

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GENERAL DRIVERS AND DAIRY
EMPLOYEES UNION, LOCAL #563

Involving Certain Employees of
SANITARY DISTRICT NO. 1, TOWN
OF GRAND CHUTE AND SANITARY
DISTRICT NO. 2, TOWN OF GRAND
CHUTE 1/

Case 4
No. 34960 ME-2450
Decision No. 22934

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys
at Law, by Mr. Larry R. Steffes, 788 North Jefferson, Room 600,
P. O. Box 92099 Milwaukee, Wisconsin 53202, appearing on behalf of
the Petitioner.

Herrling, Clark, Hartzheim & Siddall, Ltd., Attorneys at Law, by
Mr. Roger W. Clark, 301 North Lynndale Drive, Appleton,
Wisconsin 54914, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

General Drivers and Dairy Employees Union, Local No. 563, having on May 8, 1985, filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employees in the employ of Sanitary District No. 1, Town of Grand Chute and Sanitary District No. 2, Town of Grand Chute; and hearing in the matter having been conducted on June 20, 1985 at Appleton, Wisconsin, before Examiner Sharon A. Gallagher, a member of the Commission's staff; and a transcript having been received on July 5, 1985; and the parties having agreed to submit initial briefs to the Examiner postmarked July 26, 1985, for exchange through her; and the parties having waived reply briefs; and the Commission, having considered the evidence and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That General Drivers and Dairy Employees Union, Local No. 563, hereafter referred to as the Union, is a labor organization and has its offices at P. O. Box 174, Appleton, Wisconsin 54912.

2. That Sanitary District No. 1 of the Town of Grand Chute and Sanitary District No. 2 of the Town of Grand Chute, hereafter referred to as the Employer or as the Joint Employer, are municipal employers within the meaning of Sec. 111.70(1)(j), Stats., with offices at 3111 West Prospect Avenue, Appleton, Wisconsin 54912.

3. That during the course of the hearing the parties stipulated as follows: that Sanitary District No. 1 of the Town of Grand Chute, functioning as the water utility, and Sanitary District No. 2 of the Town of Grand Chute, functioning as the sewer utility, were created pursuant to Chapter 60.71, Stats., and that they jointly employ the following people: Mr. Huntoon, Mr. VanGrinsven, Ms. VanHeertum, Ms. Leopold, Mr. Ertl, Mr. Maki and Mr. Pahl, and also a number of engineers who are not in dispute and are properly excluded from the petitioned-for unit; that Messieurs Ertle, Maki and Pahl are employees within the meaning of Sec. 111.70, Stats., and are properly included in the petitioned-for unit; that Mr. Huntoon currently occupies the position of Manager of Sanitary Districts

1/ The petition was amended at hearing to reflect the legal name of the Employer.

Nos. 1 and 2 and Mr. VanGrinsven currently occupies the positions of Assistant Manager of Sanitary District No. 2 and Crew Chief/Foreman of Sanitary District No. 1; that Huntoon and VanGrinsven are managerial and supervisory employees within the meaning of Sec. 111.71(i) and (o), Stats., and are properly excluded from the unit; that there are three commissioners of the Sanitary Districts No. 1 and 2 who are also supervisors of the Town of Grand Chute, but these commissioners are paid by the Sanitary Districts Nos. 1 and 2 and not by the Town of Grand Chute when they are functioning as the commissioners of the utilities; that there are no town employees who interchange with, work with or are transferred into Sanitary Districts No. 1 and 2.

4. That in the instant proceeding, the Union seeks an election among the following employees: "all employees of the Water Distribution and Sewer Maintenance including office clerical of the Water and Sewer Department, but excluding supervisors as defined in the Act"; that at the hearing and in its brief the Union made clear that it seeks to represent all non-professional employees of the Sanitary Districts Nos. 1 and 2 of the Town of Grand Chute, but excluding Messieurs Huntoon and VanGrinsven, who the Union stipulated at hearing are managerial/supervisory personnel; and that the Union does not seek to represent any employees of the entity, the Town of Grand Chute.

5. That the parties also stipulated at hearing that the Town of Grand Chute and the Sanitary Districts Nos. 1 and 2 are separate employer entities; that the Sanitary Districts Nos. 1 and 2 have leased equipment from the Town of Grand Chute, but it has been on an arm's length basis; that Sanitary District No. 1 and Sanitary District No. 2 each establish and have separate budgets and separate payrolls; that the Town does not contribute to the Districts' budgets or payrolls; that the Sanitary Districts Nos. 1 and 2 are separately funded by assessment of a user service charge, and should there be any excess revenues in any year, such excess revenues would be retained by the Sanitary Districts Nos. 1 and 2 and would not be available to the Town of Grand Chute; that the rates in Sanitary District No. 1 are set indirectly by the State Public Service Commission (PSC); that the PSC sets the rates for the City of Appleton, and then the Sanitary District No. 1 must buy its water from the City of Appleton at a set percentage rate above that which Appleton pays the PSC; that the rates for Sanitary District No. 2 are set by means of the three utility commissioners conferring with the Sanitary District's engineers; that the engineers then make a recommendation concerning any rate change, and thereafter the Commission must hold a public hearing before it can set any new rate; that the Sanitary District No. 1 and Sanitary District No. 2 each hold separate meetings for purposes of doing business, which are separate and distinct meetings from those held by the Town Board of the Town of Grand Chute; and that the Sanitary Districts No. 1 and No. 2 each have separate facilities.

6. That the only disputed positions herein are those of Office Coordinator, currently occupied by Ms. Leopold, and Assistant Office Coordinator, currently occupied by Ms. Van Heertum; that the Employer posits that both of these positions are managerial, executive, confidential, or supervisory and, therefore, both positions should be excluded from any collective bargaining unit; that the Union took the position that these positions are not confidential, supervisory, managerial or executive and they should be included in any unit.

7. That with the exception of the above-mentioned disputed positions, the parties stipulated that the employees sought to be represented by the Union constitutes an appropriate unit.

8. That the Employer's office area has been recently remodeled and expanded such that it now contains three separate offices--one for Huntoon, one for Van Heertum and one for Leopold--each with connecting doorways; that previously Ms. Leopold shared an office with Ms. Van Heertum while Mr. Huntoon had his own office; that as a result of the renovation, Leopold and Van Heertum's offices are connected by a doorway and by a picture window-sized opening in the wall between their offices; also as a result of the renovation all of the filing cabinets including those containing personnel files were moved into Ms. Leopold's office.

9. That approximately nine years ago the Employer hired Ms. Leopold to be Manager Huntoon's Secretary; that at that time Mr. Erdman was the Office Coordinator, in charge of all bookkeeping and payroll for the Employer; that although Ms. Leopold occasionally did typing for Mr. Erdman at his request, Ms. Leopold's work was not directed by Mr. Erdman; rather, Ms. Leopold's direct superior at this time was Manager Huntoon; that approximately six years ago, the Employer sought to hire someone to replace Ms. Leopold as Ms. Leopold had been

promoted to the Office Coordinator position previously held by Mr. Erdman; at this time, Manager Huntoon reviewed resumes, interviewed candidates and decided to hire Van Heertum to the secretarial position formerly held by Leopold; that before Van Heertum's hire, Huntoon told Leopold he wished to hire Van Heertum and he requested that Leopold review the resumes of the applicants to see whether Van Heertum was the best candidate for the job; that Leopold concurred with Huntoon's decision; that Huntoon directed Leopold to train Van Heertum to do her former job and Leopold did so; that as Office Coordinator, Leopold took on greater responsibilities than Mr. Erdman had, the latter doing primarily bookkeeping; that reasonably accurate job descriptions of the Office Coordinator and Assistant Office Coordinator positions are as follows:

TITLE: Office Coordinator

Job Description:

Under general direction of the Manager of the Water and Sewer Utility, the Office Coordinator shall be responsible for all (accounting)*, billing, bookkeeping, collection work associated with the wastewater collection system, water distribution system and act in direct supervisory capacity over the clerical staff associated with the above.

More specifically:

1. Supervise the operation of the billing and collection work.
2. (Plan, schedule, direct and assign all work of the office staff associated with the pumping stations, wastewater collection and water distribution systems.)*
3. Compile and maintain daily and monthly reports and records, bids, tabulations, and similar utility operating files.
4. Develop and implement new procedures and records systems required by operating rule changes.
5. Assist Manager of Water and Sewer Utility in preparation of reports associated with budget, rate increases, (personnel review, personnel interviews)*, equipment purchasing and other related work as requested by the Manager.
6. Prepare permits and other documents required for utility operations.
7. Accumulate and distribute receipts and expenditures over operation, maintenance, and other accounts.
8. Compute labor from departmental time sheets and post to proper accounts.
9. Accumulate and distribute material (sic) costs to work orders or inventory records.
10. Maintan (sic) general ledger data for Sanitary District 1 & 2.
11. Handle accounts payable and receivable in reference to general ledger.
12. Prepare and maintain payroll records of the utility personnel.
13. Prepare and verify bi-monthly, monthly and quarterly State, Federal, FICA and Retirement payroll reports.

14. Compile all annual reports required by statutes or Public Service Commission associated with the utility operations.
15. Maintain all special assessments records, collect payments, and prepare tax roll to county.

* There is no evidence that Ms. Leopold performs these duties as stated. Ms. Leopold testified that she has not performed them, except as detailed infra.

TITLE: Assistant Office Coordinator

Job Description:

Under general supervision of the Office Coordinator, the Assistant Office Coordinator shall be responsible for all billing and collection operations associated with the Water and Sewer Utility system.

More specifically:

1. Prepare and post billing amounts to all accounts within the utility system for water and sewer usage.
2. Keep records of billings, collections, penalties, and areas for water and sewer usage.
3. Receive payments of bills. Prepare and deposit banking accounts.
4. Perform proper routing of customers service needs with respect to complaints on billing, collection, special readings, turn offs, meter set, service malfunctions, requests, damage, changes, emergency calls, etc.
5. Record meter readings from cards returned by customers or meter readers.
6. Initiate follow through procedures to comply with the regulations to obtain meter readings, meter removal, or shut-offs.
7. Take applications for new services. Set up all files for new customers for sewer and water and bill accordingly.
8. Perform routine filing.
9. Type letters, reports, vouchers, estimates, checks and other incidental material.
10. Operate various office machines including IBA 5120 Computer.
11. Handle complaints and if necessary, route to proper channels.
12. Act as receptionist with public, secretary to the Manager of water and sewer Utility.
13. Design and correlate customer notification mailings.
14. Daily Post office pickup and delivery of mail and any other functions or purchases for office procedures.

10. That as Office Coordinator, Ms. Leopold is responsible for running the office; that she has the authority to assign work to Van Heertum but Leopold only

does this if there is a variation in routine work and/or Leopold believes office priorities should be changed; that otherwise Leopold does not direct Van Heertum's work since there is very little overlap in their jobs and work tasks are largely routine and well-known to both women; that Leopold has no authority to grant overtime, sick leave, vacation leave, or leave without pay; that Leopold has no independent authority to grant regular or merit increases or to discipline, fire or discharge employees, although Huntoon sought and followed Leopold's opinions concerning Van Heertum's hire, and Van Heertum's annual merit raises; that Leopold sat in on Van Heertum's disciplinary interview, conducted by Huntoon approximately four years ago but that Leopold did not recommend any action be taken and did not speak during this interview; that Leopold typed the written warning given Van Heertum following this interview; that Leopold cannot purchase any item for the employer without first getting a voucher signed by Huntoon; that Leopold has no authority to decide the amount of funds to seek in an upcoming budget and Leopold has no authority to bring a recommended budget to the commissioners of the Employer, although she does assist Huntoon in projecting upcoming budgets and compiling figures therefore by looking at the past year's expenditures, what new business is anticipated in the coming year, what materials have been used and what materials need to be bought in the future; that Leopold attends commission meetings where these budgets are presented and recommended by Huntoon in order to answer questions and defends the budget figures; that Leopold has no input into whether user fees should be increased except through her budgetary responsibilities; that she has no authority to make recommendations concerning field operations or field employees; that her only input into the direction of operations and policy are her effective recommendations regarding the smoother functioning of the office such as the redrafting of office forms, the faster processing of disconnection of service notices allowed by law, and the purchase of office equipment and supplies; that although Leopold has no authority to decide how much to spend or which equipment to buy, she did effectively recommend the purchase of a \$1500 typewriter; that Leopold keeps track of inventory in order to draft and issue monthly and annual reports, such as the annual report due the PSC, but she is not responsible for keeping field material and equipment in stock; that Leopold makes most of the necessary entries into employees' personnel files such as recording promotions, merit increases, wage increases and other payroll information; that Leopold also types and files disciplinary warnings for field employees although she is not the only employee who has done this; that Leopold does not periodically review personnel files; that field employees may not have access to their personnel files without Huntoon's permission and Leopold has no authority to give this permission, although the personnel files are kept unlocked in her office; that Leopold will likely perform any confidential work which will necessarily result should employees vote for Union representation; that Leopold does not formally evaluate Van Heertum or any field employee's work performance, although Leopold and Huntoon informally discuss Van Heertum's performance for purposes of merit increases; that Leopold dispatches field employees who call in for job assignments by giving them the information from job orders which have been placed on a spindle in order of response by someone else; that when Huntoon is absent Assistant Manager and Crew Chief VanGrinsven runs the field operations while Leopold runs the office; that if both Huntoon and VanGrinsven are absent Leopold would not have the authority to run both the field and office operations; that only Huntoon has the authority let bids and seek estimates for equipment and materials; that Leopold is the only employee who processes the payroll with the exception that Van Heertum types the payroll checks.

11. That Ms. Van Heertum was hired approximately six years ago to fill Ms. Leopold's secretarial position; that Van Heertum's title is "assistant office coordinator;" that Leopold did not have this title when she occupied the position; that the duties of this position have not changed since Leopold held the job; that Van Heertum spends her work day processing bids and estimates, writing out plumbers permits, billings, sewer assessments and violation notices, typing letters and documents for Mr. Huntoon, typing letters to applicants, routing applications and other information to Huntoon, typing budget figures compiled by others, typing information regarding mailings into the computer, acting as receptionist, filing, opening, routing and processing mail, typing and filing items and making entries in personnel files but only if Leopold is absent; that Van Heertum has no employees who answer to her; that she is directed by Huntoon and, secondarily, by Leopold if there is a variation in normal office routine that must be responded to; that Van Heertum has no authority to recommend employee raises or merit increases, to interview job applicants, to allow employees access to personnel files, to issue verbal or written warnings, to hire or fire, to decide what supplies or equipment to purchase, to purchase anything without a voucher signed by Huntoon; that Van Heertum has no authority to set or influence

the budget, employer policies or strategies concerning labor relations or the direction of operation of the Employer's activities; that the Employer has sought Van Heertum's opinion regarding the purchase of office machinery and supplies, although such has admittedly been out of courtesy.

CONCLUSIONS OF LAW

1. That Sanitary District No. 1 of the Town of Grand Chute and Sanitary District No. 2 of the Town of Grand Chute, (hereafter the Sanitary Districts) are municipal employers under Sec. 111.70(1)(j), Stats., who jointly employ employees described in Conclusion of Law 3, below.

2. That the Town of Grand Chute constitutes a separate (municipal) employer from the Sanitary Districts.

3. That all regular full-time and regular part-time employees of Sanitary District No. 1 of the Town of Grand Chute and the Sanitary District No. 2 of the Town of Grand Chute excluding supervisory, managerial, confidential and executive employees constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(1)(e) and (4)(d)2.a., Stats.

4. That the position of Assistant Office Coordinator, currently occupied by Donna Van Heertum, is not a supervisory, managerial or confidential position but rather is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and that the incumbent thereof is eligible to vote in the election directed herein.

5. That the position of Office Coordinator, currently occupied by Sally Leopold, is a confidential position and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and not eligible to vote in the election directed herein.

6. That a question of representation within the meaning of Sec. 111.70(4)(d), Stats., has arisen among the municipal employees in the collective bargaining unit set forth in Conclusion of Law No. 3.

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

DIRECTION OF ELECTION

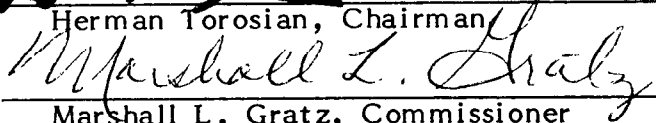
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Sanitary District No. 1 of the Town of Grand Chute and the Sanitary District No. 2 of the Town of Grand Chute excluding supervisory, managerial, confidential, and executive employees who are employed by the Sanitary District No. 1 of the Town of Grand Chute and Sanitary District No. 2 of the Town of Grand Chute on September 30, 1985, except such employees as may, prior to the election, quit their employment, or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by General Drivers and Dairy Employees Union, Local No. 563 for the purpose of collective bargaining with the Sanitary District No. 1 of the Town of Grand Chute and Sanitary District No. 2 of the Town of Grand Chute on wages, hours and conditions of employment.


Given under our hands and seal at the City of
Madison, Wisconsin this 30th day of September,
1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

TOWN OF GRAND CHUTE

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

BACKGROUND

The only issues in dispute are whether the positions of Office Coordinator and Assistant Office Coordinator are municipal employees. The Employer, contrary to the Union, contends that both positions should be excluded from the unit on the ground that they are managerial, executive, confidential and/or supervisory. 2/

DISCUSSION

Sally Leopold, Office Coordinator

The Employer contends Leopold is a supervisory, managerial and executive or confidential employee, while the Union contends to the contrary.

As to the issue of Leopold's confidential status, the Commission has consistently held that in order for an employee to be considered a confidential employee and thereby excluded from the bargaining unit, such employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 3/ In order for information to be confidential for such purpose, it must be the type of information that: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2) is not available to the bargaining representative or its agents. 4/ The Commission has also held that a de minimus exposure to confidential labor relations material is ordinarily insufficient grounds for excluding an employee from the bargaining unit 5/ except where the person in question is the only one available to perform such confidential duties. 6/

In regard to Leopold's confidential duties, we have outlined in Findings of Fact 9 and 10 her regular contact with personnel files due to her bookkeeping/payroll duties and her typing and filing of disciplinary warnings. We recognize that at this point in time while Leopold's duties give her access to and knowledge of confidential information her involvement as such is de minimus. However, we note that this is an initial election petition. Thus, the Employer has not had a relationship wherein its employees are represented by a labor organization which would generate a conflict of interest or raise the issue of

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- 2/ The Employer also argued for the first time in its brief that the Office Coordinator and Assistant Office Coordinator lack a community of interest with field employees. This argument could be viewed as inconsistent with the parties' positions at hearing concerning the appropriate unit. In any event, we reject this contention because it would result in undue fragmentation of the non-professionals employed by the Sanitary Districts.
 - 3/ City of Ashland, Dec. No. 18808 (7/81); Green County (Sheriff's Dept.), Dec. No. 16270 (WERC, 3/78); Kenosha V.T.A.E. District No. 6, Dec. No. 14993 (WERC, 10/76).
 - 4/ Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).
 - 5/ Kenosha V.T.A.E. District No. 6, supra; Wisconsin Heights School District, supra; Northwood School District, Dec. No. 20022 (WERC, 1982).
 - 6/ See, e.g., Village of Brown Deer, Dec. No. 8915 (WERC, 2/69); City of Kaukauna (Utility Commission), Dec. No. 17149-A (1/80) aff'd by operation of law, Dec. No. 17149-B (WERC, 2/80); City of Port Washington (City Hall and Police Dept.), Dec. No. 18654-B (Greco with final authority of the Commission, 4/82); Sheboygan County Handicapped Children's Education Board, Dec. No. 20217 (WERC, 1/83); Town of Pewaukee, Dec. No. 20759 (WERC, 6/83).

confidentiality. Further, we note that if the employees here were to vote to establish a collective bargaining relationship and we were to include both Leopold and Van Heertum in the unit, the Employer would be left to carry on its labor relations functions without benefit of the services of a confidential employee who could perform necessary office/clerical work required by such a relationship. Therefore, although Leopold only performs minimal confidential duties now, such duties in addition to the likelihood that she will be performing additional confidential work which will necessarily result should employees vote for representation, and the fact that she will be the only employee performing such work are sufficient to exclude her from the unit as a confidential employee. Having found Leopold to be a confidential employee and excluded from the unit, we deem it unnecessary to address the Employer's additional contentions that Leopold is also a managerial, supervisory and/or executive employee.

Donna Van Heertum, Assistant Office Coordinator

The Employer contends Ms. Van Heertum is a supervisory, managerial and executive or confidential employee.

With respect to the supervisory issue, Section 111.70(1)(o), Stats., defines the term "supervisor" as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, 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 the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the position in question is supervisory, considers the following factors:

1. The authority to recommend effectively 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 other 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment and discretion exercised in the supervision of employees. 7/

At the hearing, the Employer argued that Van Heertum possessed duties and authority sufficient to confer supervisory status upon her. The record does not support this contention, and we conclude that Van Heertum is not a supervisor under Sec. 111.70(1)(o), Stats. We base this conclusion upon the following factors: (1) Van Heertum has no subordinates to supervise and (2) it does not appear that she has the authority to hire, fire, promote, discipline, transfer, layoff, grant overtime, sick leave or vacation time off or effectively recommend same or that she engages in any other supervisory activities.

7/ See, e.g., City of Milwaukee, Dec. No. 6960 (WERC, 12/64); Northwood School District, supra.

In determining whether a position has managerial status, the Commission considers the degree to which the incumbent participates in the formulation, determination and implementation of management policy or possesses the authority to commit the Employers' resources. 8/

The Employer contends only that Van Heertum possesses the authority to commit the Employer's resources. In this regard, the evidence indicates that Van Heertum has never purchased any item for the Employer without first receiving a voucher therefor, signed by Huntoon. Her only involvement with bids and estimates is to route them to Huntoon upon receipt and type letters in conjunction with the bidding process. There is some evidence that Huntoon has asked Van Heertum's opinion concerning the purchase of office equipment and/or supplies but there is no evidence that Van Heertum made any recommendations regarding these matters. Rather, it is clear that Huntoon sought her opinion out of courtesy and a concern for personal relations between employees working closely together in a small office setting.

In addition it is clear that Van Heertum has very little to do with the Employer's budget. Her role is to type budget documents which have been drafted and compiled by Huntoon and Leopold. There is no evidence that Van Heertum has made any recommendations regarding the Employer's original budget or that she can allocate funds on her own in any way. Thus, we conclude that Van Heertum is not a managerial employee.

With respect to Van Heertum's alleged confidential status, we find that the evidence does not support such a contention by the Employer. Rather, it is clear that Van Heertum's contact with confidential information such as disciplinary letters and employment applications and employment letters contained in personnel files appears to be occurring sporadically or when Leopold is absent. Indeed contact with personnel files has been held to be an insufficient basis for a finding of confidential status. See e.g., Kenosha County (Sheriff's Dept.), Dec. No. 21909 (WERC, 8/84). The fact that Van Heertum types Manager Huntoon's letters for approximately 10% of her work time is insufficient to render her a confidential employee. There was no evidence proffered to show that these letters have contained confidential labor relations matter.

Finally, and most importantly, we have already determined Leopold to be a confidential employee. There is no reason to believe that the small amount of confidential work generated by a unit of four employees cannot be performed by one employee, Leopold. Thus, Van Heertum will not be excluded from the unit as a confidential employee.

With regard to Van Heertum's status as an executive employee, argued by the Employer, we conclude that Van Heertum is not an executive employee. As we stated in City of Oak Creek (Fire Department), Dec. No. 17633 (WERC, 3/80):

In our view the commonly understood meaning of the term "executive", if it is to be distinguished from the term "managerial" as it is in Section 111.70(1)(b), refers to an individual possessing managerial authority who has the overall responsibility for the management of an agency or major department of the employer. Thus an executive employee also has managerial and/or supervisory responsibilities, 7/ but is distinguishable by reason of his or her possession of the overall responsibility and authority for an agency or major department. . . .

7/ We note that several available definitions, such as those contained in Black's Law Dictionary (4th Edition) and 33 C.J.S. 848, make reference to managerial and supervisory authority possessed by executives.

8/ Milwaukee VTAE, Dec. No. 8736-B (WERC, 6/79); Northwood School District, supra.

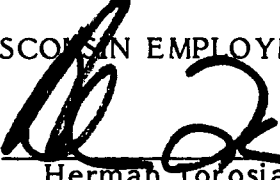
From the facts of this case, it is clear that Van Heertum does not have overall responsibility and authority for an agency or major department (emphasis added). Therefore Van Heertum is not an executive employe and cannot be excluded from the unit on that basis.

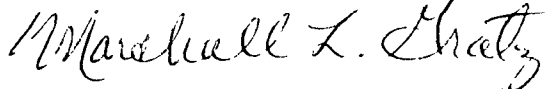
On the basis of the above, we find that the Assistant Office Coordinator, Donna Van Heertum is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and is hereby included in the appropriate collective bargaining unit herein and is eligible to vote in the election herein. Also on the basis of the foregoing, we find that the Office Coordinator, Sally Leopold is a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and is hereby excluded from the unit found appropriate herein and is not eligible to vote in the election herein.

Dated at Madison, Wisconsin this 30th day of September, 1985.

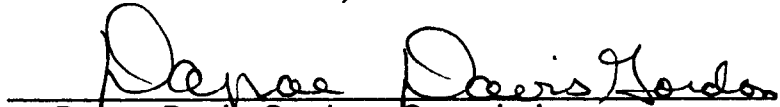
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman



Marshall L. Gratz, Commissioner


Dahae Davis Gordon, Commissioner