

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
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WISCONSIN COUNCIL 40,	:	Case 5
AFSCME, AFL-CIO	:	No. 41770 ME-2861
	:	Decision No. 26170
Involving Certain Employees of	:	
	:	
VILLAGE OF SAUKVILLE	:	
	:	

Appearances:

Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1207 Main Street, Sheboygan, WI 53081, appearing on behalf of the Union.

Lindner and Marsack, S.C., Attorneys at Law, by Mr. James S. Clay, 411 East Wisconsin Avenue, Milwaukee, WI 53202, appearing on behalf of the Village.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

On May 4, 1989, Wisconsin Council 40, AFSCME, AFL-CIO, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, in a claimed appropriate bargaining unit described as "all regular full time and regular part time employees of the employer excluding supervisory, managerial, and confidential employees." As the parties could not agree on the employment status of certain positions, hearing was held on May 30, 1989, in Saukville, Wisconsin, before Examiner Stuart Levitan, a member of the Commission's staff. A stenographic record was prepared by June 7, and briefs were submitted by July 24, 1989. The record remained open until August 11, 1989, to receive reply briefs; none were filed. The Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereafter the Union, is a labor organization with offices at 1207 Main Street, Sheboygan, Wisconsin 53081.
2. The Village of Saukville, hereafter the Village, is a municipal employer with offices at 639 East Green Bay Avenue, Saukville, Wisconsin 53080.
3. The Union seeks an election for the purposes of determining whether a majority of affected employees desire to be represented thereby, in a claimed appropriate bargaining unit described as "all regular full time and regular part time employees of the employer excluding supervisory, managerial, and confidential employees."
4. Randy Bukas is the incumbent Village Administrator, which position he has held since January, 1989. Pursuant to the position description published in the Village's Personnel Policy Manual, Bukas is the Chief Administrative Officer of the Village, responsible for overseeing the proper implementation of Board policy in all departments and for the direct supervision of all department heads and administrative personnel. Among other duties, the Administrator recommends to the Board action on hiring and firing,

has authority to take disciplinary actions directly, prepares the annual budget for submission to the Board, implements personnel policies and negotiates with the existing employe union. When Bukas assumed his position, negotiations were already underway with the only represented group of employes, the members of the Saukville Professional Police Association. In preparation for such negotiations, Bukas' predecessor had, in consultation with the Police Chief, submitted to the Village Board a series of proposals and alternatives, reflecting both initial and subsequent stages in the bargaining process. Although the Village Board retains legal counsel to assist in the negotiations, and holds the final authority to approve or reject a collective bargaining agreement, Bukas has assumed a leadership role in the continuing negotiations.

4. Debra Lee Matzen is the incumbent Administrative Assistant/Deputy Clerk for the Village, which position she has held since March 14, 1989. In the absence of the Administrator, or up on the Administrator's direction, this position performs the statutory duties of a Municipal Clerk, but does not serve as Deputy Administrator. Pursuant to the published position description, and under the direct supervision of the Administrator, examples of the work of Matzen's position include:

Telephone and counter reception duties, typing of all correspondence and forms per direction of Village Administrator, file and maintains records, issue licenses per the direction of Village Administrator, reconcile all checking accounts, provide radio dispatch to D.P.W., type inspection notices for Fire Department, accounts payable, personnel file maintenance and such other duties as may be assigned by the Village Administrator, types and transcribes all minutes of Village meetings, reconciles checking accounts, types inspection notices.

Matzen's duties include typing of confidential labor relations matters at the request of the Administrator. Matzen is paid an annual salary of \$14,025.

5. Pamela C. Pflughoeft is the incumbent Village Treasurer, employed pursuant to an individual contract for calendar year 1989. Pflughoeft is paid an annually gross salary of \$17,473, plus certain fringe benefits as stated in her contract and/or the Village Personnel Policy Manual. According to the published position description, incorporated into her contract, "Examples of Work" for Pflughoeft's position include:

Payroll administration, sewer/water billings and adjustments, collection of all receipts due the Village, carry out investments per the direction of Administrator, record and maintain correct balances in all checking and savings accounts, handle all accounting functions and prepare monthly reports through use of data processing, maintain all records and vouchers for disbursements, issue building permits and maintain payment records, prepare all billings necessary including ambulance bills, and such other duties as may be assigned by the Village Administrator, including those of Deputy Clerk.

The funds which Pflughoeft invests come from property taxes, bond borrowing, licenses, permits, and fees. Based on long-standing Village policy (which predates both Bukas and Pflughoeft), Village investments are made only in financial institutions located within the Village; there are currently two banks and one savings and loan which qualify and in which such investments are made. As a general rule, investments are limited to certificates of deposit and money market funds. There has been at least one repurchase agreement for

securities, which investment decision was made by the prior Administrator. In making investments, Pflughoeft first determines how much money will be needed for bills coming due, which determination often involves discussions with Bukas. Given the amount of funds available, and the period of time before they are needed, Pflughoeft then obtains quotations from the financial institutions on their rate of return for the appropriate amount and duration. The Treasurer does not seek or require approval by either the Board or the Administrator on her investment decisions. It is expected that Pflughoeft will invest available funds in the financial institution which offers the highest applicable rate of return. On one occasion, when two institutions offered the same rate of return, Pflughoeft sought the advice of Bukas on how to proceed, and followed his suggestion on making the investment in the institution where certain Village collateral was already located. Bukas has never rescinded an investment decision made by Pflughoeft. The Treasurer performs the clerical function of physically collecting bills being paid at the Village offices. If taxes go unpaid, the Treasurer notifies the County to list the property on its delinquent tax role, a non-discretionary duty which she performs without prior approval. There is an existing, unwritten policy under which two unpaid water bills are allowed before service is cut. In administering the Village's accounts payable, Pflughoeft first obtains written authorization from the relevant department head for each bill; she then submits them to the Administrator, whose approval is essentially automatic. Pflughoeft then has checks typed for the Administrator's signature, after which they are returned to Pflughoeft, who then mails them on a schedule based on their due date and possible discounts for early payment, but within the unwritten village policy of payment within thirty (30) days. Pflughoeft also prepares for the Village Board a monthly report reflecting the total financial status of the Village, which report she reviews and discusses at meetings of the Village's Financial Committee. The Village retains an independent consultant to assist in the preparation of borrowing packages; this consultant does not advise the Village regarding investments. The budget for the Treasurer's Office consists of Pflughoeft's salary (apportioned, apparently at her determination, over three line items) and fringe benefits, and payments for the Board of Review and the Assessor. The payment for the Board of Review is set by statute and/or ordinance, and there is no evidence that either Pflughoeft or any predecessor was instrumental in negotiating the independent agreement with the Assessor. Pflughoeft does not have the authority to deviate from the budget as adopted by the Village Board.

7. Laurie Miske is the incumbent Secretary/Dispatcher for the Village Police Department. Pursuant to a recruiting announcement which the Village published, examples of work for this position are "Operation of police radio, answering telephones, filing reports, cross-referencing reports, typing reports and letters, data entry on computer system. Person will also receive and process fine monies paid at the Police Department. May have to run minor errands, or travel to County Court House." According to a recitation of duties presented by the incumbent to the Personnel Committee and offered as an employer exhibit, there are close to thirty (30) separate functions or duties, the last-listed of which is "Secretary to the Chief of Police and other officers of the Department." At all times material to this proceeding there has been, and continues to be, a collective bargaining unit of all regular full time and regular part time employes with the power of arrest, excluding supervisory, managerial, confidential and executive employes, represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division. There are currently four members of the bargaining unit, and three non-union employes -- the Chief, the Secretary/Dispatcher (who does not have the power of arrest), and a sergeant. Although Miske holds the only position designated as secretarial, she has never typed or otherwise worked on documents or materials related to the employer's strategy or positions in collective bargaining negotiations, contract administration, or other confidential labor relations matters.

8. The position of Administrative Assistant/Deputy Clerk has sufficient access to and participation in the confidential labor relations matters to render the incumbent therein a confidential employe.

9. The position of Treasurer does not have sufficient participation in the formulation, determination or implementation of management policy or sufficient independent control or authority over the allocation of Village financial resources to be deemed a managerial employe.

10. The position of Police Department Secretary/Dispatcher does not have sufficient access to or participation in confidential labor relations matters to render the incumbent therein a confidential employe.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Administrative Assistant/Deputy Clerk, Debra Lee Matzen, is a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and is thereby excluded from the proposed bargaining unit described in Conclusion of Law 4.

2. That the occupant of the position of Village Treasurer, Pamela Pflughoeft, is not a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and is thereby included in the proposed bargaining unit described in Conclusion of Law 4.

3. That the occupant of the position of Police Secretary/Dispatcher, Laurie Miske, is not a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and is thereby included in the proposed bargaining unit described in Conclusion of Law 4.

4. That a bargaining unit described as all regular full time and regular part-time employes of the Village of Saukville excluding supervisory, managerial, and confidential employes, and those employes with the power of arrest, constitutes an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

5. That a question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats. currently exists as to the municipal employes in the proposed collective bargaining unit set forth in Conclusion of Law 4.

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 employes of the Village of Saukville, excluding supervisory, managerial, confidential employes and those employes with the power of arrest, who were employed by the Village of Saukville on September 21, 1989, except such employes as may prior to the election quit or be discharged for cause, for the purpose of determining whether a majority of said employes desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, for purposes of collective bargaining with the Village of Saukville concerning wages, hours

and conditions of employment, or whether such employes desire not to be represented by said labor organization.

Given under our hands and seal at the City of Madison Wisconsin this 1st day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker
William K. Strycker, Commissioner

VILLAGE OF SAUKVILLE

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

POSITION OF THE PARTIES

The Union:

In support of its position, the Union asserts and avers as follows:

Laurie Miske, the Police Department Secretary/Dispatcher, is not a confidential employe. In her two years with the Village, she has not performed any duties related to labor relations. A non-union sergeant is available to do any typing related to labor relations.

Nor is Debra Matzen, the deputy clerk, a confidential employe. She neither attends closed meetings nor has access to personnel and negotiations files. If the typing of material related to labor relations is required, it can be performed by the non-union sergeant, a temporary employe, or the Village's law firm. The Village failed to produce a single confidential labor relations document typed by either Matzen or her predecessor.

Pam Pflughoeft, the Village Treasurer, is essentially a clerical and/or ministerial employe, not managerial. She is a "bean counter" with little independence, constrained by ordinance and pre-existing policy on how to pay bills and make investments. She does not deal with the formulation of policy, nor does she have authority to commit resources to affect the Village's operations.

Moreover, all three employes have a pay scale that does not reflect any special remuneration, and fringe benefits (e.g., the lack of term insurance) that are different from other management personnel.

The three subject positions should be included in the voting group.

The Village:

In support of its position, the Village avers and asserts as follows:

The position of Village Treasurer is managerial, in that the position participates in the formulation, determination and implementation of management policy and possesses effective authority to commit the employer's resources.

That the Treasurer allocates the Village's resources in a manner which requires the exercise of non-ministerial, independent judgment is shown by reference to the functions of accounts receivable and payable and the investment of Village funds.

Regarding investments, testimony established that the participation and direction by the Administrator is de minimis and/or nonexistent. The Administrator has no knowledge of the details concerning the decision on which investment institutions to use, the Administrator's approval is not required to make an investment determination, and the Administrator cannot rescind an investment decision which has been made. And the one time when there was cause for consultation between the Treasurer and Administrator (because two institutions were both offering the same rate), the Treasurer indicated she could have made the decision without asking the Administrator.

Any implication that investment decisions are ministerial because the

Treasurer engages in the sound business practice of getting the best return on available money is ridiculous and should not be given any credence by the Commission.

The Treasurer also exercises a great deal of independent judgment in the area of accounts payable, by determining what bills go on the list for payment. This clearly distinguishes this case from that in City of Whitewater, Dec. No. 24354 (WERC, 3/87), where the City Treasurer operated under oversight not here present.

Regarding the Administrative Assistant/Deputy Clerk, the record is admittedly scant due to the short tenure of both the Administrator and the incumbent Assistant. However, testimony makes it clear that the position has been, and will continue to be, instrumental in assisting the Administrator in the discharge of his duties relating to collective bargaining and contract administration. That is, while the Assistant has not/will not participate directly in closed strategy or negotiation sessions, the Assistant has been/will continue to be responsible for typing and otherwise preparing reports and other material reflecting discussion and action done in closed session. Inclusion of this position in the proposed bargaining unit would unjustly deprive the Village of the confidential clerical and/or administrative help necessary to conduct its business.

Similarly, the Secretary/Dispatcher in the Police Department is appropriately confidential, in that this position assists the Chief in his role as a member of the bargaining team and adjudicator of Step 2 grievances. The typing of preliminary bargaining proposals and grievance responses, clearly within the job function of the Secretary/Dispatcher, are responsibilities the Administrator assumes would be borne by this position. Thus, this position has sufficient access to and involvement in confidential information related to labor relations matters to warrant exclusion from the proposed unit.

DISCUSSION

1. Administrative Assistant/Deputy Clerk

It is well-settled that, for an employe to be held confidential, such employe must have access to, knowledge of, or participation in confidential matters relating to labor relations; for information to be confidential, it must (A), deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and 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/

While a de minimis exposure to confidential materials is generally insufficient grounds for exclusion of an employe from a bargaining unit, 2/ we have also sought to protect an employer's right to conduct its labor relations through employes 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 employe 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 employe has

1/ Dane County, Dec. No. 22976-C (WERC, 9/88)

2/ Boulder Junction Joint School District, Dec. No. 24982 (WERC, 11/87)

3/ Cooperative Educational Service Agency No. 9, Dec. No. 23863-A (WERC, 12/86)

4/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85)

significant labor relations responsibility, the clerical employe assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, unless the confidential work can be assigned to another employe without undue disruption of the employer's organization. 5/

Clearly, the vast majority of the duties of this position are unrelated to labor relations, involving as they do such tasks as telephone and counter reception, the issuance of licenses, the typing of inspection notices, radio dispatch for public works, and so on. However, there is no doubt that the Village Administrator has significant bargaining responsibilities. And, while the subject position has duties beyond the purely clerical, the position does function, in part, as secretary to the Administrator. In particular, the Administrative Assistant/Deputy Clerk is the employe the Village has chosen to type drafts of possible bargaining proposals and all other confidential labor relations communications written by the Administrator. Thus, while such duties do not constitute a large part of the Assistant's responsibilities, the fact that her position is the only one which will henceforth be available to the Village for this purpose justifies exclusion of this position from the bargaining unit. 6/

2. Police Department Secretary/Dispatcher

We have already noted the characteristics of a confidential employe, above. Using the same analysis under which we found the Deputy Clerk to be confidential, we find the Police Department Secretary/Dispatcher to be a municipal employe.

In each case, the argument advanced by the Village was essentially the same, namely that this employe is the only one available to assist a ranking management official in the discharge of duties related to confidential labor relations. There is a difference, however, in the amount of corroborative evidence available and offered at hearing.

Neither the incumbent Administrator nor Deputy Clerk were Village employes when the current collective bargaining with the Police Department union commenced; thus, conclusions about the Deputy Clerk's role in this, or any other future bargaining relationship, is largely prospective and presumptive. The Secretary/Dispatcher, however, has been employed by the Village throughout the bargaining process, and she unequivocally denied any role in the preparation of confidential labor relations materials. In contrast, the Village's evidence consisted solely of the Administrator testifying to his "assumption" that the secretary/dispatcher was involved in the preparation of confidential material.

Moreover, the availability of two other non-union positions -- the sergeant and the Deputy Clerk -- minimize the need for exclusion of this position. That is, while we would not expect the sergeant to assist in the bargaining with the proposed AFSCME unit, we find the availability of the Deputy Clerk, and, if necessary, the Sergeant sufficient to handle tasks related to bargaining and contract administration with the existing WPPA unit.

5/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88)

6/ The justification for at least one confidential employe to assist the Administrator in his personnel-related duties is strengthened further by the obvious fact that a successful organizing drive by the Union would foretell a significant increase in the confidential duties needing to be discharged. Given the potential doubling of the represented workforce, and the pressing needs for law enforcement, we find unreasonable the Union's suggestion that the Police Sergeant be utilized to perform Village-wide confidential duties.

3. Village Treasurer

The Municipal Employment Relations Act (MERA) expressly excludes from the definition of "municipal employe" those employes who are managerial. But because there is no clear legislative mandate as to the appropriate definition of such employes, it has fallen to the Commission to provide such definition. In a series of cases we have done so, finding that managerial employes are excluded from MERA coverage "because their relationship to management imbues them with interests significantly at variance with those of other employes," in that they "participate in the formulation, determination and implementation of management policy," and thus are "unique from their coworkers." We have also found that managerial status "may be related to a position's effective authority to commit the Employer's resources." This formulation was upheld by the Wisconsin Supreme Court as "consistent with the purpose of the Act." Milwaukee v. WERC, 71 Wis.2d 709, 715-717 (1976).

Thus, in order to find a position to be managerial, we must find either participation at a relatively high level of responsibility in the formulation, determination and implementation of management policy, or the effective authority to establish an original budget or to allocate funds for differing purposes from such a budget in a non-ministerial manner. 7/

There are two aspects to the Treasurer's duties which the Village contends bestow managerial status, namely decisions on investments and the treatment of accounts payable/receivable. Evaluating these contentions in light of both the documentary and testimonial evidence, we conclude that the incumbent's freedom to act with independent judgment and in a non-ministerial capacity is significantly limited by preexisting Village policies and/or ordinances.

We start, as does the employment relationship, with the individual employment contract between the Village and Pflughoeft. That contract, incorporating elements of the Personnel Policies manual revised by the Village on December 16, 1989, includes the following as General Statement of Duties:

The Village Treasurer shall function under the direct supervision of the Village Administrator. This person shall perform all duties of the Municipal Treasurer as prescribed by Wisconsin Statutes. This is a permanent full time position. (emphasis added)

The policies manual also includes the following as illustrative Examples of Work:

Payroll administration, sewer/water billings and adjustments, collection of all receipts due the Village, carry out investments per the direction of the Administrator, record and maintain correct balances in all checking and savings accounts, handle all accounting functions and prepare monthly reports through use of data processing, maintain all records and vouchers for disbursements, issue building permits and maintain payment records, prepare all billings necessary including ambulance bills, and other such duties as may be assigned by the Village Administrator, including those of Deputy Clerk. (emphasis added).

Thus, on the basis of a document unilaterally promulgated by the Village, there is prima facie reason to believe that the Treasurer does not set or

7/ City of Sparta (Police Department), Dec. No. 18799-A (WERC, 12/86)

determine investment policies herself, but rather that she carries out investments "per the direction of the Administrator." To persuade us to the contrary, it thus becomes necessary for the Village to offer sufficient testimonial evidence of rebuttal. This it has failed to do; indeed, the Administrator affirmatively identified the policy manual as containing "the job descriptions of the various employment classifications." For her part, Pflughoeft disagreed with minor aspects of the list (indicating that, contrary to the description, she neither issued building permits nor ambulance billings), but otherwise indicated it was "basically" accurate.

Further testimony strengthens our belief that the Treasurer is a municipal employe. Regarding investment decisions, it is apparent that the Treasurer has had little, if any, input into the formulation and determination of management policy. It is established Village policy to invest only with financial institutions having branch offices within the Village; it is established Village policy only to invest in certificates of deposit and money market funds, and to avoid the stock market. The Village offered no evidence that either the incumbent or any predecessor was instrumental in the formulation and/or development of these policies. Further, the policy of investing where the rate of return is the highest is simply common business sense, and does not rise to the level of management policy.

It is true that the Administrator neither passes on investment decisions before they are made, nor has the power to rescind them afterwards. The Village argues that this lack of involvement by the Administrator necessarily entails the conclusion that it is the Treasurer who must be exercising managerial authority. This conclusion, however, presupposes that there is on-going managerial authority which must be exercised; given the definite, established and preexisting parameters within which investment decisions are made, we find that not to be the case.

It is also significant to note that on the one occasion when two competing financial institutions offered the same rate of return, the Treasurer did consult with the Administrator, seeking -- and following -- his suggestion on how to proceed. While it is true that it is the Treasurer who makes the initial determination of the length of an investment (a decision which impacts on the return rates offered), such a decision is reflective of projected cash flow (a determination which often necessitates discussion with the Administrator), and thus is more ministerial than policy-based.

Thus, as to the matter of investment decisions, we find that the Treasurer does not participate in a significant degree in the formulation, determination and implementation of management policy so as to warrant being deemed a managerial employe.

Regarding her activities in the realm of accounts payable and receivable, we reach the same conclusion. Treatment of accounts receivable -- notification to Ozaukee County of unpaid property taxes, and the handling of unpaid water bills are non-discretionary, ministerial duties set either by ordinance or existing policy. Similarly, the handling of accounts payable is regulated by either policy (payment within thirty days), established procedure (authorization by the appropriate department head before submission to the Administrator for his approval, followed by preparation of checks and their signing) or ordinance (payment off bills rather than statements). As the Village notes, the Treasurer has the discretion to hold a check for a day or two between its execution and its mailing. However, such decision, as well as the initial decision as to which bills to submit at which time, are again constrained both by external preconditions and basic business practices. Thus, while the Treasurer does enjoy a modicum of leeway in preparing the list of accounts payable for approval and payment, apparently giving this position slightly more independent responsibility than that held by the Treasurer we found to be a municipal employe in City of Whitewater, Dec. No. 24354 (WERC,

3/87), we find that Pflughoeft neither participates sufficiently in the formulation, development or, implementation of management policy, nor has sufficient authority to commit the Village's resources so as to warrant a finding of managerial status.

Finally, given that major elements of her office budget are set by either local ordinance or state statute, and given that the position lacks authority to alter the Board-approved budget, it is apparent that the Treasurer does not have sufficient authority to commit the Village's resources in a budgetary sense so as to be deemed a managerial employee.

Dated at Madison, Wisconsin this 21st day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner