

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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WISCONSIN COUNCIL 40, AFSCME, AFL-CIO :
  
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Involving Certain Employes of : Case 1
  
: No. 45725 ME-498
  
: Decision No. 27180
  
CITY OF LANCASTER :
  
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Appearances:

Mr. Michael Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin, appearing on behalf of the Union.  
Hoskins, Brown, Kalnins & McNamara, Attorneys at Law, 118 West Cherry Street, Lancaster, Wisconsin, by Mr. Ivars Kalnins, Assistant City Attorney, and on brief, by Mr. John P. McNamara, appearing on behalf of the City.

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

Wisconsin Council 40, AFSCME, AFL-CIO, on April 22, 1991, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified collective bargaining unit consisting of certain employes of the City of Lancaster to determine whether the positions of Utility Clerk and Deputy Clerk Treasurer should be included in the unit. Hearing was held in Lancaster, Wisconsin on October 1, 1991 by Commission Examiner Coleen A. Burns. The hearing was transcribed and the transcript was received on October 15, 1991. The post hearing briefing schedule was completed on October 30, 1991. The Wisconsin Employment Relations Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The City of Lancaster, herein the City, is a municipal employer and has its offices at 206 South Madison Street, Lancaster, Wisconsin 53813.
2. Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Local 2378, herein the Union, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.
3. Following an election conducted by the Wisconsin Employment Relations Commission, herein the Commission, Wisconsin Council of County and Municipal Employes, AFSCME, AFL-CIO, on May 27, 1981, was certified as the exclusive collective bargaining representative of certain City employes in a bargaining unit described as follows:

All regular full-time and regular part-time employes employed by the City of Lancaster in the city crew, parks, sewage plant, and cemetery departments, excluding guards, supervisors, confidential employes, managerial employes, executive employes and all other employes. 4/

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4/ City of Lancaster, Dec. No. 18603 (WERC, 5/81).

On July 21, 1983, the Commission issued an Order Amending Certification to reflect that the name of the certified representative of the above-noted collective bargaining unit is Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO and its affiliate, the Grant County Public Employees Union Local 2378. 5/

4. The instant proceeding was initiated on April 22, 1991, by a petition filed by the Union, wherein it contended that the positions of Utility Clerk and Deputy Clerk-Treasurer should be included in the collective bargaining unit represented by the Union because the positions meet the statutory basis for inclusion. Prior to hearing on the petition, the Union and the City agreed to include the position of Utility Clerk in the collective bargaining unit represented by the Union. The City argues that the position of Deputy Clerk-Treasurer should not be included in the collective bargaining unit represented by the Union because the position is occupied by a supervisory, confidential, and/or managerial employe.

5. Karen Simon has been employed as the Deputy Clerk-Treasurer of the City of Lancaster for approximately nine years. Vanda Vorwald has been the City of Lancaster Clerk-Treasurer for approximately 14 years. Simon, Vorwald, and Helen Millin, the Utility Clerk, work in the Clerk-Treasurer's office which is located in the City Hall. The Utility Clerk does the billing for the Water and Sewer Utility. In addition to the office of the Clerk-Treasurer, the City Hall contains the Department of Public Works and the Police Department. The Utility Clerk works from 8:00 a.m. to 4:30 p.m. Simon and Vorwald alternate working from 7:00 a.m. to 3:30 p.m. and 8:00 a.m. to 4:30 p.m. The Clerk-Treasurer position is an appointed position and has the following job description:

CLERK-TREASURER

GENERAL STATEMENT OF DUTIES: Performs a variety of responsible administrative and supervisory work in the overall operation of the Clerk-Treasurer's office.

DISTINGUISHING FEATURES OF THE CLASS: The Clerk-Treasurer performs fiscal, administrative, supervisory and clerical functions in accordance with the State Statutes and municipal ordinances. The Clerk-Treasurer attends the meetings of the Common Council and keeps the official records of the proceedings. The incumbent maintains the city's financial and accounting records, reports and statements. Work is performed under the general direction of the Mayor and the Common Council.

EXAMPLES OF WORK: (Illustrative only)

Prepares the majority of the annual city budget by compiling figures, gathering data, estimating revenues and expenditures of certain departments, and by typing and publishing the document;  
Calculates tax roll, tax receipts, collections and tax statements;  
Invests all funds for the city, the hospital, utilities and the cemetery;

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5/ City of Lancaster, Dec. No. 18603-A (WERC, 7/83).

Calculates city payroll and enters budgetary accounting on Burroughs B-80 computer, including water and sewer departments;  
Prepares all necessary reports for the city, and state and federal agencies;  
Conducts and supervises all city elections and publishes election notices;  
Attends all Common Council meetings, prepares agenda, records and publishes minutes;  
Schedules all committee meetings and attends as required;  
Issues all licenses and permits;  
Maintains city's ordinance book, personnel records and personnel manual;  
Supplies information to general public and other agencies orally and in writing;  
Maintains all records for city owned cemetery, issues burial permits and furnishes deeds;  
Trains and supervises subordinate personnel in the Clerk-Treasurer's office;  
Does related work as required.

QUALIFICATIONS:

- Knowledge of the function and organization of municipal government and of the function of the Common Council;
- Knowledge of office management practices;
- Knowledge of accounting practices and procedures;
- Knowledge of state laws and ordinances related to the Clerk-Treasurer's office;
- Knowledge of data processing practices and computer language;
- Typing and shorthand skills;
- Ability to prepare reports of official proceedings;
- Ability to interpret and apply provisions of laws, rules and regulations;
- Ability to supervise the work of others;
- Ability to communicate effectively orally and in writing;
- Ability to keep accurate, clear and concise records and correspondence;
- Ability to be bonded for at least \$25,000.

TRAINING AND EXPERIENCE: Possession of an Associate's Degree in Bookkeeping and Accounting and at least five years of progressively responsible experience in a financial office setting; or any combination of training and experience which provides the required knowledge, skills and abilities.

When Vorwald is absent from work, Simon is the acting Clerk-Treasurer and has the right to exercise all of the authority of the Clerk-Treasurer, including the authority to sign legal documents. Generally, Vorwald is absent from work because she is using compensatory time, vacation or sick leave. Vorwald, who receives three weeks of vacation each year, generally does not take her vacation in consecutive weeks.

6. The City does not have a job description for the position of Deputy

Clerk-Treasurer. On a typical work day, Simon prepares the City payroll, prepares vouchers for disbursements approved by the Finance Committee, and prepares governmental reports. Simon also performs other miscellaneous office duties as needed. As Simon prepares the vouchers, she monitors account balances and, if a balance is low, notifies Vorwald. When account balances are low, either Simon or Vorwald prepares a City Council resolution to authorize the transfer of funds into the account. Neither Simon nor Vorwald has authority to withdraw or transfer City funds without prior approval of the City Council. Recommendations on borrowing funds are made by the Finance Committee to the City Council. After the City Council authorizes such borrowing, Simon or Vorwald prepare the application form. When a chairman calls a meeting of a City Council committee, Simon types and mails the meeting notice to the committee members. As timecards are turned in, Simon enters the timecard data onto the time sheet and into the computer. The respective department head signs the timecard prior to its receipt by Simon. Simon issues licenses and permits which have been approved by the City Council. Simon also collects monies, prepares burial permits and cemetery deeds, responds to information requests from the public, and maintains the City ordinance book. Simon does the typing for the Director of Public Works and takes his phone messages. Simon assists in collecting monies for the Water and Sewer Utility and, when the Utility Clerk is on vacation, responds to questions from the public concerning the Sewer and Water Utility. Simon does not perform any other work of the Utility Clerk. Simon has not performed any of the budgetary duties of the Clerk-Treasurer. Nor has Simon recommended changes to any existing budget. Vorwald plans to have Simon become more involved in budget work and the physical management of the office.

7. Simon, as Deputy Clerk-Treasurer, does not have authority to hire, fire, discipline, transfer, promote, lay off, or recall other employes or to effectively recommend same. Simon, as Deputy Clerk-Treasurer, does not have authority to receive or adjust grievances. Simon has never evaluated an employe. Prior to scheduling vacation, the Utility Clerk and Simon notify Vorwald of their vacation request. Vorwald can approve or disapprove such requests. Prior to using compensatory time, Simon notifies Vorwald. Simon does not approve or disapprove any vacation or leave requests of the Utility Clerk. Simon does not determine the Utility Clerk's work hours. Simon does not assign work to the Utility Clerk and does not evaluate the Utility Clerk. If the Utility Clerk has any questions concerning the performance of her work duties, she asks Vorwald. The Utility Clerk and Simon are entitled to a fifteen minute break in the morning and the afternoon, which breaks are taken as the workload permits. Simon does not monitor the Utility Clerk's use of breaks. Simon does not have authority to authorize overtime or alter the work hours of any employe. On one or two occasions during Vorwald's tenure as Clerk-Treasurer, Vorwald has hired temporary help to work one or two days to assist in the Clerk-Treasurer's office. Simon has not hired or laid off this temporary help. Simon has authority to assign work to the temporary help and to monitor their work performance. If Simon were dissatisfied with the work performance of the temporary help, she would discuss the matter with Vorwald. Simon has not been dissatisfied with the work performance of the temporary help. When performing the duties of Deputy Clerk-Treasurer, Simon does not exercise any supervisory authority over the Utility Clerk or any other permanent City employe. When performing the duties of Deputy Clerk-Treasurer, Simon's supervisory authority over temporary employes is that of a lead worker and the exercise of such authority involves a de minimis amount of Simon's work time.

8. As a department head, Vorwald can make recommendations to the Personnel Committee concerning the hiring, layoff, discipline, and discharge of employes. Final authority with respect to such decisions rests with the

Personnel Committee and the City Council. Vorwald has never disciplined nor discharged any employe. Vorwald has laid off the temporary help. Vorwald devotes most of her work time to fulfilling her duties of Clerk-Treasurer, rather than supervising employes. In the absence of the Clerk-Treasurer, Simon has the right to exercise the supervisory authority of the Clerk-Treasurer. Simon has not hired, fired, transferred, promoted, laid off, recalled, disciplined, or evaluated any employe when performing the duties of the Clerk-Treasurer, nor has she effectively recommended same. The Clerk-Treasurer's exercise of supervisory authority primarily involves the direction and the assignment of the Utility Clerk and Simon. Simon's devotes a de minimis amount of work time to performing the duties of the Clerk-Treasurer and has not exercised any significant supervisory authority when performing the duties of the Clerk-Treasurer.

9. Simon does not attend bargaining sessions between the City and any of its collective bargaining units. Simon has provided the Personnel Committee with information which was used in collective bargaining, i.e., copies of collective bargaining agreements, payroll information, and the costs of employe benefit programs such as Social Security and retirement. Simon has never been involved in developing or costing any of the City's bargaining proposals. Simon maintains the City's personnel records. Employes have access to their own personnel records. On occasion, Simon provides the Personnel Committee with information from an employe's personnel record. Simon has the responsibility to maintain the City Personnel Manual which is available to employes. Simon has never been in a closed session of the Personnel Committee. Vorwald takes the minutes of the City Council meetings, including closed sessions. Occasionally, when Vorwald is not available, Simon will take the City Council minutes. Simon does not recall taking minutes when the City Council was in a closed session which involved personnel matters. Records of closed sessions, which include bargaining proposals, are maintained in the Clerk-Treasurer's office. Simon has access to these records, but would not go into these records unless requested to do so. Simon has never been requested to go into the records of closed sessions. Generally, minutes of closed sessions are sealed before they are brought to the Clerk-Treasurer's office. Simon files the minutes of closed sessions, including the sealed minutes. Simon does not receive or respond to grievances filed by employes and is not consulted with respect to such grievances. Simon has never done any typing of confidential labor relations information for the Director of Public Works involving contract administration or collective bargaining. On one occasion, Simon typed a disciplinary letter for the Director of Public Works. The letter was given to the affected employe. Simon has typed letters for the Director of Public Works involving the offer or refusal of summer employment. Simon has not done any other work for the Director of Public Works involving a personnel matter.

10. Karen Simon, the individual occupying the position of Deputy Clerk-Treasurer, does not have sufficient access to, knowledge of and involvement in confidential labor relations matters to be deemed a confidential employe.

11. Karen Simon, the individual occupying the position of Deputy Clerk-Treasurer, does not possess supervisory responsibilities and duties in sufficient combination and degree to be deemed a supervisory employe.

12. Karen Simon, the individual occupying the position of Deputy Clerk-Treasurer, does not have sufficient participation in the formulation, determination or implementation of management policy, or authority to commit the City's financial resources, to be deemed a managerial employe.

Upon the basis of the above and foregoing Findings of Fact, the

undersigned issues the following

CONCLUSIONS OF LAW

1. Karen Simon, the individual occupying the position of Deputy Clerk-Treasurer, is not a confidential or managerial employe within the meaning of Sec. 111.70(1)(i), Stats., nor a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and thus is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The position of Deputy Clerk-Treasurer, currently occupied by Karen Simon, is appropriately included in the collective bargaining unit represented by the Union.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the undersigned makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 3/

1. The description of the collective bargaining unit represented by the Union and previously referred to in Finding of Fact 3 above is hereby amended to read as follows:

All regular full-time and regular part-time employes employed by the City of Lancaster in the city crew, parks, sewage plant, cemetery departments, and Clerk-Treasurer's Office, excluding guards, supervisors, confidential employes, managerial employes, executive employes and all other employes.

2. The position of Deputy Clerk-Treasurer, presently occupied by Karen Simon be, and the same hereby is, included in the collective bargaining unit described in this Order.

Given under our hands and seal at the City of Madison, Wisconsin this 27th day of February, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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

(See footnote 3/ on pages 8 and 9)

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3/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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

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

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

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

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

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



CITY OF LANCASTER

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

In its petition, the Union contends that the positions of Utility Clerk and Deputy Clerk-Treasurer are appropriately included in the collective bargaining unit represented by the Union because these employees do not meet the statutory basis for exclusions. Prior to hearing on the petition, the Union and the City agreed to include the position of Utility Clerk in the collective bargaining unit represented by the Union. The City argues that the employee occupying the position of Deputy Clerk Treasurer is not appropriately included in the collective bargaining unit represented by the Union because the individual occupying the position is a confidential, supervisory and/or managerial employee.

DISCUSSION

Supervisory Status

Section 111.70(1)(o)1 of the Municipal Employment Relations Act (MERA) defines the term "supervisor" as follows:

- . . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Wisconsin Employment Relations Commission has, on numerous occasions, listed the following factors as those to be considered in determining whether or not an individual is a supervisor within the meaning of Sec. 111.70(1)(o)(1), Stats:

- 1.The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- 2.The authority to direct and assign the work force;
- 3.The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
- 4.The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or for his/her supervision of employees;
- 5.Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
- 6.Whether the supervisor is a working supervisor or whether he spends a substantial majority of his/her time supervising employees;
- 7.The amount of independent judgment exercised in the

supervision of employes. 6/

The Commission has consistently held that not all of the above factors need to be present, but if the factors appear in sufficient number and degree, the Commission will find an employe to be a supervisor. 7/ Even an employe who spends a majority of his/her time doing non-supervisory duties, may be determined to be supervisory where sufficient responsibilities and authority of a supervisor are present. 8/

Karen Simon, the individual occupying the position of Deputy Clerk-Treasurer, works in the Clerk-Treasurer's office with two other City employes, i.e., Vanda Vorwald, the Clerk-Treasurer, and Helen Millin, the Utility Clerk. On one or two occasions during Vorwald's 14 year tenure as Clerk-Treasurer, Vorwald has hired a temporary employe to work one or two days in the Clerk-Treasurer's office. While it is not evident that Simon has exercised any significant supervisory authority over any of these temporary employes, Simon does have authority to assign work to the temporary employes, to monitor the work performance of the temporary employes, and to report any dissatisfaction with the work performance to Vorwald. Obviously, the limited supervision of temporary employes does not involve a significant amount of Simon's work time as Deputy Clerk-Treasurer. Moreover, Simon's supervisory authority over temporary employes is that of a lead worker, rather than a supervisor.

When performing the duties of the Deputy Clerk-Treasurer, Simon does not exercise any supervisory authority over the Utility Clerk, or any other permanent City employe. Thus, Simon's duties as Deputy Clerk-Treasurer do not involve the exercise of the indicia of supervisory status in sufficient combination and degree so as to warrant the conclusion that Simon is a supervisory employe within the meaning of the Municipal Employment Relations Act.

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6/ Muskego-Norway School District, Dec. No. 10585-A (WERC, 12/91); City of Milwaukee, Dec. No. 6960 (WERC, 12/64).

7/ City of Lake Geneva, Dec. No. 18507 (WERC, 3/81); Lodi Jt. School District No. 1, Dec. No. 16667 (WERC, 11/78).

8/ City of Madison (Public Library), Dec. No. 19906 (WERC, 9/82); School District of Montello, Dec. No. 17829-B (WERC, 2/82).

As the City argues, in the absence of the Clerk-Treasurer, Simon has the right to exercise the supervisory authority of the Clerk-Treasurer, which authority primarily involves the direction and the assignment of the Utility Clerk and Simon. However, Simon's performance of the Clerk-Treasurer duties does not involve a significant amount of Simon's work time, nor does it involve the exercise of any significant supervisory authority. Thus, we are satisfied that Simon's duties as acting Clerk-Treasurer do not involve the exercise of the indicia of supervisory status in sufficient combination and degree so as to warrant the conclusion that Simon is a supervisory employe within the meaning of the Municipal Employment Relations Act.

#### Managerial Status

In the absence of a statutory definition of a "managerial" employe, the Commission, through case law, has developed a definition of managerial status. A managerial employe is one who participates in the formulation, determination and implementation of management policy, or who has effective authority to commit the employer's resources. 9/ To yield managerial status, the involvement with the municipal employer's policies must be "at a relatively high level of responsibility" 10/ and be "to a significant degree." 11/ Preparation of a budget, per se, is not sufficient to establish managerial status. To confer managerial status, an individual's budget preparation duties must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 12/ Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employes to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. 13/

The record does not demonstrate that, in fulfilling her duties as the Deputy Clerk-Treasurer, Simon has participated in the formulation, determination, and implementation of management policy "at a relatively high level of responsibility" and "to a significant degree." Nor has Simon significantly participated in the establishment of any City budget. 14/

As the City argues, in fulfilling her duties as Deputy Clerk-Treasurer, Simon collects monies, prepares payroll, and monitors City accounts. The

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9/ Kewaunee County v. WERC, 141 Wis.2d 347 (1987); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Milwaukee v. WERC, 71 Wis.2d 709 (1976); Door County, Dec. No. 14810 (WERC, 7/76).

10/ City of Milwaukee, Dec. No. 12035-A (WERC, 2/74).

11/ City of Milwaukee, Dec. No. 11971 (WERC, 7/73).

12/ DePere Unified School District, Dec. No. 26572 (WERC, 8/90).

13/ Jackson County, Dec. No. 17828-B (WERC, 10/86).

14/ At hearing, Clerk - Treasurer Vorwald indicated that she was planning changes which would involve Simon in the physical management and the budget work. Simon's status as a municipal employe, however, is a function her existing duties and cannot be determined on the basis of future potential changes.

Commission, however, considers these activities to be ministerial, rather than managerial, in nature.

As the City further argues, Simon prepares vouchers for the disbursement of City funds, prepares applications for City borrowing, and arranges for other types of withdrawals and transfers of City funds. Each of these transactions, however, requires approval by members of the City Council. We are persuaded, therefore, that it is the City Council, and not Simon, who has significant authority to commit the City's resources. These duties of the Deputy Clerk-Treasurer are not managerial within the meaning of the Municipal Employment Relations Act.

As discussed earlier, we are not persuaded that Simon's performance of the Clerk - Treasurer's duties involves more than a de minimis amount of Simon's work time. Thus, even assuming arguendo that the Clerk - Treasurer performs managerial duties, Simon's duties as acting Clerk - Treasurer would not involve significant participation in the formulation, determination and implementation of management policy. Nor would the assumption of these duties imbue Simon with significant authority to commit the City's resources. Accordingly, we are not persuaded that Simon's duties as acting Clerk-Treasurer warrant the conclusion that Simon is a managerial employe within the meaning of the Municipal Employment Relations Act.

#### Confidential Status

For an employe to be held confidential, the employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. 15/ For such 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. 16/

While a de minimis exposure to confidential materials is generally insufficient grounds for exclusion of an employe from a bargaining unit, 17/ 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. 18/ 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, 19/ 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, where the confidential work cannot be assigned to another employe without undue disruption of the

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15/ Price County, Dec. No. 11317-B (WERC, 9/89).

16/ Rock County, Dec. No. 8243-K (WERC, 9/91).

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

18/ CESA Agency No. 9, Dec No. 23863-A (WERC, 12/86).

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

employer's organization. 20/

As the City argues, in fulfilling her duties as Deputy Clerk-Treasurer, Simon has access to employe personnel files and maintains the City's personnel manual. Inasmuch as the individual employe has access to his/her personnel file and the personnel manual, the personnel files and manuals are not confidential materials within the meaning of the Municipal Employment Relations Act.

Simon does not receive or respond to employe grievances and is not consulted with respect to employe grievances. On one occasion, Simon typed a disciplinary letter for the Director of Public Works, which letter was given to the affected employe. Simon has also typed letters for the Director of Public Works which have offered or refused summer employment. Simon has not performed any other work for the Director of Public Works involving collective bargaining or personnel matter.

When the Clerk-Treasurer is unavailable, Simon attends the meetings of the City Council and takes the minutes of these meetings, including closed sessions. None of these closed sessions have involved personnel or collective bargaining matters.

The Personnel Committee of the City Council is involved in collective bargaining and other matters relating to labor relations, such as employe discipline. Simon has never attended a closed session of the Personnel Committee. Generally, minutes of closed sessions, which may include bargaining proposals, are sealed before they are brought to the Clerk-Treasurer's office.

These sealed minutes, as well as all other minutes, are filed by Simon. While Simon has access to the minutes of the closed sessions, she has never been asked to go into these records.

Simon has not attended bargaining sessions between the City and any of its collective bargaining units. Nor has Simon ever costed any City bargaining proposal. On occasion, Simon has provided the Personnel Committee with information which was used in collective bargaining, i.e., copies of collective bargaining agreements, payroll information and the costs of employe benefit programs. It is not evident, however, that Simon has had any knowledge of the manner in which this information was used to develop strategy or positions relating to collective bargaining, contract administration, litigation, or other matters pertaining to confidential labor relations matters.

In performing her duties as Deputy-Clerk Treasurer and as acting Clerk-Treasurer, Simon has a de minimis access to, knowledge of, or participation in confidential matters relating to labor relations. Accordingly, Simon is not a confidential employe within the meaning of the Municipal Employment Relations Act.

#### Conclusion

As discussed above, the Commission rejects the City's assertion that Karen Simon, the individual occupying the position of Deputy Clerk-Treasurer, is a supervisory, managerial or confidential employe. The Commission has concluded that the position of Deputy-Clerk Treasurer is a municipal employe within the meaning of the Municipal Employment Relations Act. The Commission

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

has included the position of Deputy-Clerk Treasurer in the collective bargaining unit represented by the Union and has amended the bargaining unit description to reflect the same.

Dated at Madison, Wisconsin this 27th day of February, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

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