

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION**

Involving Certain Employees of
CITY OF RHINELANDER

Case 41
No. 51465
ME(u/c)-720

Decision No. 24518-C

Appearances:

Mr. Steven J. Urso, Executive Assistant, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

Attorney Philip I. Parkinson, City Attorney, 135 South Stevens Street, Rhinelander, Wisconsin 54501, appearing on behalf of the City of Rhinelander.

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

On October 23, 2000, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing bargaining unit of City of Rhinelander employees by including the position of Deputy Clerk/Treasurer held by Val Foley. The City opposed the petition because it believes Foley is a confidential employee.

Hearing was conducted on May 15, 2001, in Rhinelander, Wisconsin, by Examiner Steve Morrison, a member of the Commission's staff. The Examiner subsequently advised the parties that he believed the record created on May 15, 2001, was inadequate. A supplemental hearing was conducted by the Examiner in Rhinelander on May 7, 2002.

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The parties orally argued their respective positions.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein the Association, is a labor organization with its offices at 340 Coyier Lane, Madison, Wisconsin 53713.

2. The City of Rhinelander, herein the City, is a municipal employer with offices at 135 South Stevens Street, P.O. Box 658, Rhinelander, Wisconsin 54501-0658. The City has a collective bargaining relationship with four different bargaining units of its employees.

Aside from the disputed Deputy Clerk/Treasurer, the City has three confidential clerical positions: the City Attorney's secretary, a Police Department secretary and Deputy Clerk/Treasurer Rickstad.

3. At all times material herein the Association has been the exclusive bargaining representative for a unit described in the parties' 1998-1999 collective bargaining agreement as:

. . . all regular full-time and regular part-time employees of the City employed in the City Hall and the Police Department. Excluded from this bargaining unit are elected officials, confidential, managerial and supervisory employees, law enforcement officers and non-clerical employees of the following departments: Fire Department, Public Works, Sewer and Water Construction, Water and Waste Treatment Plant, Cemetery and Parks and Recreation.

4. Prior to October, 2000, the City employed a full-time Clerk/Treasurer, (Deborah Breivogel), and two Deputy Clerk/Treasurers, one of whom was full-time (Rickstad) and the other part-time. In an effort to reduce the workload of existing employees, the City concluded that the part-time Deputy Clerk/Treasurer position should become a full-time position. In October, 2000, Val Foley was hired to fill the position.

The City Clerk/Treasurer and the two Deputy Clerk/Treasurers share a small office area. The City Clerk/Treasurer has a private office.

The job descriptions for each Deputy Clerk/Treasurer position were drafted by the Clerk/Treasurer shortly before Foley's hire. They are identical and read as follows:

JOB DESCRIPTION
DEPUTY CLERK/TREASURER

BASIC FUNCTION

This is a confidential mid-management position that is responsible for assisting the organization, direction and coordination of all activities of the Clerk/Treasurer's Office to include administration of voter registration, issuing municipal licenses, processing city payrolls, maintenance of all official City records, maintenance of automated cash receipting and administration of computer network. Acts in behalf of the City Clerk/Treasurer in his/her absence.

SUPERVISION RECEIVED

Works under the general supervision of the City Clerk/Treasurer

ESSENTIAL DUTIES AND RESPONSIBILITIES

May attend, record and supervise the transcription and publication of Common Council proceedings.

Refers all Common Council actions to standing committees, boards, commissions, and City Department Heads

Maintain automated cash receipting system, assisting in the collection of all monies due the City and collection of delinquent accounts, as well as, bank deposits

Receives and processes claims against the City

Prepare, issue and maintain City licenses: liquor, cigarette, arcade, bartender, etc

Prepare payroll and payroll data for processing; post and maintain information and changes; process and deposit authorized deductions; process authorized payroll changes; audit payroll register for accuracy

Insure timely deposits of Federal, State, and FICA taxes, etc.

Maintain employee records and administer City fringe benefit programs

Administer Novell computer network including daily backup and program updates

Administers all elections and system configuration for computerized election machines

Assists in the preparation, distribution and collection of City tax bills

Maintain fixed asset records

Files ordinances and resolutions of the Council and oversees the codification of ordinances into the municipal code

Provides leadership and direction in the performance of department responsibilities; gathers, interprets, and prepares data for studies, and reports; works with other departments and agencies as needed.

Assures that assigned areas of responsibility are performed within budget; performs cost control

Daily office work, correspondence and filing

Attend, transcribe, post, distribute, send meeting notices, distribute, and file agendas and minutes from Committees and Boards

Operate and maintain the Parking Meter System

Assist City Clerk/Treasurer as needed

EDUCATION AND EXPERIENCE

Graduation from an accredited two (2) year college or vocational education degree with major course work in business management, accounting, or a closely related field or

Two (2) years of related experience; or

Any equivalent combination of education and progressively responsible experience, with additional work experience substituting for the required education which provides the following knowledge, ability, and skills:

- Good knowledge of accounting/payroll systems, principles and practices and the ability to apply these to work situations
- Good knowledge of office practices, procedures, and of the operation of standard office equipment
- Ability to make effective decisions in accordance with policy, rules and regulations
- Ability to perform arithmetic computations accurately and rapidly, and write legibly
- Ability to follow moderately complex instructions and adhere to prescribed routines
- Ability to establish and maintain effective working relationships with fellow employees and the general public
- Ability to maintain administrative, payroll, and general office records and to prepare reports and answer questions from same
- Ability to schedule effective use of own time and to coordinate activities of others
- Skill in data entry and the ability to operate a keyboard proficiently at a speed of not less than fifty (50) words per minute
- Skill in the utilization of word processing equipment and associated software (Windows 95 or higher; Excel; Word; Access)
- Must be bondable
- Must have a valid state driver's license, or ability to obtain one
- Notary public certification within six months

Both Deputy Clerk/Treasurers are expected to perform all of the position's duties.

5. The office of the City Clerk/Treasurer performs most personnel functions for the City including payroll, the maintenance of the personnel records, and providing financial information (such as the cost of existing fringe benefits) to the City Attorney when he bargains labor agreements on behalf of the City.

The Deputy Clerk/Treasurers are responsible for the payroll function including processing employee time sheets which contain information such as hours worked and leave usage. If the data they are recording suggests the potential for employee misconduct, the Deputy/Clerk Treasurers so advise the City supervisors/managers who then decide how to proceed.

The Deputy Clerk Treasurers maintain the employee personnel files which are stored in the City Clerk/Treasurer's private office.

The Deputy Clerk/Treasurers attend City Council meetings for the purpose of taking and preparing minutes of open and closed portions of the meeting. During the closed portions of Council meetings, issues related to the collective bargaining and contract administration are

discussed. Taking and preparing minutes is not a substantial portion of the Deputy Clerk/Treasurers' overall workload. The City Attorney's confidential secretary and the Police Department's confidential secretary also have the skills to perform this duty.

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

CONCLUSIONS OF LAW

1. There is not sufficient confidential labor relations work performed by the Deputy Clerk/Treasurers to warrant the exclusion of both Deputy Clerk/Treasurers from the bargaining unit described in Finding of Fact 3 as confidential employees.

2. The confidential labor relations work performed by the Deputy Clerk/Treasurers can be performed by one Deputy Clerk/Treasurer without undue disruption of the City's operations.

3. Inasmuch as Deputy Clerk/Treasurer Mary Jo Rickstad is presently excluded from the bargaining unit as a confidential employee, Deputy Clerk/Treasurer Val Foley is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Deputy Clerk/Treasurer position currently held by Val Foley is included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of November, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

CITY OF RHINELANDER

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

POSITIONS OF THE PARTIES

The Association

The Association seeks to include the position of Deputy Clerk/Treasurer held by Val Foley into the bargaining unit set forth at Finding of Fact 3.

The Association contends that this is a newly created position which is virtually identical to the existing position of Deputy Clerk/Treasurer. It argues that the existing position has held confidential status by agreement of the parties for a long period of time and that the City is simply spreading the work in a way which excludes a person from the right to participate in the collective bargaining process. The Association argues that the City may not so spread the work and cites MARSHFIELD JOINT SCHOOL DISTRICT, DEC. NO. 14575-A (WERC, 7/76) in support.

The Association argues that the Commission must strike a balance between the amount of confidential work to be performed and the number of employees available to perform that work and that we must consider the degree of disruption which could be caused to the employer's operation if the confidential work had to be reassigned. It argues that the majority of the duties argued by the City to be confidential, to wit, access to payroll records and personnel files, and the ability to overhear conversations in the office, are not confidential at all and cites RICHLAND CENTER, DEC. NO. 17950-A (WERC 2/96) in support of this argument.

The Association takes the position that the only real confidential duty performed by the incumbent is the taking of minutes at one closed session of the City Council which lasted for about 45 minutes. Taking those minutes, in addition to the time it takes for Foley to type the minutes in final form, is work that could easily be reassigned to one of the other confidential employees available for confidential work assignments with little or no disruption to the operations of the employer. The Association admits that it is possible that in the future there could be further confidential work to be performed but submits that this work could also be absorbed by the other confidential employees.

The City

The City argues that these two Deputy Clerk/Treasurer positions are identical and both should be excluded from the unit represented by the Association. It argues that the City

created the position because the Clerk/Treasurer's office is very busy and the extra person was needed to share the duties of the office with the then existing Deputy Clerk/Treasurer and to take some of the workload from the Clerk/Treasurer.

The City explains that the City Clerk's office is the personnel office and the payroll office for the entire City of Rhineland. Considering the regular City Hall employees, public works employees, police, a full-time fire department, a water/wastewater utility, a municipal golf course and the operations for which it has a joint responsibility with the County (the airport, the library and the animal shelter), the payroll function alone is formidable and hence the need for the additional position.

The City points out that the confidential secretary for the City Attorney has, during the three years prior to the creation of the new position, worked an average of 100 hours per year of overtime just taking the minutes of City Council meetings. This financial burden also justifies the new position, according to the City. The City maintains that the "transference of (the job of taking the minutes of) these City Council meetings with their corresponding confidential meetings that occur periodically" was a transfer of responsibilities in an attempt to use assets more efficiently and not an attempt to spread the duties over a number of people to exclude them from membership in the bargaining unit.

The City emphasizes that payroll is a demanding activity in the Clerk/Treasurer's office and that the Clerk/Treasurer has worked to the point of exhaustion in the years prior to the hiring of the incumbent and has even given back vacation so that the payroll can be completed on time. Consequently, it is evident, according to the City, that the inclusion of payroll duties in the job description of the incumbent was not done for the purposes of bargaining unit exclusion but to relieve pressure from the Clerk/Treasurer.

The City also urges that we find the new position of Deputy Clerk/Treasurer to be confidential because of the close proximity to the Clerk's office. Because of this close proximity, the Deputy "will know every time the Attorney's office asks for dollar costs" on the payroll and for "fringe benefits in preparation of a labor management agreement." Further, the Deputy will know when a union member has been disciplined because of his/her knowledge of payroll and because of his/her access to personnel files.

DISCUSSION

Section 111.70(1)(i), Stats., defines a municipal employee in pertinent part as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or **confidential**, managerial or executive employee. (Emphasis added.)

The statutory term “confidential . . . employee” is not statutorily defined. With judicial approval (See MINERAL POINT UNIFIED SCHOOL DISTRICT v. WERC, 251 WIS.2D 325 (CT. APP. 2002)), we have defined a confidential employee as one having sufficient 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 grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. 1/

1/ *DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).*

While a *de minimis* exposure to confidential labor relations matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 2/ we have also sought to protect an employer’s right to conduct its labor relations through employees whose interests are aligned with those of management. 3/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 4/ and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption of the employer’s organization. 5/ In reviewing an allegation of confidential status, the Commission is mindful of the need to balance the statutory right of employees to engage in concerted activity with the right of employers to conduct labor relations through employees whose interests are aligned with management. 6/ In striking this balance, we look to, among other things, the amount of confidential work, and the degree of disruption that would be caused to the employer’s operation if confidential work is reassigned. 7/

2/ *BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87).*

3/ *CESA AGENCY NO. 9, DEC. NO. 23863, (WERC, 12/86).*

4/ *TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85).*

5/ *HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88).*

6/ *CITY OF SEYMOUR, DEC. NO. 28112 (WERC, 7/94).*

7/ *CITY OF SEYMOUR, SUPRA.; CITY OF GREENFIELD, DEC. NO. 26423 (WERC, 4/90).*

We begin by identifying the confidential labor relations work performed by the two Deputy Clerk/Treasurers.

The City correctly argues that when they take the minutes of closed portions of City Council meetings during which the City discusses its strategy in collective bargaining and contract administration or disciplinary action the City may take against a union-represented employee, the Deputy Clerk/Treasurers are exposed to confidential labor relations information.

The City is also correct that when assembling information for the City's use in collective bargaining, the Deputy Clerk/Treasurers perform confidential labor relations work. As argued by the City, while the raw data itself is not confidential because a union has access to same, knowledge as to what the types of information the City is assembling can expose clerical employees to the employer's bargaining strategy. *MOSINEE SCHOOL DISTRICT, DEC. No. 20479-F (WERC, 5/02)*.

The City points to the performance of payroll duties/personnel file maintenance as also exposing the Deputy Clerk/Treasurers to confidential labor relations information. We agree to the extent that the two employees are to look for and report to the City supervisors/managers employee payroll data that reflects potential employee misconduct. However, to the extent the City relies on the payroll/personnel file exposure of the Deputy Clerk/Treasurers to personal information about employees, we disagree. Such information is not "confidential" in the labor relations context because it either does not relate to labor relations or, in the case of matters such as records of disciplinary action, is information to which a union has or is entitled to have access.

Having identified the confidential labor relations work performed by the two Deputy Clerk/Treasurers, we turn to the question of whether the amount of such work, the interchangeability of the two positions or physical setting in which they work warrant exclusion of both individuals as confidential employees.

The record establishes that the confidential work related to closed City Council meetings and assembling data for bargaining is not particularly time consuming. Thus, in terms of the time taken to perform these duties, they could be performed by one of the two Deputy Clerk/Treasurers. While such a division of responsibilities would impact on the City's interest in having the two positions be "interchangeable," we are satisfied that such an allocation of responsibilities would not unduly disrupt the City's operations. This is particularly true where, as here, the confidential City Attorney's secretary and the confidential Police Department secretary are also available to perform such work.

We acknowledge that although the time spent monitoring payroll for potential employee misconduct is not in and of itself significant, the payroll function is time consuming and it may not be particularly feasible to segregate the leave monitoring from the overall payroll responsibility. However, even assuming the City allocated primary payroll responsibilities to

one Deputy and had the other Deputy perform the minute-taking and bargaining data functions, this allocation would not warrant exclusion of both Deputies from the unit as confidential employees. We have consistently held that performance of the monitoring function is not in and of itself sufficient to establish confidential status. MANITOWOC SCHOOLS, DEC. NO. 29771-C (WERC, 7/01).

The City contends that the exclusion of only one of the two Deputies is simply not feasible to the context of the small office space in which the Clerk/Treasurer and the two Deputies work. The City asserts that it is inevitable that the confidentiality of the labor relations work of the office would be compromised. We disagree. While our decision may require that more care be taken as to where and how loudly confidential labor relations information is discussed or as to who has access to the files where minutes of closed Council meetings are kept, such changes fall far short of the unduly disrupting the City's operations. LAFAYETTE COUNTY, DEC. NO. 29333 (WERC, 3/98).

In closing, we acknowledge that the City indicates it plans to use the Deputy Clerk/Treasurers to perform the confidential labor relations work of determining the cost of proposals the City may make during collective bargaining. Should the City find it necessary to pursue that plan, based on the current record, we find no reason why such duties could not be assigned to the confidential Deputy Clerk/Treasurer.

Given all of the foregoing, we conclude that the Deputy Clerk/Treasurer Foley is not a confidential employee.

Dated at Madison, Wisconsin, this 7th day of November, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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