

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :   
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DRIVERS, WAREHOUSEMEN & DAIRY :   
EMPLOYEES UNION, LOCAL NO. 75, : Case 63  
: No. 45527 ME-3114  
Involving Certain Employes of : Decision No. 27106  
:   
CITY OF STURGEON BAY :   
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.,  
Attorneys at Law, by Ms. Marianne Goldstein Robbins, 1555 North  
River Center Drive, Suite 202, Milwaukee, WI 53212, on behalf of the  
Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Clifford B. Buelow,  
Suite 1400, 111 East Kilbourn Avenue, Milwaukee, WI 53202-3101,  
on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On March 27, 1991, Drivers, Warehousemen & Dairy Employees Union, Local No. 75 filed a petition, later amended on May 23, 1991, requesting that the Wisconsin Employment Relations Commission (WERC) conduct an election in a residual bargaining unit among certain unrepresented, non-professional and non-supervisory "support staff" employes of the City of Sturgeon Bay. Hearing was held on the petition by Sharon Gallagher Dobish, an Examiner on the Commission's staff, on May 31, 1991. A stenographic transcript of the proceedings was prepared and received by June 19, 1991. Post-hearing briefs were received by July 17, 1991 and thereafter exchanged by the Examiner. The Commission being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The City of Sturgeon Bay, herein the City, is a municipal employer with its principal offices located at 30 South Third Avenue, Sturgeon Bay, Wisconsin 54235.
2. The Drivers, Warehousemen & Dairy Employees Union, Local No. 75, herein the Union, is a labor organization with its principal offices located at 1546 Main Street, Green Bay, Wisconsin 54302.
3. On March 27, 1991, the Union filed a petition for an election among the "City of Sturgeon Bay support staff" including "Assessors/Building Inspectors, Deputy City Clerk/Treasurer, Assistant City Clerk/Treasurer, Street Department Secretary, Assistant Building Inspector/Plan Examiner, Police Department Secretary, Park & Recreation Department Secretary, Assessors/Inspection Department Secretary, Handyman/Park (sic) Attendant, Payroll Clerk." In its amended petition, filed on May 23, 1991, the Union stated it was seeking to represent "All Non-Represented, Non-Supervisory and Non-Professional employees of the City of Sturgeon Bay."
4. The City of Sturgeon Bay has had separate collective bargaining relationships with three different bargaining units for many years. The

Sturgeon Bay Professional Police Officer's Union, Local 1658, AFSCME, AFL-CIO has represented the City's law enforcement officers since its certification by the WERC on May 18, 1976 in the following bargaining unit:

All employes employed by the City of Sturgeon Bay in the Police Department, excluding the Chief, the Captain, Special Police and all other employes of the City of Sturgeon Bay, Dec. No. 14644 (WERC, 5/76).

Local 1658, Sturgeon Bay City Employees Union, AFSCME, AFL-CIO was certified by the WERC on September 27, 1967 as the exclusive collective bargaining representative for employes in the following bargaining unit:

All regular full-time and regular part-time employes of the City of Sturgeon Bay employed in the Department of Public Works, excluding elected officials, clerical employes, supervisors and professional employes, Dec. No. 8154 (WERC, 9/67).

The 1990-1992 collective bargaining agreement between the City and the City Employees Union describes the bargaining unit as follows:

All regular full-time and regular part-time employes in the Department of Public Works, and those regular full-time and regular part-time employes engaged in the maintenance of the parking meters of the City of Sturgeon Bay, and those regular full-time and regular part-time employes engaged in the operation and maintenance of the parks of the City of Sturgeon Bay, including therein those employes engaged in the operation and maintenance of the swimming pool of the City of Sturgeon Bay, excluding elected officials, clerical employes, supervisors and professional employes. . . .

The Sturgeon Bay Firefighters Association, Local 2682, IAFF, AFL-CIO has represented the City's firefighters since its certification by the WERC on May 22, 1979 in the following bargaining unit:

All full-time full paid employees of the Sturgeon Bay Fire Department in positions classified as Firefighters, Sergeant, Lieutenant, but specifically excluded herefrom the Chief and the Captain. Dec. No. 17029 (WERC, 5/79).

5. The Union seeks an election among the following unrepresented City employes:

Arthur Williamson	Meterman/City Handyman
Kathryn Schultz	Deputy City Clerk-Treasurer
Patti Jacobsen	Assistant City Clerk-Treasurer
Kelly Koontz	Payroll Clerk
Wayne Meyer	Deputy Assessor
Roger Strege	Building Inspector
Sandra Hogan	Secretary
Sandra Draper	Secretary
Joy Meyer	Secretary
Jenniece Hoiska	Police Assistant

The City generally argues that the residual unit is inappropriate because

creation of any additional unit of City employes constitutes undue fragmentation, particularly where a de facto residual unit already exists. Should the Commission conclude that a residual unit is appropriate, the City then asserts that:

1. Deputy City Clerk-Treasurer is a confidential or managerial employe who is therefore ineligible for unit inclusion.
2. Police Assistant should be included in the Police Department unit.
3. The Meterman/City Handyman should be included in the City Employees unit.

6. The currently effective description for the disputed Police Assistant position, currently occupied by Jenniece Hoiska, is as follows:

JOB OBJECTIVES (Purposes of the position):

To provide clerical and secretarial duties to the administration of the Police Department. To maintain all Department records keeping systems. To provide information and assistance to the general public, businesses and other governmental agencies which interface with the Department. To serve as the Department court liaison officer.

ESSENTIAL JOB FUNCTIONS (Functions essential to attaining job objectives):

Operate the Department's computer system and maintain computer files, answer telephones, take dictation, prepare and type correspondence and police incident reports, communicate orally and in writing to members of the general public, administer the Department's Traffic Violation and Registration Program, file records, receive and account for monies from parking violation payments, prepare payroll records and work schedules, prepare non-reportable accident reports, issue various permits, etc.

JOB STANDARDS (Minimum qualifications needed to perform essential job skills):

Excellent reading, verbal and written communication skills, ability to type 50 words per minute, ability to operate a variety of office machines (including typewriter, calculator, dictaphone, copy machine, etc.), background in the use of various computer software programs with general knowledge in data file creation, records keeping skills, math skills, excellent judgement, good physical and emotional health.

JOB LOCATION (Place(s) where work is performed):

Police Department offices located in the Door County Safety Building, Circuit Court of Door County, Door County District Attorney's Office and various other City and County offices.

EQUIPMENT (Machines, devices, tools, etc., used job performance):

Typewriter, dictaphone, calculator, computer and related hardware, telephone, etc.

In addition to the duties listed above, Hoiska occasionally reviews and signs criminal complaints in the absence of the Sergeant/Investigator or Captain of Police. She also serves as fingerprint technician. She has not received any of the State-mandated training required for certification as a law enforcement officer. Ms. Hoiska has been deputized by the Door County Sheriff and may possess powers of arrest incidental to such appointment. Ms. Hoiska's employment with the City does not include any grant of arrest powers by her employer. The Police Assistant position (then known as the Police Clerk) was included in the Police Officers' Association unit for an unknown time until 1982.

7. The currently effective position description for the "Meterman/City Handyman" occupied by Arthur Williamson, is as follows:

II. GENERAL DUTIES:

A. Inspect City owned office and meeting room facilities to determine maintenance and cleaning needs; perform those services determined to be required and arrange through the Purchasing Agent to obtain those beyond capability.

B. Inspect, clean and repair parking meters. Collect coins from meters and issue parking tickets.

III. DISTINGUISHING FEATURES:

A. Under the supervision of the City Administrator, employee has responsibility for maintaining City owned office and meeting room facilities at a suitable level of cleanliness and repair.

B. Under the direction of the Chief of Police, employee has sole responsibility for maintaining coin operated parking meters.

IV. EXAMPLES OF DUTIES:

A. Inspect City owned office and meeting room facilities on regular scheduled basis; clean and maintain same as required.

B. Submit requests to Purchasing Agent for required supplies, maintenance material or specialized service as required to maintain facilities in suitable state of repair and cleanliness.

C. Clean and properly maintain parking meters as required.

D. Collect coins from parking meters in operation on a scheduled basis; transfer money

collected to the City Clerk-Treasurer the same day as collected.

E. Issue citations (tickets) for observed parking violations.

F. Additional duties as assigned.

V. ESSENTIAL KNOWLEDGE, SKILLS AND ABILITIES:

A. Must have a thorough knowledge of laws, ordinances and regulations pertaining to parking violations.

B. Must possess a complete knowledge of parking meter functioning and operations.

C. Must possess valid vehicle operator's license.

VI. DESIRED EXPERIENCE AND TRAINING:

A. General mechanical aptitude.

B. A working knowledge of inventory management.

The Meterman/City Handyman position is currently known as "City Handyman/Parking Attendant" because since approximately 1985 the City removed its downtown parking meters. (The City continues to maintain some parking meters on the West Side of town). For approximately one-third of his time, Williamson enforces the posted parking restrictions downtown and in the City's West Side business area (by marking tires, writing parking tickets and emptying meters).

The remaining two-thirds of his time is spent performing janitorial and maintenance duties at City Hall and other City offices such as the Park and Recreation Department, and the Police Department. Williamson spends most of his time at City Hall because the City contracts with the County for most maintenance/janitorial services at the Police and Parks Departments. Thirty-eight percent of Williamson's salary, approximately \$7.91 per hour, is charged against the Police Department budget. The remainder is charged against the City Administrator's office budget. Williamson does not possess the power of arrest. Police Chief Nordin is considered Williamson's supervisor.

8. The currently effective position description for the disputed position of Deputy City Clerk/Treasurer, occupied by Kathryn Schultz, reads as follows:

JOB OBJECTIVES:

Does corporate bookkeeping functions; coordination of General Ledger, Payroll and Accounts Payable. Assumes the duties of the City Clerk-Treasurer during his absence. Variety of administrative functions under the direction of the City Clerk-Treasurer.

ESSENTIAL JOB FUNCTIONS:

Non-profit bookkeeping. Financial reporting. Attend some Common Council/Board of Public Works/Board of Review meetings and keep full records of the proceedings. Variety of

reporting, typing and filing assignments.

JOB STANDARDS:

The job requires that the following activities be performed adeptly with accuracy and timeliness; Bookkeeping, computer operations, machine calculation, record keeping, typing, filing, effectively dealing with the public, other employees and local officials and agencies.

JOB LOCATION:

City Hall, Polling Places, occasional travel may be required.

EQUIPMENT:

Various pieces of equipment must be operated in the course of employment including without limitation they are: Computer, copier, Computer terminal, computer card reader, various types of calculators, tape recorder and vote recorder.

Schultz has been employed in the City Clerk's office for the past 19 years, the last seven of which she occupied the position of Deputy City Clerk-Treasurer. Schultz does typing, filing, recordkeeping, licensing and acts as the City's bookkeeper. She also acts as City Clerk-Treasurer in the absence of the City Clerk-Treasurer, Paul Bellin, who has held that position for the past 18 years.

She assumes Bellin's responsibilities during his four weeks vacation each year, during the time he is on sick leave and whenever Bellin is out of town for a meeting or unavailable on election days due to his duties at the polls. One of Bellin's responsibilities is to take the minutes of City Council meetings and in his absence Schultz takes such minutes. On July 7, 1987 Schultz took minutes of a closed City Council meeting in which "The City Administrator reported regarding the upcoming negotiations with the Street Dept. Union." During the meeting the Council also discussed the possibility of leasing the City pool to the YMCA after one union pool employe quit and another retired. This is the only closed meeting where confidential labor relations matters were discussed at which Schultz took the minutes.

9. Under present City Administrator Jordan, Schultz has become more involved in budgetary matters due to Jordan's team oriented management style, and her experience and knowledge of City finances. Jordan, Bellin, Schultz and Mary Lou Allen, Jordan's Administrative Assistant, conferred throughout the 1991 budgetary process. It has been stipulated by the parties that the Administrative Assistant position, currently occupied by Mary Lou Allen, should be excluded from any unit as a confidential employe. Jordan, Bellin and the Finance Committee then gave Schultz collected figures on receipts and general City expenses for some departments and Schultz, using the format previously created and used for prior budgets, put the figures into the format and typed up the budgets for the past two years showing actual costs. Jordan then issued a memo to department heads seeking their projections for costs in their departments for 1991. Schultz then got these numbers and plugged them into the format. Jordan, Allen, Bellin and Schultz then met to go over the projected budgets and Jordan cut some items at this time. Thereafter, the Finance Committee met with Jordan, Bellin and Schultz and/or Allen and it directed that certain further cuts be made. The Finance Committee (plus Jordan, Bellin, Schultz and/or Allen) then met with department heads to receive their input into potential cuts and their departmental priorities. Again, Schultz received

the new figures as decided by the Finance Committee and plugged them into the format and typed the revised budget. The process involving Finance Committee meetings then resumed anew. Schultz physically places allocations representing employe wage increases in various accounts in the tentative budget, prior to the completion of collective bargaining; the accounts in which she places such allocations change annually; at times even Bellin is unaware of the accounts in which these allocations appear, but Schultz has exact knowledge of their location. Schultz has not been asked to go to department heads to discuss their projected budgets and she cannot ask them to cut items. Schultz has no authority to cut items from the budget or to change amounts listed. Schultz is also responsible to keep the City's general ledger as well as accounts payable and payroll information and she has knowledge of and access to all City budgetary information. In 1990, during a period between October 9 and November 28, Schultz took minutes for eleven separate open Finance Committee meetings, and the budget was discussed on each occasion.

10. Schultz does have sufficient access to and involvement in confidential matters relating to labor relations to render her a confidential employe.

Based on the above Findings of Fact, the Commission issues the following

#### CONCLUSIONS OF LAW

1. A question concerning representation exists among the employes in the following collective bargaining unit deemed appropriate under Sec. 111.70(4)(d) 2.a., Stats:

all regular full-time and regular part-time white collar employes of the City of Sturgeon Bay who are not included in an existing collective bargaining unit, excluding supervisory, managerial, executive, confidential and professional employes.

2. While Jenniece Hoiska, the Police Assistant, has been deputized by the County Sheriff and may thus have powers of arrest which flow from such appointment, such powers have not been granted by her employer. Accordingly, it would be inappropriate to include her in the bargaining unit presently represented by the Sturgeon Bay Professional Police Officer's Union, Local 1658, AFSCME, AFL-CIO.

3. Arthur Williamson, the Meterman/City Handyman, is not appropriately included in the residual bargaining unit described above in Conclusion of Law 1 but is appropriately included in the City Employees Union bargaining unit described in Finding of Fact 4.

4. Kathryn Schultz, the Deputy City Clerk-Treasurer, is a confidential employe and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

#### ORDER

1. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time white collar employes of the City

of Sturgeon Bay who were employed on December 17, 1991, and who are not included in an existing collective bargaining unit, excluding supervisory, managerial, executive, confidential and professional employes except such employes as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting wish to be represented by Drivers, Warehousemen & Dairy Employees Union, Local No. 75 for the purposes of collective bargaining with the above-named Municipal Employer on questions of wages, hours and conditions of employment or not to be so represented.

2. The Meterman/City Handyman is hereby included in the City Employees Union bargaining unit described in Finding of Fact 4.

Given under our hands and seal at the City of  
Madison, Wisconsin this 17th day of December,  
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

\_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner



CITY OF STURGEON BAY

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

POSITIONS OF THE PARTIES:

Union:

The Union urged that the petitioned-for residual unit is appropriate because it includes all currently unrepresented nonprofessional employees including all white collar/clerical employees previously specifically or de facto excluded from the City's three existing bargaining units. Citing Waukesha County, Dec. No. 26020-A (WERC, 9/89) the Union asserted that a residual unit promotes anti-fragmentation, enhances stability between the City and existing units, and allows employees to participate in the selection of their own representative.

The Union contended that the Police Assistant is appropriately included in the residual unit, and that because she does not possess the power of arrest, inclusion in the Police unit, as argued by the City, is inappropriate.

In regard to the Deputy City Clerk-Treasurer, Kathryn Schultz, the Union asserted that Schultz's budgetary duties do not require a finding that she is managerial. The Union urged that the job description lists Schultz's duties as bookkeeping, accounting, typing and filing. The Union pointed out that during the 1991 budget process, Schultz generally employed the budget format which had been used over the years, applied the numbers given to her, and then typed the budget drafts. The Union emphasized that Schultz has no discretion to change the numbers or to eliminate or to cut any items; that Schultz does not contact department heads or tell them to prioritize items or perform any functions other than recording the numbers given to her. The Union argued that the facts fail to show that Schultz participates in any management policy formulation, determination or implementation. Her presence at Finance Committee meetings, primarily to answer questions based on her 19 years' experience as a City employee, and her presence at City meetings taking notes do not render her managerial, in the Union's view. Furthermore, the Union contended that Schultz does not have the authority to establish an original budget nor can she allocate funds for purposes different from those in the adopted budget. The fact that Schultz fills in for City Clerk-Treasurer Bellin when he is absent is not significant since Schultz then acts in an advisory capacity rather than a decision-making role. These duties should not require Schultz's exclusion from the petitioned-for unit on managerial grounds, in the Union's view.

The Union disagreed with the City's contentions that Schultz should be excluded as a confidential employee. In this regard, the Union noted that Schultz has no more than a de minimis exposure to confidential materials relating to labor relations. Schultz's attendance and/or taking notes at the generally open City Council meetings would not require her exclusion from the unit on confidential grounds. In addition, the fact that Schultz took minutes of only one closed Council meeting in the past five years shows only a de minimis exposure to confidential matters. The Union noted that Mary Lou Allen, Administrative Assistant, is a confidential employee who would be available to handle the few closed sessions Committee meetings that may arise.

In regard to Arthur Williamson, the Union asserted that his position also belongs in the residual unit as his duties do not warrant placing him in the City Employees unit. Citing City of Watertown, Dec. No. 24798 (WERC, 8/87), the Union argued that accreting employees such as Williamson into existing units

is inappropriate because no compelling community of interest exists between Williamson and employees in existing units and because such action deprives employees of a choice as to their representation.

Therefore, the Union sought a direction of election in the residual unit.

City:

The City argued that the petition should be dismissed to avoid undue fragmentation because the City, relatively small in population, should not have to deal with an additional bargaining representative representing 10 or less employees. The City noted that if the Teamsters were to be certified in a residual unit, this would constitute a fourth unit and a third union with which the City was to bargain. In addition, the City contended that its historical relationship with its AFSCME-represented City Employees unit shows that this bargaining unit has in fact become a residual unit for unrepresented employees who desire union representation. In this regard, the City pointed out that it voluntarily agreed to a unit consisting only of D.P.W. employees and thereafter has voluntarily expanded the unit to include meter readers, parks employees, pool employees and custodial employees working at the Market Square Community Center. The City stated that it will voluntarily amend the City Employees' unit description to include the disputed employees so long as the disputed employees' rights to choose or refrain from union representation is preserved.

The City asserted that Deputy City Clerk-Treasurer Schultz should be excluded from any bargaining unit as a confidential and/or managerial employee. In this regard, the City urged that because Schultz has attended open and closed sessions of the City Council and taken minutes, attended "selected closed session Personnel Committee meetings", and is privy to confidential information relating to budgeted increases for represented employees, Kathryn Schultz is a confidential employee. In addition, the City claimed that the City Administrator's avowed intention to transfer much of the minute-taking responsibilities from Mary Lou Allen to the City Clerk-Treasurer's office shows that the position will become increasingly confidential.

The City also asserted that Schultz is a managerial employee. The fact that when City Clerk-Treasurer Bellin is often gone due to vacation, illness, conferences or election day duties, Schultz then acts as City Clerk-Treasurer including supervising the two other office employees, supports a conclusion that she is a managerial employee. Further, City Administrator Jordan's team management approach has resulted in Schultz being used as a team member for budgetary matters. If Schultz is not excluded from any unit as a confidential or managerial employee, the City will have to revamp its budgetary process, its Council minute-taking policies and the supervision of Bellin's office in his absence, the City contended.

The City also urged that the Police Assistant, Jenniece Hoiska, should be included in the Police unit, as was one of Hoiska's predecessors Ebert McCoy. The City pointed out that the 1990-92 collective bargaining agreement between the City and the Police Officers' Union does not exclude the Assistant; that the incumbent Assistant's duties have become more police-related; that the incumbent wears a badge and a uniform similar to that worn by officers; that she has no contact with and little in common with other employees in the petitioned-for residual unit; that the Police Chief would like the Assistant to have the power of arrest although he would not assign her to patrol; and that her duties as court liaison officer, her signing of criminal complaints, and her access to and maintenance of official Departmental records, all support a conclusion that the Police Assistant should be placed in the Police unit.

Finally, the City contended that the Parking Attendant/Handyman position

occupied by Arthur Williamson should be placed in the City Employees' bargaining unit, which unit description includes employes with meter responsibilities. Williamson's duties for the City are meter reading/parking attendant for one-third of his time and custodial/maintenance duties for two-thirds of his time. As such, the City urged, Williamson should be accreted into the City Employees' unit.

#### DISCUSSION

The first issue before us is whether we should direct an election in a separate residual unit, as urged by the Teamsters, or whether we should add the unrepresented municipal employes to one or more of the existing bargaining units, as urged by the City.

As the Commission stated in Waukesha County, Dec. No. 26020-A (WERC, 9/89):

Residual units have historically been found to be appropriate by the Commission for several reasons. Residual units, of course, consist of all unrepresented municipal employes of a municipal employer; thus, the statutory interest in avoiding further fragmentation of bargaining units is served since the existence of a residual unit assures the municipal employer that it will not be confronted with any additional units in the future. In addition, stability in existing bargaining relationships between the municipal employer and existing labor organizations is maintained when a residual unit is established. As we are satisfied that the residual unit is appropriate herein because it serves the interests recited above and because an election in such a unit will allow the employes in question to freely opt for union representation or a continuation of their unrepresented status, we are strongly inclined to reach that result unless there is a compelling reason to place them in an existing unit through the unit clarification process.

In Waukesha, supra, the Commission directed an election in a residual unit because the record failed to demonstrate that the disputed employes share a "compelling community of interest" with employes in any existing unit and because none of the positions in dispute "fell within the confines of an existing unit description."

Citing its size and limited resources, the City argues that establishment of a fourth bargaining unit will unduly fragment the City's workforce. It contends that the City Employees unit already is a de facto residual unit and urges that currently unrepresented municipal employes, with the exception of Police Assistant Hoiska, be given the opportunity to vote on whether they wish to be included in that unit. As to Hoiska, the City asserts she should be included in the Police unit.

At present, the City bargains with a law enforcement unit, a firefighter unit, and a blue collar unit. As a general matter, we conclude that creation of a fourth unit, particularly a residual unit which will ensure that no additional units will confront the City in the future, is not inappropriate for the size of the municipal workforce in question. If we were to accept the City's argument, we would in effect be concluding that in smaller villages, towns and cities, all non-law enforcement, non-firefighting employes must be included in one unit, a conclusion which would run counter to our many prior

determinations that community of interest criteria can justify smaller groups of employes as appropriate bargaining units. 1/

Nor do we agree with the City's contention that a de facto residual unit presently exists. The City Employee unit is a blue collar unit which specifically excludes "clerical employees". Thus, while it may well be argued that the City Employee has become a City-wide blue collar unit (with the obvious exception of Williamson), it is clear that the white collar employes who make up the lions share of the proposed residual unit do not fall within the confines of the existing City Employees unit description. Further, with the exception of the Meterman/City Handyman, there is no particular contention or evidence before us that the employes in the proposed residual unit have a "compelling community of interest" with employes in existing units which would warrant inclusion in an existing unit under a Waukesha analysis.

Thus, applying the Waukesha analysis quoted above, we find establishment of a residual unit to be appropriate. We turn to resolution of disputes as to which employes are eligible for inclusion in the unit.

Looking first at Police Assistant Hoiska, we have consistently concluded that it is inappropriate to include employes who have not been given the power of arrest by their employer in the same bargaining unit as employes who possess such power. As we held in Manitowoc County, Dec. No. 25851 (WERC, 1/89) and Marinette County, Dec. No. 22102-D (WERC, 7/87):

Those employes who possess the power of arrest play a critical role in maintaining the public peace and because of same, the Legislature failed to provide that said employes in their attempt to settle disputes under Section 111.77, Stats., have the right to strike. On the other hand, employes in law enforcement departments who do not possess the power of arrest do not play the same critical role in maintaining the public peace. Consequently, the Legislature has provided these employes with a different statutory scheme under which to attempt to settle disputes, and said employes are afforded the right to strike under the limited circumstances set forth in Section 111.70(4)(cm), Stats. Because law enforcement personnel and other municipal employes are subject to different statutory provisions regarding their respective rights to strike or to pursue interest arbitration, it is inappropriate to include civilian employes who do not possess the power of arrest in the same bargaining unit with law enforcement personnel."

Although Hoiska may have the power of arrest, it flows not from her employer, but through her appointment as a deputy by the County Sheriff. Under this circumstance, we reject the City's contention that her position should be included in the existing Police unit. At such time as she may be granted the power of arrest by her employer, the inclusion of her position in the Police unit would be appropriate. Until then, however, the position of Police Assistant is appropriately a part of the white collar unit we establish herein.

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1/ City of Franklin, Dec. No. 18208 (WERC, 11/80); Village of Union Grove, Dec. No. 15599 (WERC, 6/77); City of Kiel, Dec. No. 11368 (WERC, 10/72). Kiel, Franklin and Union Grove used community of interest criteria to approve units based on "blue collar" or "white collar" composition.

Turning to the status of Meterman/City Handyman Williamson, the record establishes that he would be the only blue collar employe in the residual unit.

It is also apparent that his janitorial/handyman duties and skills are more akin to those performed by certain employes in the existing blue collar City Employee unit than those of the white collar/clerical employes in the residual unit. Although placement in the City Employees unit will deprive Williamson of a choice as to representation, we conclude that his community of interest with employes in the existing blue collar unit is sufficiently compelling to exclude Williamson from the proposed residual unit and instead include him in the City Employee unit.

Next, we turn to the position of Deputy Clerk-Treasurer for which the City claims either a managerial or confidential exclusion. We believe the record supports the City's view of the confidential status of the position.

A confidential employe must have significant access to, knowledge of, or participate in confidential matters related to labor relations. Information is confidential when it: 1) deals 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 bargaining representatives and employers, and 2) is not information available to the bargaining representative or its agents. Portage County, Dec. No. 6478-D (WERC, 1/90); West Salem School District, Dec. No. 22514-A (WERC, 8/89).

In the instant matter, it appears the incumbent Deputy Clerk-Treasurer, Christine Schultz, has been a City employe since 1970. 2/ The record verifies that she has become an extremely valuable employe.

Part of her value is in the performance of non-confidential tasks. She files documents, types, keeps books and fiscal records, issues licenses, and, in the absence of the Clerk-Treasurer, acts as city clerk and supervises two other employes. In 1990, she took minutes for seven monthly City Council meetings. 3/ Essential as these duties are to the smooth functioning of the City, none of them appear to involve responsibilities related to labor relations - a sine qua non for confidential status.

The other part of her value pertains to her budget responsibilities. According to the Clerk-Treasurer, Schultz has the responsibility for physically putting the budget together. That responsibility includes receiving information from the City Council Finance Committee, City department heads, and City Administrator and incorporating it " . . . into a package called the budget." 4/ In such capacity, Schultz necessarily has access to contemplated wage/and salary increases for represented employes prior to the conclusion of

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2/ Tr. at 116. Although Deputy Clerk-Treasurer for the past seven years, prior to that, Schultz functioned as Deputy City Clerk for twelve years. Tr. at 127.

3/ Tr. at 144-5. Nothing in the record indicates that any portion of these seven Council meetings (February, March, April, July, August, September, November) were in closed session for any reason. The record also reflects that Schultz took minutes at a closed City Council meeting on July 7, 1987, where the agenda included a discussion on collective bargaining strategy. We regard this stint as both too isolated and too distant to be a factor in our analysis.

4/ Tr. at 57.

negotiations. These contemplated increases are included by Schultz as allocations in the tentative budget (a public document) being considered by the Council, but in a manner as to make them difficult to impossible to locate, until identified by Schultz. According to the Clerk-Treasurer, contemplated employe increase allocations are handled differently each year in the tentative budget. 5/  
Sometimes, it seems, even he is unaware of where they are located; Schultz, however, has exact knowledge of their location. 6/

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5/ Tr. at 68-9.

6/ Tr. at 69.

Actually, her knowledge of the City's fiscal collective bargaining strategy begins even before she physically compiles the tentative budget. It appears, for instance, that anticipated wage and benefit increases for represented employes are initially reported to Schultz from a variety of administration sources, including the Clerk-Treasurer, department heads, and the City Administrator. The record further indicates that in 1990, Schultz took minutes at eleven separate Finance Committee meetings between October 9 and November 28, and the City's annual budget was discussed on each occasion. 7/ Doubtless, fiscal collective bargaining parameters did not form an exclusive discussion topic at each meeting. At the same time, any informed municipal budget discussion must take anticipated personnel costs into account, and it is unrealistic to expect the Finance Committee to quarantine Schultz from its discussion of this item -- the results of which she would ultimately learn, in any event, when she plugged them into the tentative budget she is required to physically compile.

Both the City Administrator and Clerk-Treasurer verified the physical presence of Schultz at meetings called by them (meeting which also included the City Administrator's secretary/administrative assistant) to help facilitate the budget process for both department heads and the Council. The City Administrator, in particular, described Schultz as an active, essential participant in these meetings. 8/ Schultz, modestly, does not share this view of her impact, and believes her role in that foursome to be much less exhalted. All (including Schultz) agree, however, that Schultz has an awareness and knowledge of budget formulation affairs as a result of her attendance at Finance Committee meetings -- which Schultz believes to have begun when the current City administrator took office some 14 months ago. 9/ Under these circumstances, whether Schultz's role within the foursome is limited to that of a budget technician or is more substantively managerial is immaterial. What is critical is the confidential information she has legitimately obtained as a direct consequence of her employment.

Thus, the exposure of Schultz to confidential labor relations fiscal strategy appears to be a good deal more than de minimis. From the record, it is by no means certain that these responsibilities could be reassigned to an employe possessing the capability of performing them; what appears more certain

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7/ Tr. at 146-52.

8/ Tr. at 75-7.

9/ Tr. at 129.

is that to attempt to do so would be unduly disruptive to the City. 10/ Accordingly, we exclude Schultz from the proposed bargaining unit on the basis of our determination that as presently constituted her position of Deputy Clerk-Treasurer is confidential.

Dated at Madison, Wisconsin this 17th day of December, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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10/ A de minimis exposure to confidential labor relations matters is insufficient to exclude an employe from a bargaining unit. However, notwithstanding the actual amount of confidential work performed by the employe (assuming good faith on the part of the employer), the employe may be excluded as confidential where the employe is the only one available to perform the task or reassignment of such duties causes undue disruption. City of Greenfield, Dec. No. 26423 (WERC, 4/90); Village of Saukville, Dec. No. 26170 (WERC, 9/89); Price County, Dec. No. 11317-B (WERC, 9/89).