

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 DOOR COUNTY : Case 51
 : No. 38693 ME-176
 Involving Certain Employees of : Decision No. 24016-A
 :
 DOOR COUNTY :
 :

Appearances:

Mr. D. Todd Ehlers, Assistant Corporation Counsel, 138 South Fourth Avenue, Sturgeon Bay, Wisconsin, 54235, appearing on behalf of the County.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin, 54220.

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

Door County having, on April 20, 1987, filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit of courthouse employes represented by Wisconsin Council 40, AFSCME, AFL-CIO to exclude seven positions from that unit; and the Commission having held the petition in abeyance due to the illness of one of the representatives; and the County having, on July 21, 1987, notified the Commission that it intended to seek the exclusion of all other Door County Unified Board employes from bargaining unit membership; and a hearing on the petition having been conducted at Sturgeon Bay, Wisconsin, on October 5, 1987, before Examiner Marshall L. Gratz; and a stenographic transcript of the proceedings having been prepared on October 21, 1987; and the Union having, on November 27, 1987, requested that the record be reopened in order to introduce into evidence the collective bargaining agreement as an additional Union exhibit; and the record having been reopened and the exhibit having been received into evidence as Exhibit 9 on December 16, 1987; and the parties having completed the filing of briefs by January 25, 1988; and 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. That Door County, herein the County, is a municipal employer and has its offices at 138 South Fourth Avenue, Sturgeon Bay, Wisconsin 54235.
2. That Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization and has its offices at P.O. Box 370, Manitowoc, Wisconsin 54220.
3. That by virtue of Door County, Dec. No. 24016 (WERC, 11/86), the Union is the certified exclusive collective bargaining representative for certain employes of the County in a bargaining unit described as follows:

all regular full-time and regular part-time nonprofessional employes of Door County employed in the Courthouse and associated departments, but including only the following offices and departments: Ag. and Extension Education; Ambulance Department; Buildings Operations; Child Support; Circuit Court Clerk; County Clerk; County Treasurer; Data Processing; District Attorney; Public Health Department; Highway Department; Planning Department; Register of Deeds; Sanitarian; Circuit Court Judge; Sheriff's Department; Soil and Water; Unified Board; Unit on Aging; and Veterans; but excluding supervisory, managerial, confidential, executive and professional employes, elected officials, library employes, and employes in existing bargaining units.

4. That, on April 20 and July 21, 1987, the County filed and amended a unit clarification petition which, as amended, requests that nine positions be excluded from the existing bargaining unit described in Finding of Fact 3, above; that those positions sought to be excluded and the basis upon which the County seeks their exclusion are as follows:

<u>Position</u>	<u>Stated Reason for Proposed Exclusion</u>
Deputy County Clerk	Confidential
Micro-filming Coordinator	Managerial
Register in Probate	Managerial; Supervisory
Confidential Secretary, Sheriff's Department	Confidential
County Tax Lister	Managerial; Supervisory
Administrative Assistant, Unit of Aging	Managerial; Supervisory; Confidential
Confidential Secretary, Unified Board	Confidential; employed by entity other than the County
Insurance/Billing Clerk, Unified Board	Employed by entity other than the County
Agency Bookkeeper/Mgmt. Info. Specialist, Unified Board	Employed by entity other than the County

5. That no collective bargaining agreement covering this unit had been signed or implemented as of the date of the hearing in this matter; but that an agreement was entered into subsequent to the hearing and admitted into evidence following the hearing (Exhibit 9).

6. That Robert Papke is the County Clerk and Administrative Coordinator for Door County and the chief administrative officer of the County on a day-to-day basis; that Papke regularly attends the meetings of the County Board of Supervisors' Executive and Personnel Committee; that that Committee has discretion over personnel and personnel matters in the County, establishes positions, hires and fires employes, and serves as the second step in the grievance procedure described in the parties' collective bargaining agreement; that Papke also regularly attends the meetings of the County's Property Committee and the Finance Committee; that Papke prepares agendas for and dictates detailed minutes of the meetings of those Committees; that Papke maintains a central reference file of grievances; that Papke is also a member of the Negotiating Committee for Door County which negotiates with five bargaining units in the County; Papke is responsible for taking and preparing detailed minutes of all Negotiating Committee meetings as well; that Nancy Bemman is the Deputy County Clerk for Door County; that Bemman types and distributes all correspondence, letters and memoranda generated by Papke, including agendas for and dictated minutes of meetings, contract proposals, and correspondence involving grievances and negotiations; that Bemman has access to Papke's central reference grievance file and is the only employe among four in the Clerk's office who has access to Papke's files; that as of the time of the hearing, Bemman had occasion only to work on the Courthouse bargaining unit minutes because she was hired after the other units had been settled; that there had been six bargaining sessions involving the Courthouse unit between November 20, 1986 and October 5, 1987; that Marie Larsen is the secretary to the Corporation Counsel, the County's chief labor negotiator for the County and Larsen is excluded from the bargaining unit described in Finding of Fact 3 as a confidential employe; that Bemman's office is separate from Larsen's office; that both have significant exposure to confidential matters due to their work for Papke and the Corporation Counsel, respectively; that it would be impractical and unduly disruptive to require Larsen to handle the confidential labor relations work for Papke that Bemman now performs; that Bemman has sufficient access to, knowledge of, or participation in confidential matters relating to labor relations so as to render her a confidential employe.

7. That June Behringer Taylor is currently the Microfilm Director for Door County, is the only person in the County's Microfilm Department and, as such, is considered a department head who therefore attends meetings of all County department heads; that Taylor's job is to plan and facilitate the condensing of County documents, primarily Courthouse documents; that Taylor spends nearly all of her time microfilming documents; that Taylor enters into a contract on behalf of the County with Eastman Kodak under which Kodak tests the Department's film for

certain characteristics, as required by statute; that Taylor's other duties include determining what documents will be microfilmed and when upon her receipt of request for microfilming, attending department head meetings, handling machine repairs, and purchasing microfilming supplies; that Taylor sets her own work and vacation schedule; that she prepares the annual budget for the Microfilming Department, which in 1987 was approximately \$33,000, about \$17,000 of which was attributable to wages, fringe benefits, Social Security and insurance, and the rest of which was attributable to supplies and equipment; that Taylor submits the Microfilming budget to the Finance and Property Committee and advocates for her budget proposal before that Committee; that any requests for additional personnel would be made by Taylor to the Executive and Personnel Committee, but no such requests have been made; that Taylor's participation in the formulation, determination and implementation of County policy and in the exercise of authority to commit the County's resources, when considered together, renders her a managerial employe.

8. That Marilyn Atkins is the Register in Probate for Door County, as well as Probate Registrar, Probate Court Commissioner, and Clerk of Juvenile Court; that Atkins was appointed to these positions by the Circuit Judge; that the duties of each of these titles are prescribed by statute; that, as Register in Probate, Atkins keeps all Court records, schedules hearings and reviews documents for the Judge's signature; that, as Probate Registrar, Atkins admits wills and sets bonds in "informal probate," where the parties are generally unrepresented; that as Probate Court Commissioner, Atkins admits uncontested wills to probate, issues domiciliary letters, appoints guardians ad litem, contacts and appoints psychologists, psychiatrists or physicians as needed for mental commitment hearings, and answers questions for the public; that, as Clerk of Juvenile Court, Atkins sends out notices for hearings, clerks the hearings, prepares dispositional orders for the Judge's signature, and distributes the orders to the parties; that, the Judge's has delegated to Atkins prepare the budget for the Circuit Court, to submit same to the Finance Committee, and the responsibility to advocate on behalf of the budget; that when Atkins prepares the budget, she generally consults only with the Court Reporter as to office supplies; that Atkins shows the budget to the Judge before she submits it to the Finance Committee; that, in preparing the budget, Atkins does not determine what level of services to provide, as those are mostly mandated by statute, but estimates what the mandated provision of services will cost the County; that Atkins has signed maintenance contracts for a copying machine on behalf of the Court; that the yearly cost of such contract was approximately \$680.00; that Atkins decided that the Court was no longer in need of the maintenance contract, discontinued the maintenance, and notified the Judge that she was dropping the maintenance contract for lack of use; that, at some point in time, Atkins wrote to either the Finance Committee or the Executive and Personnel Committee to suggest that the Clerk of Court's budget and her budget be "unmerged" and that, after consultations with its auditors, the Committee established separate budgets as Atkins had suggested; that on two occasions Atkins has hired an individual to work as her Deputy; that Atkins chose the first from a list of applicants given to her by the County Board Chairman; that the second time Atkins hired a Deputy, she alone interviewed the applicants; that Atkins did not consult the Judge as to her choice of Deputy; that the Judge did not meet the new Deputy until after she was hired; that Atkins' Deputy does some work for the Clerk of Circuit Court, but is not supervised by that Clerk; that Atkins is responsible for reprimanding the Deputy, if necessary; that Atkins assigns the Deputy's work duties each day; that the Judge wrote a letter to Papke authorizing Atkins to attend monthly department head meetings in place of the Judge; that Atkins does attend such meetings; and that Atkins exercises supervisory responsibilities in sufficient combination and degree so as to render her a supervisory employe.

9. That Leroy Klein is the Sheriff of Door County; that the Deputy Sheriff's and other staff in the Sheriff's Department are in a separate bargaining unit with their own labor agreement; that the Sheriff's Department is located in the Door County Safety Building rather than the Courthouse; that Klein is involved in negotiations leading to said agreement; that Klein, as Sheriff, is the first step in the grievance procedure regarding County law enforcement personnel; and that Klein has authority to hire and fire in the Sheriff's Department; that Cherie Hafeman is secretary to Sheriff Klein and also performs clerical duties for the Chief Deputy of the Department; that Hafeman types and files all correspondence, memoranda and other paperwork generated by Klein, a small portion of which is related to labor relations, including exchanges of ideas with the Negotiating Committee for the County Board regarding proposed changes in the contract, and

correspondence with the Corporation Counsel involving grievances and disciplinary actions; that Hafeman has access to Klein's personnel files; that Hafeman types all disciplinary action that takes place within the Department for Personnel that Hafeman attends meetings of the County's Law Enforcement Committee, which Committee serves as step two in the grievance procedure and where grievances are discussed in Hafeman's presence; that Hafeman has seen approximately five or six grievances at this Committee; that Hafeman takes the minutes of Committee meetings and types correspondence for Committee members; that Hafeman spends approximately ten hours per year on grievance matters; that Hafeman types bargaining data for the Sheriff approximately five or six times per year; that no other clerical employe in the Sheriff's Department is excluded from the unit; that the Sheriff's Department is located in a separate building from the Courthouse; and that Hafeman has sufficient access to, knowledge of or participation in confidential matters relating to labor relations so as to render her a confidential employe.

10. That Lois Nyman is the Real Property Lister for Door County; that Nyman is responsible to the Personnel and Executive Board Committee; that Nyman spends the majority of her time listing taxes; that her other job duties include making all property name changes following property transfers, assisting the public in finding property descriptions, making up the workbooks for the assessors, keying in the first half of the tax bills from municipalities in January through March, and attending monthly department head meetings; that Nyman prepares the annual budget, the most recent of which was approximately \$79,500, for the tax listing office; that the budget includes monies for salaries, operating expenses, supplies for the local treasurers, assessors and clerks; that the budget includes an item known as the monumentation program, which is an outside service contract arrangement that the County has with a local surveyor; that the decision to enter into a contract for this monumentation program has historically been made by a consensus of Nyman and the Highway Committee; that Nyman initiated the computerization of her office, and she requested the hiring of a Mapping Technician, which requests were submitted to the Executive and Personnel Committee and ultimately carried out by the County; that Brian Spetz is the Mapping Technician in the Tax Listing office; that Nyman and the County Board interviewed all the applicants for the Mapping Technician job; that Nyman had input into whom she wanted as Mapping Technician; that the Board concurred in her choice of Spetz; that Nyman tells Spetz which districts to map, when to wait on customers and when to cover the phone; that Nyman has no authority to transfer or fire Spetz, but does have authority to reprimand Spetz; that Nyman had the responsibility to effectively recommend to the Executive and Personnel Committee Spetz's retention or release during and at the close of his probationary period; that Spetz also works part-time for Joe LeClair, the County's Data Manager; and that Nyman's participation in the formulation, determination and implementation of management policy and in the exercise of authority to commit the County's resources, when considered together, renders her a managerial employe.

11. That Judith McQueen is the Administrative Assistant for the Door County Unit on Aging, serving also as the Unit's Nutrition Director; that McQueen performs all of the clerical functions for the Unit of Aging, including typing, reception and filing and bookkeeping and spends the substantial majority of her time on such clerical duties; that, as Nutrition Director, McQueen oversees the meal site managers at the various meal sites in the County; that McQueen travels to the various meal sites around the County, confers with the meal site managers, directs their work, answers their questions and is responsible for their proper performance of meal site operations; that McQueen is the only individual who has day to day contact and regular site visitations as a part of her responsibilities; that McQueen also has administrative responsibilities for the Meals-on-Wheels program, including determining eligibility for the program by applying existing guidelines to individuals seeking to participate in the programs; that McQueen has been involved in the hiring of four site managers; that in hiring those managers, McQueen obtained permission from the Personnel Committee to advertise the position and then contacted the Personnel Committee to arrange convenient times for interviewing; that McQueen sat in on the interviews, and sent the letters at the close of the process indicating the hiring decision, but that the Personnel Committee made the hiring decisions; that McQueen trains the new site managers; that if the site managers have any problems or questions, they go to McQueen for assistance; that McQueen occasionally attends Personnel Committee meetings to respond to inquires about the meal site managers; that, as Nutrition Director, McQueen negotiates contracts with caterers, and with town boards involving the use of buildings; that McQueen spends 15% to 20% of her time in her capacity as Nutrition Director; that the Director of the Unit on Aging is Russell Bowling;

that when Bowling is not in the office, McQueen acts in his place and responds to emergent problems requiring immediate solutions or attention; that McQueen prepared or effectively recommended the contents of the probation reports regarding retention or release of the Unit site managers at the end of their probationary period; that McQueen earns more per hour than the site managers; and that McQueen exercises supervisory responsibilities in sufficient combination and degree to render her a supervisory employe.

12. That Theodore E. Bauch is the Director of the Door County Unified Board; that, pursuant to statute, the County has delegated the authority to the Unified Board to provide services to disabled persons in the County; that the County Board chairman appoints the Unified Board members, some of whom are incumbent County Board members, and the rest of whom are persons with the interest or expertise to provide services to disabled persons; that the Unified Board has a number of responsibilities as required by statute; that the Unified Board promulgates programs and services which are administered by the staff and director of the Unified Board; that the Unified Board relies in large part on the State and County monies to fund its programs; that it develops its own budget and calculates the amount of monies it will receive from the State and other non-County sources and then requests the balance of its needed funds from the County; that the Unified Board refunds to the County any monies budgeted for specific line items not spent by the end of the year; that the Unified Board staff consists of ten full-time and one half-time positions; that the Unified Board has discretion to determine whether it needs any new positions, which decision would then be presented to the County Board; that the Unified Board would solicit applicants for available positions, with the Unified Board chairman designated as the person to whom applicants should respond; that the Personnel and Recruitment Subcommittee of the Unified Board screens and interviews the applicants and makes hiring decisions; that at present only one member of the Personnel and Recruitment Subcommittee, Chairman Millard, is also a member of the County Board; that the Unified Board has its own personnel policy; that the Unified Board has the authority, pursuant to Chapter 51 of the Wisconsin Statute, to hire and fire employes and the County Board does not have advise and consent authority as to the Unified Board's hire and fire decisions; that the Unified Board determines the wages, fringe benefits, hours and working conditions of its employes; that these wages, fringe benefits, hours and working conditions have historically been generally the same as those of the County; that, although the County has lawful authority to review the salaries of the Unified Board personnel, it has generally chosen not to do so; that the Unified Board purchases some services from the County, such as the office expenses and payroll accounting; that the Unified Board employes' paychecks are drawn from the Unified Board's account rather than the County's; that the Unified Board does not have the power to tax; that the County Supervisors who serve on the Unified Board are paid a per diem by the Board; and that the Unified Board's offices are housed in the same building as the Door County Public Health Department; and that the Unified Board is sufficiently independent of the County in governance and personnel decision-making so as to render it an employer separate from the County.

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

CONCLUSIONS OF LAW

1. That the position of Deputy County Clerk for Door County currently held by Nancy Bemman is confidential, and therefore, is Bemman not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. That the position of Microfilming Coordinator for Door County currently held by June Behringer Taylor, is managerial, and therefore, Taylor is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. That the position of Register in Probate for Door County currently held by Marilyn Atkins, is supervisory within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore, Atkins is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

4. That the position of secretary in the Door County Sheriff's Department currently held by Cherie Hafeman is confidential, and therefore, Hafeman is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

5. That the position of Door County Tax Lister currently held by Lois Nyman, is managerial, and therefore, Nyman is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

6. That the position of Administrative Assistant in the Unit on Aging in Door County currently held by Judith McQueen, is supervisory within the meaning of Sec. 111.70(1)(o), Stats., and therefore, McQueen is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

7. That the Unified Board of Door County, and not Door County, is the municipal employer of the Unified Board's employes, including Secretary, Insurance/Billing Clerk and Bookkeeper/Management Information Specialist.

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

ORDER CLARIFYING BARGAINING UNIT
AND AMENDING CERTIFICATION 1/

1. That the position of Deputy County Clerk shall be and hereby is excluded from the bargaining unit described in Finding of Fact 3.

2. That the position of Microfilming Coordinator shall be and hereby is excluded from the bargaining unit described in Finding of Fact 3.

3. That the position of Register in Probate shall be and hereby is excluded from the bargaining unit described in Finding of Fact 3.

4. That the position of Sheriff's Department Secretary shall be and hereby is excluded from the bargaining unit described in Finding of Fact 3.

5. That the position of County Tax Lister shall be and hereby is excluded from the bargaining unit described in Finding of Fact 3.

6. That the position of Administrative Assistant in the Unit of Aging shall be and hereby is excluded in the bargaining unit described in Finding of Fact 3.

7. That because the Unified Board, and not the County, is the municipal employer of the Secretary for the Unified Board, as well as the Insurance/Billing Clerk and Agency Bookkeeper/Management Information Specialist for the Unified Board, those Unified Board positions shall be and hereby are excluded from the bargaining unit described in Finding of Fact 3, and the Certification of Representatives issued in Dec. No. 24016 is hereby amended to delete the express inclusion of "Unified Board" personnel from the unit description.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of March, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

[Signature]
Herman Torosian, Commissioner

[Signature]
A. Henry Hempe, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by

(Footnote 1 continued on page 7.)

(Footnote 1 continued from page 6.)

following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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

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

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

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

. . .

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

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

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

The County argues that the various positions listed in Finding of Fact 4 should be excluded because they are confidential, managerial or supervisory, or involve employes of a separate employer.

The Commission has held that for an employe to be confidential, the employe must have access to, knowledge of, or participate in confidential matters relating to labor relations. Information is confidential when it

1. Deal(s) with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and
2. Is not information which is available to the bargaining representative or its agents. 2/

The Commission has held that a managerial employe is one who participates in the formulation, determination and implementation of policy to a significant degree, or who possesses effective authority to commit the employer's resources either by exercising the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 3/ As was stated in City of Cudahy, Dec. No. 18502 (WERC, 3/81):

Managerial employes . . . have been excluded from MERA coverage on the basis that their relationship to management imbues them with interest significantly at variance with those of other employes. In that managerial employes 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 employes do not necessarily possess confidential information relating to labor relations or supervisory authority over subordinate employes. 6/

It is not sufficient merely to assert that the incumbent of a position possesses certain interests at variance with those of other employes in order to involve the position with managerial status. Rather, such status must be demonstrated by a showing that the holder of the position in question participates in the formulation, determination and implementation of management policy "at a relatively high level of responsibility" and "to a significant degree" 7/ and/or that the holder of such position has the effective authority to commit the municipal employer's resources.

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- 2/ Appleton Area School District, Dec. No. 22338-B (WERC, 7/87); Menomonee Falls School District, Dec. No. 13492-A (WERC, 10/85); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).
 - 3/ Kenosha County (Sheriff's Department), Dec. No. 21909 (WERC, 8/84); Town of Conover, Dec. No. 24371-A (WERC, 7/87), Portage County, Dec. No. 6478-C (WERC, 10/87).

6/ City of Oak Creek, supra n. 14; City of New London (12170), 9/73; approved by the Wisconsin Supreme Court in City of Milwaukee v. Wisconsin Employment Relations Commission 71 Wis. 2d. 709, 239 N.W. 2d. 63 (1976). See also Milwaukee Area Board of Vocational Technical & Adult Education No. 9 (8736-B, 16507-A) 6/79, Tomahawk School District (16525), 8/78.

7/ City of Milwaukee (12035-A), 6/73, aff'd sub nom. Dane Co. Cir. Ct. No. 142-170 (7/74); City of Milwaukee (11917), 7/73.

The Commission considers the following factors in determining if a position is supervisory in nature:

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 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 is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 4/

Not all of the criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described above are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

Deputy County Clerk

The County argues that the Deputy County Clerk should be excluded because of the confidential nature of her position. It argues that the incumbent's duties as deputy to Robert Papke expose her to confidential labor relations matters, including grievances and County bargaining strategy session minutes, and warrant her exclusion from the unit as a confidential employee. It cites Bemman's typing of Papke's meeting minutes, memoranda and correspondence as evidence of this exposure to confidential information.

The Union argues that Bemman's access to confidential information is too small a part of her work duties to justify her exclusion from the unit. It also argues that Bemman's exclusion in addition to the exclusion of Marie Larsen, would be excessive, noting that the County already has two confidential exclusions, and seeks four additional confidential exclusions in this case.

4/ Town of Conover, Dec. No. 24377-A (WERC, 7/87); Portage County, Dec. No. 6478-C (WERC, 10/87).

The evidence shows that Nancy Bemman, the incumbent Deputy County Clerk, has significant access to and knowledge of confidential labor relations matters through her work for Robert Papke, the County Clerk. As noted above, Papke prepares minutes of meetings of the Executive and Personnel Committee, and of the Negotiations Committee, handles employe grievances, and is involved in contract negotiations. Bemman types these minutes, correspondence and contract proposals, much of which will never be revealed to the Union or unit members.

It is true that the Corporation Counsel is the chief labor negotiator for the County and that Marie Larsen, the secretary in that office is excluded from the unit as a confidential. Larsen and Bemman both work for people who are significantly involved in sensitive labor relations. It would be unduly disruptive to require the County to cause Larsen to handle all the secretarial work involving sensitive labor matters as the Union proposes. We recognize that Bemman does not spend a great number of hours on sensitive labor relations work. We conclude, however, that the time she does spend is not de minimis.

In sum, the Commission concludes that the Deputy County Clerk position, currently occupied by Nancy Bemman, should be excluded as confidential.

Sheriff's Department Secretary

The County argues that the secretary for the Sheriff's Department, Cherie Hafeman, should be excluded as confidential. The County argues that Hafeman "is obviously privy to all employer - employe relationships and matters within the Sheriff's Department." County's brief at p. 8. Accordingly, it argues, her exclusion is warranted.

The Union argues that Hafeman's testimony that she works fewer than ten hours a year on confidential labor matters indicates that her exposure to confidential information is de minimis, and hence insufficient to warrant her exclusion from the unit.

The evidence shows that Hafeman has some exposure to confidential labor matters due to her work for the Sheriff. For example, Hafeman types and files all paperwork generated by the Sheriff, who is involved in both negotiations and grievances, and she attends meetings of the County's Law Enforcement Committee which is step two of the Department's grievance procedure.

While we recognize that Hafeman does not spend a great deal of time on confidential matters for the Sheriff, we conclude that her confidential duties are not de minimis. The record shows that Sheriff Klein is involved in labor negotiations and grievances and that Hafeman handles the correspondence, typing and filing associated with those matters. In addition, she is privy to confidential information through her attendance at Law Enforcement Committee meetings. The Sheriff's Department is physically separate from the Courthouse, so that it would be impractical to require a Courthouse confidential employe to handle the Sheriff's confidential work; and the record does not show that there is another excluded employe in the Sheriff's Department who could perform Hafeman's duties. We therefore conclude that, based on the record as a whole, Hafeman is appropriately excluded from the unit as confidential.

Administrative Assistant, Unit on Aging

The County argues that the position of Administrative Assistant in the Unit on Aging, currently held by Judith McQueen, should be excluded from the unit on the grounds that she is managerial, supervisory and confidential. On the issue of McQueen's managerial status, the County argues that McQueen is responsible for negotiating and writing all contracts with food service program caterers, which constitute the ability and authority to commit the County's resources. The County also argues that McQueen effectively runs the Unit on Aging when Russell Bowling, the Director, is absent.

As to her supervisory status, the County argues that she has the authority to hire, fire, promote, reprimand and supervise nutrition program employes, referring to five or six meal site managers.

Finally, the County argues that McQueen is confidential as a corollary to her supervisory duties. It states that because she is responsible for supervising the meal site managers, it is also her responsibility to receive and resolve complaints regarding the work of those managers, which necessarily makes her aware of matters not available to the Union or its agents.

In its brief the Union did not specifically address the County's argument that McQueen is managerial. It argues, however, that she is neither supervisory or confidential. The Union argues that McQueen supervises an activity more than employes, and that the record is devoid of any evidence to prove that McQueen is confidential.

Judith McQueen is the Administrative Assistant to Russell Bowling in the Unit on Aging. Although McQueen spends the majority of her time performing clerical duties, as the Unit's Nutrition Director, she has a significant supervisory role with respect to the County's four meal site managers. Although she was involved in each of the phases of the hiring of the meal site managers, the record suggests that she neither made nor effectively recommended the selections for hire. The Personnel Committee made those decisions for itself, after personally interviewing the various candidates. McQueen, however, appears solely responsible for directing the work of the meal site managers. They perform their duties at meal sites variously located throughout the County, and it has been McQueen rather than Bowling who has regularly visited the sites to observe and direct the work of the site managers. It is to McQueen that the site managers report and with whom they discuss their problems and questions, not Bowling. McQueen also evaluated those employes by effectively recommending whether they would successfully pass probation. It is also the case that McQueen earns more per hour than the meal site managers, though the breadth of her overall duties and responsibilities could account for that as easily as the supervisory component of her responsibilities. For those reasons, and especially because McQueen appears to be the only individual supervising the meal site managers on a day-to-day basis, we conclude that, on balance, McQueen possess supervisory authority in sufficient combination and degree to render her position supervisory. On that basis we have excluded her position from the unit, and we find it unnecessary to address the additional questions of whether her position is also confidential and/or managerial in nature.

Microfilm Coordinator

The County argues that the position of the Microfilm Coordinator, currently held by June Behringer Taylor, should be excluded as a managerial employe. The County points to Taylor's responsibility for budget preparation, her discretion as to what work for the department she will do, and the fact that she reports directly to the Door County Board of Supervisor's Property Committee as evidence of her managerial status.

The Union counters that Taylor spends nearly all of her time microfilming, and it argues that any managerial functions Taylor performs are de minimis. Citing, City of Sparta (Police Department), Dec. No. 18799-A (WERC, 12/86) and Stanley - Boyd Jt. School District No. 4, Dec. No. 11589-A (WERC, 7/73). The Union also argues that Taylor's budgeting responsibilities are so limited that they do not satisfy the second prong of the managerial test.

The record reflects that the microfilming function in the Door County Courthouse is fulfilled by one person, June Taylor, and that the Microfilming Department constitutes a separate County department. In her capacity as Microfilm Coordinator, Taylor draws up and implements a budget for microfilming in the County, contracts with Kodak for services, and is responsible for meeting the microfilming needs of the County primarily within Courthouse.

With regard to the Union's contentions that Taylor's managerial duties are de minimis and that her budgeting responsibilities are too limited to satisfy the managerial employe test, we find that Taylor exercises a good deal of discretion in determining priorities for the microfilming needs of the Courthouse and that she has authority to commit the County's resources through the preparation of a budget. When those factors and her independence from supervision and participation in management-only meetings are considered together, we conclude that Taylor's relationship to management involves her with interests at variance with those of other employes, and more closely aligns her interests with management than with other employes.

Register in Probate

The County, relying heavily on Kewaunee County, Case No. 86-1800 (Ct App III, 1987) (2-1) aff'g Dec. No. 13185-D (WERC, 1/86) argues that the Register in Probate, currently Marilyn Atkins, should be excluded from the unit based on managerial and supervisory exclusions. The County notes that the Judge has delegated to Atkins the job of preparing the Court budget, arguing its merits before the County Finance Committee, and the responsibility to attend department head meetings, as evidence that Atkins is a managerial employe. The County also argues that Atkins' supervisory powers over her Deputy support her exclusion on supervisory grounds.

The Union argues that Atkins' budgetary and supervisory responsibilities are minimal and insufficient to justify her exclusion on any basis. Specifically, the Union argues that Atkins really does not create the budget, that most of the budget is for services not under the control of the Register in Probate, and that many of her budgetary requests have not been granted. It argues that the record indicates only that Atkins submits a budget, but not that she creates it.

As for Atkins' supervisory responsibilities, the Union argues that the Executive and Personnel Committee has true hiring and firing responsibility at the present time, not Atkins, and that Atkins does not have sufficient supervisory responsibilities to warrant her exclusion from the unit. The Union argues that Atkins has no authority to transfer, suspend, lay off, recall, promote, reward, reprimand or discipline employes, and that Atkins has not hired any employe for two years. It points to Atkins' testimony that the Executive and Personnel Committee has the authority to hire and fire as evidence that Atkins is not a supervisor.

In our opinion, although Atkins has hired only two employes and now supervises only one, and although the incumbent Deputy Clerk does not require a great deal of supervision, we conclude from the totality of the record that Atkins is a supervisor. It is true that she is not the ultimate decision-maker regarding the hiring, discharge and reprimand of Courthouse employes. The record reflects, however, that Atkins, as Register in Probate, has assumed many of the supervisory responsibilities on behalf of the Judge. She effectively hired and supervises the part-time deputy clerk for the court, Lori Miller. Atkins was the only person involved in interviewing and hiring the deputy clerk. The Judge did not meet the Deputy Clerk until after Atkins hired her. Atkins has authority to effectively recommend personnel decisions to the Judge, has the authority to direct and assign work for Ms. Miller, and exercises independent judgment in the exercise of the foregoing supervisory authority. We have therefore excluded Atkins as a supervisory employe, and we do not reach the question of whether she is also excludable as a managerial employe.

County Tax Lister

The County argues that the County Tax Lister, Lois Nyman, should be excluded from the bargaining unit based on managerial and supervisory exceptions. The County argues that Nyman supervises office procedure and formulates, determines and implements the policy of the County Real Property Listing office. It argues that Nyman clearly has authority to commit the County's resources by virtue of her budgetary responsibilities and her authority to allocate funds for programs with that budget. It points to Nyman's attendance at County department head meetings as additional evidence of managerial status. The County also argues that Nyman's supervision of her assistant warrants her exclusion as supervisory.

The Union argues that Nyman is neither managerial or supervisory. The Union points to Nyman's testimony that she spends nearly all of her time listing taxes, and that the budget preparation that she does is more ministerial than discretionary. It adds that the County failed to introduce the Department's budget in support of the managerial claim. It also argues that Nyman lacks authority to transfer, lay off, recall, promote, reclassify, reward, hire or fire, and that, therefore, she is not supervisory.

The County Tax Lister for Door County, Lois Nyman, is responsible for tax listing in Door County. As head of this two-person department, Nyman prepares the listing budget, attends County department head meetings and contracts with third parties for the County monumentation program.

It is true that Nyman's roles in policy formulation, determination and implementation and in budget creation are not intensively time consuming. Nevertheless, as with the Microfilm Coordinator, when those roles and her independence from supervision and participation in management-only meetings are considered together, we are persuaded that they render Nyman's interests at variance with those of other employes and more closely aligned with management.

Because we have therefore determined that Lois Nyman is a managerial employe, we do not reach the issue of her alleged supervisor status.

Claimed Separate Status of Unified Board

The County argues that the Unified Board is a separate employer from the County, such that the positions of Confidential Secretary, Agency Bookkeeper - Management Information Specialist and Insurance - Billing Clerk for the Unified Board must be excluded from the instant unit of Door County employes. The County also argues that, even if Door County is the employer of these positions, that the Secretary must be excluded as confidential. In support of its position, the County argues that the County Board has no control or authority over the Unified Board's employes, that Unified Board has its own budget from which it pays the employes' salaries, that the Unified Board employes report directly to the Unified Board, and that the Unified Board determines its own policies including personnel policies. As for the confidential secretary, the County argues that she must be excluded because she types all correspondence typed by Theodore Bauch, and therefore is privy to sensitive labor relations information.

The Union argues that the County is the employer of the secretary, insurance/billing clerk and agency bookkeeper/management information specialist, rather than the Unified Board. It cites the inclusion of the Unified Board in the Commission's Certification of Representatives in Door County, Dec. No. 24016 (WERC, 11/86) support for its assertion that the County is the employer here. It argues that the County sets personnel policies to which the Unified Board subscribes and that the County Board of supervisors has majority representation on the Unified Board, therefore, the County and not the Unified Board is the true employer of these three positions. The Union also argues that Shawn Wiesner, the Secretary for the Unified Board has had no access to the employer's strategy in collective bargaining and grievance handling, and therefore cannot be excluded as confidential.

In determining whether an employer is separate from another employer, the Commission has considered several factors, including: the source and control of revenues and budget; separation of the personnel function; involvement of the parent municipality in the affairs of the other employing entity; and the "critical areas" of the locus of decision-making as to the wages, hours and working conditions of the employes, and locus of authority to hire and fire employes. 5/

The record indicates that the Unified Board and not the County is the locus of decision-making as to the wages, hours and working conditions of the Unified Board employes. Although the Unified Board receives much of its funding from the County, and although there is some overlap between the Unified Board membership and that of the County Board, it appears that the Unified Board exercises the primary control over the Unified Board employes' wages, hours and conditions of employment. While the Unified Board has historically chosen to base its wage, hour and working condition policies on those of the County, the County does not directly control the wages, hours and working conditions of the Unified Board employes, and the historical parallelism of the wages, hours and working conditions is an insufficient basis upon which to conclude that the County is the employer of the Unified Board employes. The record also indicates that the locus

5/ Sheboygan County (Unified Board), Dec. No. 23031-A (WERC, 4/86). See also, CESA #14, Dec. No. 17235 (WERC, 8/79); City of Waukesha (Street and Parks Department), Dec. No. 21034 (WERC, 10/83); City of Superior (Public Library), Dec. No. 23318-A (WERC, 2/86); City of Cudahy, Dec. No. 21887 (WERC, 8/84).

of personnel decisions, including hiring and firing, is with the Unified Board. Accordingly, we conclude that the Unified Board is a separate employer from the County, and that its employes are therefore properly to be excluded from the instant County unit. We have also ordered that the Certification of Representatives be amended to delete the express inclusion of "Unified Board" personnel.

Dated at Madison, Wisconsin this 17th day of March, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Kempe
A. Henry Kempe, Commissioner