the discharge.

The Register of Deeds' office consisted of the elected Register of Deeds, a “chief deputy” who was not included in the bargaining unit and four employees (three of whom were deputies) who were included in the bargaining unit. The Register filled a vacancy in a bargaining unit deputy position without regard to otherwise applicable provisions of the existing agreement and argued that under CRAWFORD, there was no obligation to follow the contract.

The issue before the Court in EAU CLAIRE was whether the holding of CRAWFORD COUNTY (i.e., that the statutory authority of the clerk of court and register of deeds to appoint and remove a deputy exempted the employer from compliance with provisions of a contract regarding employee rights to fill or retain a deputy position) extended to any and all deputies. As we have previously

noted in SHAWANO COUNTY, DEC. NO. 28250-B (WERC, 1/97), the EAU CLAIRE Court concluded that the statutory authority to appoint and remove a deputy is automatically superior to a collective bargaining agreement only as to one deputy for each elected official (i.e., the chief deputy) and that additional exemptions from compliance with applicable contract provisions were dependent on whether the additional deputies were managerial employees under MILWAUKEE V. WERC, 71 WIS.2D 709 (1976). The Court was not being asked to exclude any deputies from a bargaining unit, and did not conclude that the statutory appointment and removal powers formed an independent basis for excluding any deputies from a bargaining unit.

The Court's opinion states at pages 304-307:

The circuit court applied the holding in CRAWFORD to resolve the dispute here in favor of the County. We have examined the appellate briefs and appendices in CRAWFORD, now located in the archives of the state law library. We observe that the respective appointments by the clerk and the register in CRAWFORD were limited to a single chief deputy in each office.

CRAWFORD acknowledged that GLENDALE PROFESSIONAL POLICEMEN'S ASS'N V. GLENDALE, 83 WIS.2D 90, 264 N.W.2D 594 (1978), pronounced the general rule: A collective bargaining agreement under Sec. 111.70, Stats., must, where possible, be harmonized with other statutory provisions. Thus, as CRAWFORD noted:

In GLENDALE, the issue was whether a provision in a collective bargaining agreement between the city and its police officers which tied promotions to seniority was illegal in light of the provisions of the general city charter law giving the police chief the power to promote subordinates. . . . The supreme court was able to harmonize the contract provision and the chief's statutory powers by concluding that because the seniority provision applied only to situations where there was more than one qualified candidate for promotion, it did not require the chief to select an unqualified person who would be entitled to the position not by his or her qualifications, but only by seniority. According to the court, "[a] requirement that the chief promote the most senior qualified applicant merely restricts the discretion that would otherwise exist."

Id. at 72-73, 501 N.W.2d at 839 (quoting GLENDALE, 83 WIS.2D AT 102-03, 264 N.W.2D AT 601 (citation omitted)).

CRAWFORD distinguished GLENDALE, holding that application of the union contract to influence the decision of the clerk and the register in his or her appointment decision would produce “a result totally in conflict with the statutes,” CRAWFORD, 177 WIS.2D AT 79, 501 N.W.2D AT 842, granting that appointment power. We limit that holding to its facts to avoid the evisceration of the legislative intent underlying MERA and Secs. 59.38 and 59.50, Stats.

Read apart from MERA, the deputy appointment power of the clerk and the register is unfettered. As GLENDALE suggests, however, the union contract and related statutes should be harmonized wherever possible. MERA and the appointment statutes certainly relate to the same subject, the hiring and firing of County employees. While CRAWFORD could not reconcile the appointment of a deputy clerk and deputy register at the pleasure of their superior, it does not follow that the number of appointments pursuant to this statutory power is unlimited. The size and function of the particular office will ultimately determine the scope of the power.

We remand to the circuit court to determine which, if any, of the deputies in this case fall within the definition approved by our supreme court in MILWAUKEE V. WERC, 71 WIS.2D 709, 715-16, 239 N.W.2D 63, 67 (1976):

Managerial employees, as well as supervisors, have been excluded from MERA coverage on the basis that their relationship to management imbues them with interests significantly at variance with those of other employees. In that managerial employees participate in the formulation, determination and implementation of management policy, they are unique from their co-workers. . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources. Managerial employees do not necessarily possess confidential information relating to labor relations or supervisory authority over subordinate employees.

We think MERA and the appointment authority can be harmonized so that the clerk and the register retain the power to hire and fire deputies at will, but only to the extent that the persons so appointed fall within the classification of “managerial employees” as that term has been defined by case law. Where the facts demonstrate that the appointment is not merely a subterfuge to avoid the union contract, and the employee's functions actually coincide with the well-established definition of a managerial employee, the appointment of more than one exempt deputy is in harmony with MERA and the discretion granted an elected official to manage his or her office.

We decline to hold as a matter of law that none of the deputies meets this definition of a managerial employee. While the job descriptions for the clerk's employees do not suggest that any of them have authority to "commit the County's resources," or that they participate in the formulation, determination and implementation of management policy, the recitation of "typical duties" is "illustrative only." Further, the job descriptions for employees in the register's office are not included.

We therefore remand to the trial court to determine which if any of the employees are properly exempt from the union contract as deputies based upon the preceding definition. The court may exercise its discretion to determine whether and to what extent further evidence is necessary upon which to resolve any dispute. With the court's approval, the parties may stipulate to submit the dispute to WERC arbitration.

In *WINNEBAGO COUNTY V. COURTHOUSE EMPLOYEES ASSOCIATION*, 196 WIS.2D 733 (CT. APP. 1995), the Court was confronted with the question of whether the clerk of circuit court has the statutory power to terminate a judicial assistant's employment without regard to the just cause provisions of a contract. The Court concluded the clerk did not have said statutory power. In its opinion, the Court also stated:

In *COUNTY OF EAU CLAIRE*, 190 WIS.2D AT 302, 526 N.W.2D AT 803, the court concluded that deputized employees, apart from the chief deputy, are exempt from Municipal Employment Relations Act (MERA) coverage only to the extent that they in fact function as managerial or supervisory employees, as that term is defined by case law. The court in *COUNTY OF EAU CLAIRE* went on to harmonize MERA and the appointment authority so that the clerk retained the power to hire and fire deputies at will, but only to the extent that the persons appointed fell within the classification of managerial employees. (footnote omitted)

In the present case, whether Felker functioned as a managerial employee in her capacity as a deputy clerk was not an issue before the trial court; hence, no findings were made. We need not, however, decide this question today. It is undisputed that Felker also had the employment status of a judicial assistant.

The County negotiated a collective bargaining agreement with the union which included the position of judicial assistant under "office positions." Because the position of judicial assistant is covered under the labor agreement and is not a position which the clerk of circuit court is empowered by statute to appoint or remove, Felker must be allowed the due process afforded under the contract's grievance procedure.

Lastly, Felker and WCCEA argue that the trial court should have stayed the proceedings and ordered arbitration. Instead, the court held that because

Articles VI and VII of the agreement as applied to deputies of constitutionally elected officials of Winnebago County was null and void, the labor grievance was not substantively arbitrable under Sec. 111.70, Stats. We conclude that because the labor agreement and the statutory powers of the clerk of courts can be harmonized, the just cause and grievance procedure provisions of the agreement are not null and void, and thus, arbitration should have been ordered.

We concede that the Court's paraphrase of EAU CLAIRE can be read as excluding the "chief deputy" from the bargaining unit, as opposed to excluding the "chief deputy" from coverage under the relevant provisions of a contract. However, given the actual holding of the EAU CLAIRE Court, we do not find this interpretation to be persuasive.

Following the filing of initial briefs by the parties in this case, 1997 Wisconsin Act 211 (which took effect May 12, 1998) amended Sec. 59.25, Stats., as to the appointive and removal power of the County Treasurer vis-à-vis Deputy Treasurers. Section 59.25, Stats., had previously provided that the Treasurer "may" appoint "one or more deputies." As amended, Sec. 59.25, Stats., provides that the Treasurer "shall" appoint "one deputy," who "may be removed only for just cause."

We have reviewed the new statute, the drafting file, and the parties' supplemental argument. We conclude that the statutory changes do not address the question of whether the deputy treasurer is or is not excluded from the bargaining unit. Thus, the statutory change does not alter our analysis of the law as to this question. Therefore, in our view, a deputy treasurer continues to be a "municipal employe" eligible for inclusion in a bargaining unit unless he or she is a supervisor or a confidential or managerial employe.

In reaching this conclusion, we acknowledge the content of the January 27, 1997 memo authored by Marc Shovers, Senior State Counsel, Legislative Reference Bureau. Shovers' memo states:

You have asked that 1995 AB-995 be redrafted for this session. In drafting the bill for this session, I reviewed the file from last session and discovered that the instructions for last session's bill were to include in s. 59.25(2) the language from the case note that follows s. 59.43. The case note is an annotation from a court of appeals decision that, in part, addresses the question of whether a register of deeds and a clerk of court have the authority to appoint and discharge deputies, or whether such deputies may be covered by a collective bargaining agreement that would limit the authority of a register of deeds and clerk of court to hire or discharge an appointed deputy. A question arose with regard to last session's bill as to whether a similar issue would arise if a county treasurer appointed one or more deputies under s. 59.25(2)(a) as it is amended in this bill.

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In the cited case, *CRAWFORD COUNTY V. WERC*, 177 WIS.2D 66, 78 (CT.APP. 1993), the court held that "while the county has the authority to

establish the pay and regulate other conditions of employment of its employees, and thus the authority to bargain collectively with the union on those subjects, that authority does not extend to bargaining away the statutory power of the clerk of court and register of deeds to appoint and discharge deputies.” ID. In effect, the court held that because the statutes gave a register of deeds and a clerk of court the authority to appoint and discharge deputies, such authority could not be overridden by a collective bargaining agreement and such appointees would be excluded from the union to which they would otherwise be eligible to join.

Based on a later decision of the same court of appeals, however, CRAWFORD is limited to its facts and only applies to the union exclusion of a single chief deputy. See COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 WIS.2D 298, 301 (CT.APP. 1994). The court further concluded that “deputized employees, apart from the chief deputy, are exempt from MERA [the Municipal Employment Relations Act in s. 111.70 of the statutes] coverage only to the extent that they in fact function as managerial or supervisory employees, as that term has been defined by case law.” ID.

Consequently, it seems that if this bill becomes law only the chief deputy treasurer and any other deputy treasurer whose “functions actually coincide with the well-established definition of a managerial employee” could be excluded from the union to which he or she would otherwise be eligible to join. ID. at 306.

As evidenced by our earlier discussion of CRAWFORD COUNTY, we do not share Shovers’ understanding of the Court’s holding in CRAWFORD. The Court did not hold that deputies “would be excluded from the union to which they would otherwise be eligible to join.” Instead, as Shovers’ memo notes, the Court held that a county has the authority to bargain with the union over deputy wages and conditions of employment. Such bargaining could not occur unless the deputies are in the bargaining unit.

In conclusion, as discussed above, the evolution of judicial precedent does not yield a conclusion that a “chief deputy” for each elected official is automatically exempted from the bargaining unit. While a “chief deputy” is not entitled to enforce certain provisions of a contract (i.e., those which cannot be harmonized with the appointment and removal power of the elected official), their inclusion or exclusion from a bargaining unit still turns on the question of whether they are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., or managerial employees within the meaning of Sec. 111.70(1)(i), Stats.

We turn to a consideration of the County’s contention that the Chief Deputy Treasurer and Chief Deputy Register of Deeds are supervisors.

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Supervisory Status

At the outset of our consideration, we acknowledge that the two chief deputies in question assume the statutory power and authority of the elected official when that official is

absent or the elected position becomes vacant. When the deputies assume that power and authority, we acknowledge that they assume the supervisory authority of the elected official.

However, this assumption of authority is not sufficient to warrant a conclusion that the deputies are supervisors. First, we have historically held that the occasional assumption of supervisory authority is not sufficient to establish supervisory status. CITY OF RACINE, DEC. NO. 24840-A (WERC, 9/97); MENOMINEE COUNTY, DEC. NO. 26983-B (WERC, 4/94); MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92); CITY OF NEW BERLIN, DEC. NO. 13173-B (WERC, 8/83); CITY OF LACROSSE, DEC. NO. 14019 (WERC, 10/75); CITY OF FRANKLIN, DEC. NO. 6147 (WERC, 10/62). Second, the record establishes that the elected officials in question function as full-time employees in their respective offices. Their absences are limited to vacation, sick leave, attendance at conferences, etc. Absences for these purposes are not of sufficient duration to warrant supervisory status for the deputies who fill in during these periods. Third, particularly given the small number of employees in each office, we are persuaded that deputies would rarely have the opportunity to exercise any significant supervisory (hire, discipline) authority and would, in any event, consult with the absent elected official before taking any significant action.

Before discussing the specific duties and responsibilities of each deputy, it is helpful to set forth the supervisory standards against which those duties and responsibilities will be measured.

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is the following:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The factors that we focus on in evaluating claims of supervisory status under Sec. 111.70(1)(o)1, Stats., are the following:

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 employees supervised and the number of persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or his/her supervision of employees;

5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97).

Not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. For instance, an employee who spends a majority of his/her time doing non-supervisory duties may be determined to be a supervisor where sufficient supervisory authority is present. CITY OF MADISON, DEC. NO. 19906 (WERC, 9/82). Our task is to determine whether the factors are present in sufficient combination and degree to warrant finding an employee to be a supervisor. WALWORTH COUNTY, DEC. NO. 29378 (WERC, 5/98).

Chief Deputy Treasurer

We conclude that Treasurer Makoutz is the supervisor of the employees in the Treasurer's office with Chief Deputy Everix serving as the lead worker.

The evidence regarding the treatment of disciplinary issues provides the best insight into the supervisory issue. Everix refers performance issues which cannot be informally resolved to the Treasurer. From this, we infer that she does not have any significant independent disciplinary authority and do not believe that she can effectively recommend discipline. Instead, we infer that the Treasurer would independently assess and resolve all disciplinary matters.

Unfortunately, there is no direct evidence in the record as to whether or not Everix would be involved in the hiring of employees. From Everix's role when Jacoby transferred into the Account Clerk I job, we would infer that Everix will be part of the hiring process.

Significantly, Everix was not even present when Jacoby received a probationary period evaluation directly from the Treasurer. It is also noteworthy that it is the Treasurer who denies or grants leave requests. Given all of the foregoing, we do not believe that Everix possesses sufficient supervisory authority to be found to be a supervisor.

Chief Deputy Register of Deeds

We conclude that Register of Deeds Voigt is the supervisor of the employees in the Register's office with Chief Deputy Bares serving as lead worker.

On the record before us, the best measure of Bares' authority is the manner in which the discipline of employe Derouchy was handled by Voigt. Although Bares alerted Voigt to Derouchy's performance problems, advised him of his disciplinary options, and documented them on Voigt's behalf, Voigt himself imposed all formal discipline. In such circumstances, we find that Voigt independently determined how the discipline of Derouchy should proceed and thus that Bares does not possess the authority to impose or effectively recommend significant levels of discipline.

Bares' involvement in the hiring process cannot be assessed because no bargaining unit vacancies have been filled during her tenure by hire as opposed to transfer. While Bares has assisted Voigt when vacancies are filled by transfer, this involvement is less indicative of supervisory authority than would be the case when hiring from an outside applicant pool because management's overall discretion in the transfer process is limited by the terms of the collective bargaining agreement. Although Bares has played a significant role in the hiring of temporary employes, this exercise of authority is somewhat dated and when combined with her lack of involvement when temporary employe Brophy was more recently hired, is not a significant indicator of supervisory status.

Nor does Bares involvement in the day-to-day operation of the office provide a persuasive basis for finding her to be a supervisor. There is little independent judgment to exercise in the assignment of work. Although Bares has the discretion to authorize overtime, Voigt approves leave requests.

Given all of the foregoing, Bares is not a supervisor.

**Unit Status of Account Clerk I, Account Clerk II,
Accounting Supervisor and Payroll Technician**

Remaining for disposition is the status of the Account Clerk I (claimed to be confidential or managerial), the Account Clerk II (claimed to be confidential or managerial), the Accounting Supervisor (claimed to be confidential, managerial and a supervisor) and the Payroll Technician (claimed to be confidential, managerial and a supervisor).

We have previously set forth the standards by which we assess supervisory status. Before considering the status of these four positions, it is now helpful to state the applicable standards for evaluating claims of managerial or confidential status.

Managerial Employees

While the Legislature has excluded “managerial employees” from the definition of “municipal employees”, it did not provide a statutory definition of managerial employees and thus left it to the Commission to develop the precise definition. There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers the degree to which individuals possess the authority to commit the employer’s resources. MILWAUKEE V. WERC, 71 WIS. 2D 709 (1976); EAU CLAIRE COUNTY V. WERC, 122 WIS. 2D 263 (Ct.App. 1984).

For an individual to assume managerial status based on participation in program and policy, such involvement must be at a relatively high level of responsibility. VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88). Managerial status based on allocation of the employer’s resources necessarily entails significantly altering the nature and direction of an employer’s operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. VILLAGE OF JACKSON, SUPRA.

Confidential Employees

For an employee to be held confidential under the statute, the employee must have access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must (a) deal with the employer’s strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and/or grievance handling between the Employer and the employees’ bargaining representative; and (b) be information which is not ordinarily available to the bargaining representative or its agents. CLARK COUNTY, DEC. NO. 19744-G (WERC, 10/97) and cases cited therein; DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88). Information which is available either to the Union or to employees is not considered to be confidential. DEPERE SCHOOL DISTRICT, DEC. NO. 25712-A (WERC, 10/90). Having access to information and records concerning employee pay levels, health and life insurance

benefits, unemployment compensation, leaves of absence and retirement, for example, do not exclude an employe as confidential unless the employe with access to this information is actually privy to the decisions of the employer with respect to personnel and labor relations policies. OUTAGAMIE COUNTY, DEC. NO. 14062 (WERC, 10/75); MARATHON COUNTY (HEALTH DEPARTMENT), ET.. AL., DEC. NOS. 17083-B, 20999-D, 9674-D and 13130-G (WERC, 2/92). In addition, “. . . providing information for use by the employer in collective bargaining or in responding to grievances, absent knowledge of the employer's grievance or bargaining strategy, generally does not render a position confidential within the meaning of the law. CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84).

Furthermore a *de minimis* exposure to confidential materials is generally insufficient grounds for exclusion of an employe from a bargaining unit. BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87). But an employe may be found to be confidential despite the amount of actual confidential work performed, where the employe is the only one available to perform the legitimate confidential work of the employer. TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85). Where a management employe has significant labor relations responsibility, the clerical employe assigned to perform his or her clerical work may be found to be confidential, even if the actual amount of clerical work performed is not significant unless the clerical work can be assigned to another employe without undue disruption of the Employer's organization. HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88). However, we have not allowed employers to exclude an inordinately large number of employes as confidential by spreading the confidential work among such employes or giving them occasional tasks of a confidential nature. MARSHFIELD JT. SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76); HOWARD-SUAMICO SCHOOL DISTRICT, supra. The fact that possible future confidential duties may be combined with current exposure to confidential matters may warrant the exclusion of a particular position as confidential under the facts of the case, MANITOWOC COUNTY, DEC. NO. 8152-J (WERC, 11/90), unless the future duties and responsibilities are too speculative or *de minimis* to warrant exclusion from the unit as confidential. WAUKESHA JT. SCHOOL DISTRICT NO. 1, DEC. NO. 10823-A (WERC, 3/81).

Account Clerk I

From our review of the record, we are satisfied that the Account Clerk I in the County Clerk's office is not a managerial or confidential employe.

While it is clear that the Account Clerk I plays an important role in the operation of the County Clerk's office, her access to payroll information does not provide a sufficient basis for concluding that she is a confidential employe. Nor do her duties involve her to a significant degree in policy matters which affect the County's operations. Therefore, she is a municipal employe who is hereby included in the bargaining unit.

Account Clerk II

While the Account Clerk II presents a closer question, we are also satisfied that she is not a managerial or confidential employe.

Although she was significantly involved in the selection and implementation of the County's new accounting system, it is important to note that the Accounting Supervisor took the lead as to these matters. Thus, to the extent managerial responsibilities were implicated, we think it clear that it was the Accounting Supervisor – not the Account Clerk II – whose exclusion could conceivably be justified on that basis.

Turning to the claim that the employe is confidential, we concur with the Union's view that the budgetary information to which the Clerk is privy is generally accessible to the public (and the Union) and thus is not confidential information. Therefore, her duties do not involve confidential labor relations matters and do not form a basis for excluding her from the unit as a confidential employe.

Accounting Supervisor and Payroll Technician

The County contends that Brill, the Accounting Supervisor, and Reismer, the Payroll Technician, should continue to be outside the collective bargaining unit because they are supervisors and/or confidential or managerial employes.

Brill and Reismer's day-to-day supervisory duties with regard to both the Account Clerk I and Account Clerk II are sufficient to warrant their exclusion from the unit as supervisors. Both the Accounting Supervisor and the Payroll Technician positions have been significantly involved in interviewing and hiring candidates into the positions of Account Clerk I, Account Clerk II and receptionist over the years since 1987. They have substantial independent disciplinary authority. Both the Accounting Supervisor and Payroll Technician have conducted performance evaluation reviews and created performance plans for the employes working under them and have effectively recommended that these employes pass probation and receive merit raises. The Accounting Supervisor and Payroll Technician have the authority to assign and direct work, and to approve or deny leaves and overtime. Although the number of employes supervised is small, it is clear from

the record that the County Clerk has given these two individuals significant supervisory powers. As we have found the Accounting Supervisor and Payroll Technician to be supervisors, we find it unnecessary to address the County's other arguments regarding their confidential and/or managerial status.

Dated at Madison, Wisconsin, this 12th day of January, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

OZAUKEE COUNTY

CONCURRING OPINION OF CHAIRPERSON JAMES R. MEIER

I write separately on the question of the MERA status of the chief deputies of elected constitutional offices appointed under the specific sections of Chapter 59. I note initially that this Commission has no special expertise on the subject of harmonizing a statute which it administers with those that it does not administer.

I concur with the result reached by my colleagues but write separately because I do not believe my colleagues' analysis sufficiently confronts what I understand to be the central issues before us: what is the meaning of the language in COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 WIS.2D. 298 (CT.APP. 1994) relative to chief deputy clerks and is that language dicta?

In EAU CLAIRE, the Court stated:

We distinguish CRAWFORD on its facts because it apparently involved a union exclusion of only a single chief deputy in each office. We conclude that deputized employees, apart from the chief deputy, are exempt from MERA coverage, only to the extent that they in fact function as managerial or supervisory employees, as that term has been defined by case law. (emphasis added)

and

Where the facts demonstrated that the appointment is not merely a subterfuge to avoid the union contract, and the employee's functions actually coincide with the well-established definition of a managerial employe, the appointment of more than one exempt deputy is in harmony with MERA and the discretion granted an elected official to manage his or her office. (emphasis added)

It seems the most reasonable interpretation of this language as it relates to chief deputies is that they would be exempt, not just from those provisions of a collective bargaining agreement which conflict with the authority of the constitutional officers to appoint and discharge deputies, but from MERA as well.

Webster's Third International Unabridged Dictionary defines the phrase "apart from" as "besides." That dictionary defines the word "besides" as "in addition." So I understand the court in EAU CLAIRE to say that chief deputies are exempt from MERA coverage as a result of statutory harmonization and that in addition other deputized employees are exempt from MERA coverage only when they are also managerial or supervisory.

The next question is whether the noted language constitutes the holding of the case or is merely dicta.

In CHASE V. AMERICAN CARTAGE CO., 176 WIS. 235, 238 (1922), the Wisconsin Supreme Court held that “when a court of last resort intentionally takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy, such decision is not a dictum but is a judicial act of the court which it will thereafter recognize as a binding decision.”

I believe that in EAU CLAIRE, the question of whether a chief deputy is exempt from MERA coverage is “germane to, though not necessarily decisive of, the controversy . . .” The reason I think that is true is because the chief deputy exception is as a result of the court in EAU CLAIRE reconsidering what it meant to hold in CRAWFORD, and in so doing announced that CRAWFORD applied to chief deputies who, it noted, were MERA exempt.

However, while the question may be germane to the controversy, I cannot conclude that the EAU CLAIRE court “intentionally took up, discussed and decided the question.” There is language in these cases which causes me to think that the court may believe that even in an office with few employees where there is no need for a manager or supervisor other than the elected constitutional officer, there are times when the elected constitutional officer ought to be able to leave the office in charge of a person, i.e. the chief deputy, which person is not reliant on the union for his or her level of compensation etc. While this reading is consistent with the language of the cases it is not express and must be inferred. The court in EAU CLAIRE simply modified CRAWFORD by stating that only chief deputies are exempt from MERA, although that was not the question before the court in EAU CLAIRE or the holding of the court in CRAWFORD.

While the court went to the extraordinary effort of checking the CRAWFORD record in the state archives with the result of reading “deputies” out of Secs. 59.38 [now 59.40(1)] and 59.50 [now 59.43(3)], Wis. Stats., the court did not explain its observation that chief deputies are exempt. This lack of an explanation leads me to conclude that the EAU CLAIRE court did not intentionally “take up, discuss and decide” the exemption from MERA issue. Therefore, I would find the subject language of EAU CLAIRE to be dicta.

Dated at Madison, Wisconsin, this 12th day of January, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

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