

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
TEAMSTERS LOCAL UNION NO. 579 :  
Involving Certain Employees of : Case 30  
VILLAGE OF EAST TROY : No. 42513 ME-2921  
Decision No. 26553  
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Appearances:  
Mr. William S. Kowalski, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson, Room 600, P.O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of the Union.  
Mr. Roger E. Walsh, Davis & Kuelthau, S.C., Attorneys at Law, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-3101, appearing on behalf of the Village.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On July 10, 1989, Teamsters Local Union No. 579, hereafter the Union, filed with the Wisconsin Employment Relations Commission a petition for a representation election involving certain employees of the Village of East Troy, hereafter the Village. As the Union and the Village could not agree as to whether the position of Deputy Clerk should be included in the proposed unit, hearing was held in East Troy on September 19, 1989, before Examiner Stuart Levitan, a member of the Commission's staff. A stenographic transcript of the hearing was prepared and delivered to the parties by October 7, 1989. The Village filed a brief on November 6, 1989. On November 20, 1989, the Examiner requested that the parties supplement the hearing record by answering certain questions. After a further exchange of correspondence among the parties, the Examiner scheduled another hearing for February 23, 1990. At that time, the Village presented testimony and argument on its previously-submitted Motion to Postpone the Proceedings, which Motion the Examiner denied. A stenographic transcript of the hearing was prepared and delivered to the parties by March 21, 1990. The Union and the Village filed briefs on April 18 and April 27, 1990, respectively, and on June 6, 1990 parties advised the Commission that they would not file reply briefs in the matter. The Commission having reviewed the matter and being fully advised in the premises, now makes and issues the following

FINDINGS OF FACT

1. Teamsters Local Union No. 579, hereafter the Union, is a labor organization with offices at 2214 Center Avenue, Janesville, Wisconsin.
2. The Village of East Troy, hereafter the Village, is a municipal employer with offices at 2106 Church Street, East Troy, Wisconsin.
3. On July 10, 1989, the Union filed a petition for an election in a bargaining unit consisting of all clerical employees of the Village excluding managerial and supervisory employees. The clerical staff of the Village consists of four positions: Lois Clark - Deputy Clerk/Treasurer; Joan Esche - Clerk Assistant; Ruth Kelling - Clerk Assistant (part-time); and, Constance Sala - Administrative Assistant to the Public Works Director. The Village, contrary to the Union, contends that the Deputy Clerk/Treasurer position is occupied by a confidential employee and should be excluded from the bargaining unit. If said position were excluded, it would be the only clerical position so excluded.
4. The Village currently has three separate bargaining units consisting of (1) four full-time and five auxiliary law enforcement employees in the Police Department, (2) five police dispatchers, and (3) seven full-time employees in the Department of Public Works. In addition to the four clerical positions at issue herein, the Village employs the following non-bargaining unit positions; the Police Chief, the Police Lieutenant, the Public Works Director, the Village Engineer, a part-time Building Inspector, and the Clerk/Treasurer.
5. At the present time the Village has not adopted a Village Manager form of administration. In February 1990 the Village Board failed to approve a resolution which would have both created a position of a Village Manager and eliminated the position of Clerk/Treasurer. The Clerk/Treasurer continues to handle many of the duties generally associated with a Village Manager, including personnel administration and labor relations. Although the Village employs law firms to handle contract negotiations with its bargaining units, the Clerk/Treasurer is the main contact with the law firms, is a member of the Village's negotiating team, collects data and other information for use in developing initial proposals for review by the law firms, represents the

Village at the second step of the contractual grievance procedures, and is responsible for administration of the labor contracts.

6. Effective February 19, 1990 the incumbent Clerk/Treasurer, M. Chris Swartz, resigned. At that time Lois Clark, the incumbent Deputy Clerk/Treasurer, assumed some, but not all, of the Clerk/Treasurer's duties until a replacement for Swartz is hired. Clark does not plan to apply for the position of Clerk/Treasurer, but rather, will return to her Deputy position when a new Clerk/Treasurer is hired. In the past Swartz typed most of his own correspondence to the outside attorneys relating to confidential labor relations matters. However, the Village has installed a new computer system and Swartz planned to train the clerical employees to use the new system. Swartz intended to then transfer many of the clerical duties he was performing to the clerical employees, including having Clark assume the typing of all materials relating to labor relations matters. A revised job description incorporating the above changes for Clark's position has been approved by the Finance Committee of the Village Board, along with the revised descriptions for the other three clerical positions. The revised description for the Deputy Clerk/Treasurer's position adds the duties of: typing various labor relations matters, including bargaining proposals, correspondence between the Village and its labor attorneys and grievance responses; preparing cost estimates of contract proposals and grievance settlements; and attending some administrative meetings at which labor relations matters are discussed. The Deputy will continue to perform various payroll, bookkeeping and personnel functions.

7. The position of Deputy Clerk/Treasurer has sufficient access to and participation in confidential labor relations matters to render the incumbent therein a confidential employee.

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

#### CONCLUSIONS OF LAW

1. A bargaining unit consisting of all regular full-time and regular part-time clerical employees of the Village of East Troy, excluding confidential, supervisory and managerial employees constitutes an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. The occupant of the position of Deputy Clerk/Treasurer, currently Lois Clark, is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is excluded from the bargaining unit set forth in Conclusion of Law 1.

3. That a question concerning representation exists as to the municipal employees in the collective bargaining unit set forth in Conclusion of Law 1.

Based on 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 clerical employees of the Village of East Troy, excluding confidential, supervisory and managerial employees, who were employed by the Village of East Troy on July 16, 1990, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees, who vote in the election, desire to be represented by Teamsters Local Union No. 579, for purposes of collective bargaining with the Village of East Troy concerning wages, hours and conditions of employment.

Given under our hands and seal at the City of  
Madison, Wisconsin this 16th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

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A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

VILLAGE OF EAST TROY

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

The sole issue is the confidential status of the position of Deputy Clerk/Treasurer.

POSITION OF THE UNION:

At present, Clark does not perform any duties which are confidential. Her main responsibilities consist of payroll and bookkeeping functions. While Clark occasionally has compiled data for collective bargaining negotiations, she has not been present at meetings where bargaining proposals were discussed.

The Village's assertion that Clark will begin performing confidential duties in the near future is irrelevant to a determination of whether she currently is a confidential employee. The Commission has refused to exclude employees on the basis of future possible duties.

POSITION OF THE VILLAGE:

The Clerk/Treasurer is responsible for labor negotiations and contract administration for three bargaining units. The Village has no confidential employee excluded from any bargaining unit and is entitled to at least one confidential employee. The Village believes the Deputy Clerk/Treasurer is the logical position to perform confidential duties.

Due to the restructuring of the duties of its personnel, the addition of a new computer system and the increased workload of the Clerk/Treasurer, the Village needs a confidential employee. In conjunction with those changes, the Deputy/Clerk Treasurer will become responsible for researching and preparing financial and benefit information for contract negotiations, opening confidential mail, typing answers to grievances, typing drafts and proposals for negotiations, typing notes of meetings regarding personnel matters, and typing confidential correspondence to labor counsel regarding negotiations and other personnel related matters. Such duties mandate the exclusion of the Deputy Clerk/Treasurer as a confidential employee.

DISCUSSION:

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

The issue here is whether the Commission should exclude a position as confidential based on the future assignment of confidential job duties and responsibilities. Clearly, the Deputy Clerk/Treasurer does not now perform confidential duties. However, the Village has restructured the duties of its personnel and now the revised job description of the Deputy Clerk/Treasurer adds the duties of typing various labor relations matters, including bargaining proposals, correspondence between the Village and its labor attorneys and grievance responses; preparing cost estimates of contract proposals and grievance settlements; and attending some administrative meetings at which labor relations matters are discussed.

Normally the Commission will not exclude positions based on future job duty changes or assignments because of its speculative nature. Here, however, the Village currently has no position excluded as confidential and there is no reason to doubt the Village's claimed need for a confidential position (especially since it already has three represented collective bargaining units) or that confidential duties will in fact be assigned to the Deputy Clerk/Treasurer consistent with the revised job description of said position. Should the Village's assertion not materialize, the Union can file a unit clarification petition to seek inclusion of the Deputy Clerk/Treasurer. 2/

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1/ Village of Saukville, Dec. No. 26170 (WERC, 9/89).

2/ In a somewhat similar case, Town of Vernon, Dec. No. 24967 (WERC, 11/87), the Commission held as follows:

The parties' positions are predicated upon the assumption that the Town is entitled to designate one employee as confidential to meet its needs. 4/ Neither Beres or (sic) Gauger currently perform any significant amount of confidential duties. As we currently have no basis for doubting the Town's assertions that Beres will perform significant confidential duties if the Union

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wins the representation election, we are satisfied that Beres should be excluded from the unit as a confidential employee. Should Beres not be given significant confidential responsibilities, the Union can file a unit clarification petition to seek her inclusion in the unit. (Footnote omitted)

Further, while it may be that the Deputy Clerk/Treasurer will not spend a great deal of time performing confidential duties, we think the rationale expressed in the Village of Saukville case is applicable here. We stated:

While a de minimis exposure to confidential material is generally insufficient grounds for exclusion of an employe from a bargaining unit, 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. 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, and similarly, where a management employe has 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. 2/ (Footnote omitted)

Here, clearly the Clerk/Treasurer, a management employe that the Deputy Clerk/Treasurer reports to, has significant labor relations responsibility, and, like Saukville, there is no other confidential employe who could be assigned the confidential work.

Based on the above, we are satisfied that the Deputy Clerk/Treasurer position should be excluded from the unit as a confidential position.

Dated at Madison, Wisconsin this 16th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner