

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO and MONROE COUNTY

Involving Certain Employees of the

MONROE COUNTY

Case 146
No. 59206
ME(u/c)-3789

Decision No. 30037-B

Appearances:

Mr. Ken Kittleson Personnel Director, Monroe County Courthouse, 112 South Court Street, P.O. Box 202, Sparta, Wisconsin 54656, appearing on behalf of Monroe County.

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

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

On February 19, 2001, Monroe County and Wisconsin Council 40, AFSCME, AFL-CIO each filed a petition with the Wisconsin Employment Relations Commission to clarify a non-professional employee bargaining unit of County employees represented by Wisconsin Council 40.

Hearing was held on both petitions in Sparta, Wisconsin on April 18, 2001, before Examiner Lauri Millot, a member of the Commission's staff. At hearing, Wisconsin Council 40 argued that all five disputed employees should be included in the unit while the County argued the following bases for exclusion for the unit:

Dec. No. 30037-B

Payroll and Accounts Manager-Confidential
Police Administrative Assistant-Supervisor
Victim/Witness Coordinator-Managerial, Supervisor
Farm Manager-Managerial
Communications Technician-Managerial, Supervisor

The parties summed up their cases orally at hearing and a stenographic transcript was received by the Commission on May 21, 2001.

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

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter Union, is a labor organization with its offices located c/o Daniel Pfeifer, Staff Representative, 18990 Ibsen Road, Sparta, Wisconsin 54656.

2. Monroe County, hereinafter County, is a municipal employer with its offices located at 112 South Court Street, P.O. Box 202, Sparta, Wisconsin, 54656. The County provides governmental services to the citizens of Monroe County.

3. In MONROE COUNTY, DEC. NO. 30037-A (WERC, 3/01), the Wisconsin Employment Relations Commission certified the Union as the exclusive bargaining representative of a bargaining unit defined as:

All regular full-time and regular part-time non-professional employees of Monroe County who are not now presently included in an existing collective bargaining unit, and conditionally excluding professional employees and fully excluding confidential, supervisory and managerial employees

4. The incumbent in the position of Payroll and Accounts Manager is Kathryn Brownell. Brownell has been employed by the County for 24 ½ years; initially in the position of Deputy County Clerk and for the last 8 years in the Payroll and Accounts Manager position. Brownell works 40 hours per week at the hourly rate of \$16.43 and receives compensatory time for any hours worked in excess of 40 in a given week. Chris Williams, Monroe County Clerk, supervises Brownell.

5. Brownell's job description was revised March 2000 and reads in pertinent part:

. . .

Basic Functions and Responsibilities

Under direction of the County Clerk, the Payroll and Accounts Manager acts as data processing manager and performs duties with AS 400 computer system involving all county financial and payroll functions.

Essential Duties and Responsibilities

- Administers data processing procedures including all operating features involving starting, backing up files and stopping the system;
- Administers payroll operations including data computation from time sheet entry, data entry, check writing and maintenance of employee master file and payroll organizational file;
- Reconciles and files monthly/quarterly/annual payroll reports;
- Reviews documents for proper revenue and expenditure classification before processing bills, prepares payment vouchers and receipts for distribution;
- Compiles data to make various reports in conformance with established regulations and accounting practices;
- Explains accounting and financial procedures to other employees and the public, and balances financial accounts with departments;
- Installs new programs when current programs are updated and determines nature of problem before notifying consultant or programmer and assists in resolving problem;
- Works with system analysts and programmers on failures or problems to get the system back on line;
- Gathers, assembles, tabulates, proofs, extends, reconciles and summarizes fiscal and other data for closing of records on a monthly basis and balances with Treasurer;
- Schedules usage of computer terminals and printing, trains operators, assigns passwords and maintains system security;
- Handles questions relating to financial accounts, payroll, AS400, data processing;
- Administers data processing controls, assists auditors, and monitors data processing budget;
- Sets up county-wide annual accounts and budgets.

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6. Brownell is responsible for the maintenance of financial data, payroll and limited budget management for Monroe County. Brownell creates reports for the Personnel Director upon request that identify current employee pay rates, current employee enrollment in the County health insurance plan identified by family and single plan selection, historical overtime costs and current employee fringe benefit information. Brownell annually prepares a prospective salary report for the County Finance Committee for budgeting purposes.

Brownell does not cost County bargaining proposals before or during negotiations with unions representing County employees. Brownell is not a member of the County's bargaining team. Brownell does not have knowledge of, nor access to, the County's strategy in labor relations litigation in which the County may be involved.

Brownell does not have sufficient access to, knowledge of, or participation in, confidential matters relating to labor relations to be a confidential employee.

7. The incumbent in the position of Police Administrative Assistant is Cheryl Bettis. Bettis has been employed full-time in the County since January 1, 1990. Bettis works 40 hours per week at the hourly rate of \$13.35. Bettis receives either compensatory time or overtime pay at the rate of one and one-half times her hourly rate for hours worked in excess of 40 per week. Bettis is supervised by the Sheriff of Monroe County.

8. The job description for the Police Administrative Assistant, most recently revised in February, 2001, reads in pertinent part:

. . .

Basic Functions and Responsibilities

Under supervision of the Sheriff, the Administrative Assistant prepares paperwork for the Sheriff, Detectives and Road Officers including confidential and routine record keeping, typing, transcribing and other secretarial duties.

Essential Duties and Responsibilities

- Transcribes and types incident reports from Sheriff, Chief Deputy, Detectives and Road Officers;
- Services as Court officer for all traffic matters other than State Patrol arrests;
- Reviews, enters into computer and maintains and organizes files of incident reports, stolen property, citations, and accidents;
- Receives incoming calls other than 911 and supplies information or transfers calls;
- Processes confidential material (juvenile matters, sexual assaults, personnel matters, search warrant information, etc.);
- Receives Crime Stoppers incoming calls, completes reports, enters calls into computer;
- Handles report copy requests and bookkeeping involved;
- Prepares DARE correspondence;
- Attends monthly Law Enforcement Committee meetings, takes and transcribes notes;
- Works with the public completing criminal complaints forms in the absence of detectives.

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Supervision Exercised

Functional supervision of Administrative Secretary, Receptionist, and clerical LTE personnel.

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9. Bettis directs the work of Administrative Secretary Mary Perry and Receptionist Terri Harrison. Each morning Bettis reviews incident reports and accident reports generated by the prior day's night duty law enforcement officers, reviews civil process paperwork, prioritizes the documents and work responsibilities and distributes to Perry and Harrison their typing and transcription work for the day. Bettis assigns data entry work and provides instruction to Perry and Harrison. Bettis approves overtime, sick leave usage and vacation requests for Perry and Harrison.

Bettis participated in the hiring of Perry and Harrison. In the hiring of Harrison in March, 2001, Bettis reviewed potential interview questions provided to her by the County Personnel Department and modified some of the questions. Bettis was an equal member of the interview panel along with the chair of the Public Safety and Justice Committee, the Chief Deputy and Mary Madison, Personnel Department Confidential Secretary. Bettis individually scored the interviewed candidates and a total point system was used by the panel to determine the best qualified candidate. The panel reached a unanimous hiring decision.

Bettis has issued two written disciplinary warnings to the Administrative Secretary. Bettis determined that discipline would be issued and signed the disciplinary action forms. Bettis completes the annual performance appraisal for the Administrative Secretary and will also evaluate the incumbent in the newly created Receptionist position. Neither the Sheriff nor any other administrative personnel review annual performance appraisals prepared by Bettis prior to their issuance. Bettis will determine whether the newly hired Receptionist passes her six month probationary period.

Cheryl Bettis possesses supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

10. The incumbent in the position of Victim/Witness Coordinator is Karen Rengert. Rengert has held the Victim/Witness Coordinator position for 15 years. Rengert works 40 hours per week and receives compensatory time off for all hours worked in excess of 40 per week. Rengert's 2000 hourly wage is \$14.87. Rengert reports to the Public Safety and Justice Coordinating Committee.

Prior to January 1, 1992, Rengert reported to the District Attorney. Subsequent to January 1, 1992, Victim/Witness became a department independent from the District Attorney's Office. The Monroe County Victim/Witness Department provides services to

victims in compliance with Chapter 950, Stats., Rights of Victims and Witness of Crime, and Administrative Code, Chapter 12 Crime Victim and Witness Assistance Program. Rengert attends quarterly department head meetings.

11. The job description for the Victim/Witness Coordinator as revised September 14, 2000, reads in pertinent part:

. . .

Basic Functions and Responsibilities

Under general supervision of the Public Safety and Justice Coordinating Committee, the Victim/Witness Coordinator assists and responds to victims and witnesses of violent crimes according to Wisconsin State Statute 950.

Essential Duties and Responsibilities

- Provides victim/witness and family support including court support and keeping them up to date in criminal and juvenile cases;
- Supervises all facets of Victim/Witness Program as department head;
- Works with judges on exchange of property, visitation with children on domestic abuse cases, and other areas as appropriate;
- Assists district attorney and police, including accompanying police in criminal cases;
- Works with public and judges on all types of restraining orders, including situation assessment, filing of petition, preparation and support in court;
- Provides social service referrals, recommends to appropriate agencies and coordinates with agencies for assistance;
- Prepares victim impact statements and restitution and presents to court on criminal and juvenile cases;
- Reports to Public Safety and Justice Coordinating Committee monthly regarding program operations;
- Prepares semi-annual state reimbursement requests;
- Prepares annual state and county budgets;
- Prepares an annual report for county and state on program status;
- Makes victims aware of crime victim compensation and assists in filing claims;
- Administrates Monroe County Domestic Abuse Project and does training;
- Maintains computer records of defendant, juvenile and other databases used by the program, district attorney's office and police agencies;
- Determines protection services and coordinates with agencies to provide protection;
- Meets with Men's Abusers Group and Monroe County Domestic Abuse Project Council on a regular basis to coordinate efforts;
- Provides training to law enforcement personnel;

- Promotes Victim/Witness Program through public appearances, speaking and media awareness;
- Serves as member of the Monroe County Domestic Abuse Task Force.

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Supervision Exercised

Administrative and functional supervision of Victim/Witness Program including an Assistant and volunteers.

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12. The State of Wisconsin makes resources available to county victim/witness offices and provides guidelines and procedures used by the Monroe County Victim/Witness Department. Under Department procedures, Rengert determines when to send out initial contact letters, when to contact victims, how to contact victims and how to prepare victims for court appearances. Rengert prepares the victim witness annual report for the State and County.

Rengert works with the District Attorney's Office and the Circuit Court. Rengert receives direction from the Circuit Court and the District Attorney to perform specific work assignments. Rengert, along with other members of the justice system, including the Director of Human Services, Sheriff, District Attorneys, Public Defender, and a County board member, serves on the Monroe County Justice Commission. The Commission determines which County community programs will be implemented by the justice system coordinator. Rengert does not provide training or administer the Monroe County Domestic Abuse Project nor does she have any responsibility to the Mens' Abuser Group. Rengert does not have the authority to initiate programs without County Board approval even if there is no fiscal impact in creating the program. Rengert obtains Committee and/or County Board approval to attend conferences, regardless of location or whether there is an expense.

Rengert prepares the budget for the Victim/Witness Department based on the prior year's budget and predetermined salary data. In the event that Rengert desires to purchase equipment, she researches the item and presents a proposal to the County Board for approval. Rengert does not have the authority to purchase items nor transfer monies within her budget without Board approval.

Rengert does not sufficiently participate in the formulation, determination or implementation of County policy or have sufficient authority to allocate County resources to be a managerial employee.

13. In addition to Rengert, the Monroe County Victim/Witness Department is staffed by Specialist Judy Bock. Bock's 2000 hourly rate is \$11.91. Specialist Bock has held this position for ten years. At the time of Specialist Bock's hire, the Victim/Witness function was a part of the District Attorney's Office and Rengert was supervised by the District Attorney. Rengert participated in the hire of Bock. Rengert and the District Attorney reviewed applications that were screened by the Personnel Department, interviewed the candidates and jointly selected Specialist Bock. No employees have been hired to the Victim/Witness Department since it became an independent department, although Rengert will be involved in the hiring process should a vacancy arise.

Rengert approves sick leave, vacation leave and overtime for Specialist Bock and evaluates her work performance. Rengert has not issued any discipline. If Rengert believed it was necessary to address a performance issue, she would issue a verbal or written recommendation to Bock for improvement. If Rengert believed a more severe action was appropriate, she would contact the Personnel Department.

Rengert and Specialist Bock mutually decided how the work in the Victim/Witness Department would be divided. Rengert works directly with the victims and witnesses, is responsible for all juvenile cases and handles all trial cases that receive public attention. Bock is responsible for the clerical work and some adult cases. Rengert and Bock have worked together for at least eight years and Bock requires little work direction.

Rengert does not possess supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

14. The incumbent in the position of Farm Manager is Larry Hopkins. Hopkins has been employed by Monroe County for 16 ½ years. Prior to his employment with Monroe County, he was a Farm Manager for Columbia County for 12 years. Hopkins receives a salary with benefits of approximately \$47,000 per year. Hopkins is provided housing as a term of his employment. Hopkins does not receive overtime or compensatory time off for hours worked in excess of 40 per week. Hopkins reports to the Monroe County Agriculture and Extension Committee and is evaluated annually based on the profitability and productivity of the farm.

15. Hopkins' job description, most recently revised in April of 1999, in pertinent part, reads as follows:

. . .

Basic Functions and Responsibilities

Under direction of the Agriculture and Extension Education Committee, the Farm manager is responsible for the management of county farm operations so that the farm exemplifies modern agricultural practices and serves from time-to-time for demonstration purposes and returns a reasonable financial return on investment.

Essential Duties and Responsibilities

- Plans, develops, implements and evaluates livestock production plan
- Plans, develops, implements and evaluates program of crop production;
- Maintains accurate financial and management records of farm operation and reports monthly to committee;
- Develops and supervises planned maintenance and improvement program for farm property;
- Arranges surplus stock and crops sale and purchase of supplies;
- Works with University Extension staff on programs concerning livestock, crops, etc.;
- Makes use of concepts available through soil and water conservation services.

. . .

Supervision Exercised

Administrative and functional supervision of Monroe County Farm operations.

. . .

16. Hopkins operates the County farm with a heifer and steer raising operation and a crop operation. The farm crops are soybeans, hay and corn — 50 percent of which is used for livestock feed and the remaining 50 percent for cash sales.

Hopkins has the authority to determine whom to purchase livestock from, the price he will pay for the livestock, whether to feed the livestock purchased feed or home raised feed, when to sell the livestock, the selling price of the livestock and the buyer of the livestock. Hopkins and the Extension Agent conduct feeding trials on livestock to obtain information.

When selling livestock, Hopkins decides how he will sell the livestock, how many animals he will sell, when he will sell and to which sale barn he will sell. Hopkins negotiates the sale price with the buyer and considers which of three livestock sale procedure options he will utilize.

Regarding the cropping enterprise, Hopkins decides what to plant, where to plant, the quantity of crop to be planted, the variety of seeds to be planted, the fertilizer and chemicals used and the date, time and procedures for harvest of the crops. Hopkins is responsible for the sale of 50 percent of the crop. Hopkins determines the method of crop sale. Hopkins may forward contract when the anticipated price at harvest time is better than the current price or he may sell the crop straight out of the field at harvest time. Hopkins signs the agreement with the grain purchaser and later informs the County Agriculture and Extension committee of his action.

Hopkins purchases equipment, repairs equipment and purchases fuel and parts. Hopkins utilizes inmates from the County jail who have received Huber privileges for cleaning and lawn mowing. Hopkins hires, supervises and determines the schedules for any part-time and fill-in help needed on the farm. Hopkins has not hired any staff in the last three years.

Hopkins prepares an annual budget and performs accounting procedures for the farm operation. Hopkins reviews his prior year budget, forecasts the purchase and selling price of livestock, forecasts the purchase and selling price of crops, projects machinery repairs and purchases, and creates his budget which is submitted to the Agriculture and Extension Committee, then to the Finance Committee and finally to the County Board. Hopkins has the authority to spend funds as he sees fit so long as his total budget is maintained.

Hopkins sufficiently participates in the formulation, determination and implementation of County policy and has sufficient authority to allocate County resources to be a managerial employee.

17. The incumbent in the position of Communications Technician is Vernon Sanders. Sanders has been employed by the County part-time since 1958 and full-time since 1973 when the County created the independent Communication Department. Sanders works 40 hours per week, in addition to on-call status, at the year 2000 hourly rate of \$16.48. Sanders receives compensatory time for all hours worked in excess of 40 per week. Sanders reports to the Public Safety and Justice Coordinating Committee.

18. The job description for the Communications Technician, as revised in April, 1999, reads in pertinent part:

. . .

Basic Functions and Responsibilities

Under direction of the Public Safety and Justice Committee, the Communication Technician orders, installs, repairs, maintains and keeps records on various pieces of electronic equipment owned by the county used in county vehicles or out on lease to various municipalities or emergency services provided within Monroe County.

Essential Duties and Responsibilities

- Orders, maintains, repairs and keeps operational electronic radio equipment and other electronic equipment;
- Keeps records on frequency of maintenance required on pieces of equipment;
- Installs electronic equipment in vehicles or at bases of leasees of county equipment following authorization;
- Maintains records to provide for billing to agencies using the services of the Communications Department;

- Studies operation of radio communications system and recommends changes which result in increased efficiency;
- Installs computer programs and maintains law enforcement computer system;
- Keeps abreast of innovations, equipment and application and advises Law Enforcement Committee of findings;
- Gives priority to emergency problems arising outside regular working hours;
- Recommends equipment purchases;
- Performs two-way radio work, including but not limited to installation, maintenance, repair, building and modification of equipment, e.g. analog, digital, mobile, portable, base and repeater stations, dispatch centers;
- Performs electronic work on closed circuit TVs inter-com systems, radio pagers and paging systems, mini-computers and peripherals, emergency vehicle lighting systems, alarm systems, etc.;
- Performs system to component level trouble shooting.

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Supervision Exercised

Administrative and functional supervision of Communication Department operations including contracted services and special project non-county employee personnel.

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19. The Communication Department is a one and one-third person department responsible for providing communications services and supplies to 13 County departments including sheriff, highway, zoning, human services, conservation, dispatch, landfill, and McMullen Park; the police departments of Tomah, Sparta, Kendall, Wilton, Cashton and Warrens; 2 hospitals, 5 ambulance and first responder groups, 5 fire departments, and 4 school districts located in Monroe County. The Communication Department holds title to communication equipment including: two-way radios, paging/alert, radar, recording, warning, emergency generators, computers and jail equipment including surveillance cameras and monitors, intercom and electric door locks.

Sanders determines what communication equipment will be purchased, negotiates the purchase price and enters into contracts for purchase. Sanders consults with County departments prior to purchasing equipment for their department, but maintains the final decision as to what product will be purchased. Sanders negotiates lease prices and enters into lease agreements.

Sanders creates the budget for the Communication Department based in part on the prior year's budget and submits the budget to the Public Safety and Justice Coordinating Committee. The budget is then forwarded to the Finance Committee and finally to the full

County Board. Sanders has the authority to expend funds in excess of his budget for emergency purposes. Sanders has authority to spend monies for purposes other than the line item identified in his budget. Sanders submits vouchers for payment of bills to the Finance Committee prior to the issuance of a check consistent with County policy.

Sanders is allocated one-third of Emergency Management Clerk Kathy Hehn's time to perform clerical and billing responsibilities. Hehn's office is within the Emergency Management Office, located in the courthouse and the Communication Department is located in the courthouse annex. The Emergency Management Coordinator, Cindy Struve, prepares Hehn's evaluation with input from Sanders, approves her sick leave, and approves her vacation leave. Sanders does not approve overtime or time off for Hehn and has not issued discipline to Hehn.

Sanders contracts with individuals to perform emergency vehicle radio installation. Sanders selects the installers based on his knowledge of their skills and abilities, determines when they will work, determines the hourly rate they will receive, directs their work, and submits time cards which initiate compensation for the individuals.

Sanders sufficiently participates in the formation, determination and implementation of County policy and has sufficient authority to allocate County resources to be a managerial employee.

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

CONCLUSIONS OF LAW

1. The incumbents in the positions of Farm Manager and Communications Technician are managerial employees within the meaning of Sec. 111.70(1)(i), Stats., and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i).

2. The incumbent in the position of Sheriff Department Administrative Assistant is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i).

3. The incumbent in the position of Payroll and Accounts Manager is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

4. The incumbent in the position of Victim/Witness Coordinator is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., or a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The bargaining unit described in Finding of Fact 3 above is hereby clarified by:

1. The inclusion of the Payroll and Accounts Manager and Victim/Witness Coordinator.
2. The exclusion of the Farm Manager, Communications Technician and Police Administrative Assistant.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of November, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MONROE COUNTY

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

The matters in dispute in this case are described in the preface to our Findings of Fact and need not be repeated here. We begin with a statement of the law we will apply when resolving the dispute.

We have held that for an employee to be a confidential employee, the employee must have significant access to, knowledge of, or participation in confidential matters relating to labor relations. As we ruled in GREEN LAKE COUNTY, DEC. NO. 16050-I (WERC, 5/99) in order 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.

In addition, in VILLAGE OF SAUKVILLE, DEC. NO. 26170 (WERC, 9/89) we stated:

While a de minimis exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87) we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. COOPERATIVE EDUCATION SERVICE AGENCY NO. 9, DEC. NO. 3863-A (WERC, 12/86). Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work. TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85).

With regard to the determination of whether an employee is a supervisor, Sec. 111.70(1)(o)1, Stats., defines a supervisor as an 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 judgement.

When evaluating a claim of supervisory status under Sec. 111.70(1)(o)1, Stats., we consider the following factors:

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; and
7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Although there are seven articulated factors, the Commission has consistently found that not all of the factors need to reflect supervisory status for an employee to be a supervisor. Rather, the Commission looks to determine whether the factors are present in sufficient combination and degree. Should the employee have sufficient supervisory responsibilities and authority, then even if the majority of their time is not spent performing supervisory functions, the employee is properly determined to be a supervisor. TAYLOR COUNTY, SUPRA.

When determining whether an employee is a managerial employee, we stated in TREMPLEAU COUNTY, DEC. NO. 18380-D, (WERC, 4/01):

Managerial employees are excluded from the definition of municipal employees pursuant to Sec. 111.70(1)(i), Stats. The Commission has developed a definition of managerial status through case law in the absence of a statutory definition of a "managerial" employee. In determining whether a position is managerial, the Commission considers the degree to which the incumbent of the position actually participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer's resources. See, e.g., Milwaukee VTAE, Dec. No. 8736-B (WERC, 6/79); Northwood School District, Dec. No. 20022 (WERC, 10/82); Marinette County (Pineview Health Care Center), Dec. No. 26154-B (WERC, 3/92), and cases cited therein. The necessary level of managerial responsibility must be "at a relatively high level." As we stated in Marinette County (Pineview Health Care Center), Dec. No. 26154-B (WERC, 3/92):

To confer managerial status, an individual's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 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 employees 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. (Footnotes omitted).

The Union argued at hearing that since the Victim/Witness Coordinator, Farm Manager and Communications Technician are required to obtain approval and authorization of expenditures by a County committee prior to issuance of checks, it follows that they do not have the authority to expend County funds as required by the managerial exclusion. In response, the County pointed out that County policy requires committee approval of expenditures, and further that some departments have a practice of obtaining approval for all expenditures. As the Court concluded in *KEWAUNEE COUNTY V. WERC*, 141 WIS.2D 347, 353-356 (1987) an employee may be found to be managerial even if the ultimate authority to appropriate funds lies with the county board. Thus, the fact that a County committee approves expenditures prior to the issuance of checks does not establish that the positions in question are not managerial employees by virtue of their resource allocation authority.

We now turn to consideration of the subject positions.

Payroll and Accounts Manager

The County asserts that the Payroll and Accounts Manager position is confidential. The testimony of the incumbent, Kathy Brownell, indicates otherwise. She is not a member of the County bargaining team. She does not cost County proposals. Brownell prepares general information for collective bargaining regarding employee compensation, benefit selections and other related current or historical information. Preparation of this type of information does not expose her to County bargain strategy. Brownell does not have access to, knowledge of, nor does she participate in any significant way in collective bargaining, litigation, contract administration or County grievance procedures.

Based on the record, we conclude Brownell does not have sufficient access to, knowledge of and participation in confidential matters relating to labor relations to be a confidential employee.

Police Administrative Assistant

The County asserts that the Police Administrative Assistant is a supervisor. The record supports this conclusion.

Bettis has significant disciplinary authority and involvement in the hiring of employees. Bettis has imposed written discipline on two occasions without intervention or prior approval from her supervisor or any other County administrative employee. She will determine whether the newly hired Receptionist passes her probationary period. As to hiring, Bettis modified interview questions, participated in the four member panel interview and recommended the hire of the successful candidate for the Receptionist position.

The record demonstrates that Bettis has the authority to direct and assign the work of two employees. She daily distributes and assigns work to the Administrative Secretary and the Receptionist through her apportioning of reports for typing and data entry and continuing instruction.

Bettis' level of pay vis-à-vis the employees she supervises is consistent with and related to her supervisory duties.

Bettis approves sick leave, vacation time and overtime for the Administrative Secretary and Receptionist. Bettis completes the Administrative Secretary's evaluation and will complete the Receptionist's evaluation. The record reveals that no other supervisor in the Sheriff's department exercises authority over either the Administrative Secretary or the Receptionist.

Bettis spends roughly 25 percent of her day fulfilling her supervisory responsibilities. Although the majority of Bettis' time is not dedicated to supervision, we find that she possesses sufficient supervisory responsibility to be a supervisor excluded from the bargaining unit.

Victim/Witness Coordinator

Our recent decision in TREMPLEALEAU COUNTY, SUPRA, creates the standard by which we address whether Rengert's responsibilities are managerial in nature. In reviewing Rengert's job duties and applying the criteria we enunciated in TREMPLEALEAU COUNTY, we are convinced that while Rengert performs some managerial functions, she does not have sufficient participation in the formulation, determination and implementation management policy or sufficient authority to commit County resources to be a managerial employee.

Rengert testified that the segregation of Victim/Witness office in 1992 was to allow the office to:

. . . remain the same. The district attorney prior to, the one that we had in 1991-1992, treated our position as strictly clerical. After he left office and the new district attorney came in, he allowed us to progress with the program to what it is now, and he had, he wanted to move on, and I felt that that was the time for us to become independent, so that the program wouldn't go backwards.

[Tr. 94]

She further indicated that since this independence, there have been only two changes in her responsibilities;

. . . [t]he only two things that I can think of are that I report directly to the County Board now, rather than to the district attorney, and that I prepare the annual report directly for the County Board. Before then my portion of the annual report would be part of the district attorney's.

[Tr. 93]

Rengert testified that the procedures used by the Monroe County Victim/Witness Department "have to be approved by the state office." [Tr. 72]. She further testified that the Court and District Attorney "order her" to do certain procedures. [Tr. 73] Rengert receives assignments from the judges. Most recently she was directed to conduct a study and benefit analysis to determine whether Monroe County would benefit from a juvenile victim offender reconciliation program. Rengert is given direction by the District Attorney to prepare a victim/witness for trial, to locate additional witnesses for a particular case, to speak to specific individuals, to contact law enforcement to request evidence and to remind law enforcement to bring evidence to trial. In the event that Rengert desires to initiate a new program through the Victim/Witness Department, she would need to obtain approval from the County Board.

Our decision in TREMPLEALEAU COUNTY held a victim/witness coordinator who had the discretionary ability to identify priorities and allocate time based on these priorities was a managerial employee. Rengert is not afforded this level of managerial discretion. The record reveals Rengert continues the practices created when the Monroe County victim/witness responsibilities were under the auspices of the District Attorney, she implements the procedures of the State, she follows the directions given to her by the Court and District Attorney, and she does not have the authority to initiate new programs without approval from either her authorizing committee or the County Board.

Addressing the second prong of the managerial exclusion, Rengert creates the recommended budget for the Victim/Witness Department by mirroring the prior year's budget and including predetermined increases to salary lines. Rengert does not have the authority to include capital purchases in her budget without County Board approval. She does not have discretionary authority to spend monies for varying purposes.

Given the foregoing, we conclude that Rengert does participate to a sufficient degree in the formulation, determination or implementation of management policy or have sufficient authority to allocate County resources to be a managerial employee.

As to the question of whether Rengert is a supervisor, we conclude that she does not possess supervisory duties and responsibilities in sufficient combination and degree to be found a supervisor.

As to the extent of her authority to hire, promote, transfer or discipline, we begin by noting that in the context of the two person Victim/Witness Department, there are no promotional or transfer opportunities and there have been no hiring or disciplinary instances through which Rengert's authority can be definitively measured. Based on the limited evidence that we do have, we conclude that Rengert's disciplinary authority is best characterized as making recommendations for improved employee performance as opposed to imposing discipline or effectively recommending that discipline be imposed by others. Further, while it seems clear that she would be involved in the hiring process if the Specialist position were to become vacant, the record does not persuade us that her involvement would rise to the level of making an effective hiring recommendation.

Regarding her authority to direct and assign the work of the Specialist, Rengert has this authority but rarely has to exercise it given the long tenure of the Specialist and the existing and long standing work allocation between Rengert and the Specialist.

As to the factor related to the number of employees, as previously noted, Rengert's authority is limited to one employee. No one else exercises authority over this employee.

Rengert's level of pay is significantly higher than the Specialist's but we are persuaded Rengert's pay rate primarily reflects her skills rather than supervisory responsibilities.

As to the remaining analytical factors, we are persuaded from the record that Rengert is primarily supervising an activity as opposed to the Specialist, that she spends very little time supervising the Specialist and exercises little independent judgment when doing so.

Considering all of the foregoing, we conclude that Rengert is not a supervisor.

Farm Manager

The County asserts Farm Manager Hopkins is a managerial employee. The record confirms that Hopkins is a managerial employee.

Hopkins has complete authority and responsibility for the Monroe County farm operations. Hopkins determines which livestock and crops to produce. He determines when to harvest and sell the livestock and crops. He determines how to feed and care for the livestock. He determines what crops to plant, the amount of each crop to be planted, the amount of crops

to be used for feed for livestock and the amount to be sold. Hopkins determines the method of sale of the farm operations and has independent authority to enter into contractual agreements to effectuate the sales.

Given all of the foregoing, we are satisfied that Hopkins sufficiently participates in the formulation, determination and implementation of managerial policy and possesses sufficient authority to commit the County's resources to be a managerial employee.

Communications Technician

The County asserts the Communications Technician is a managerial employee and a supervisor. We agree that Sanders is a managerial employee.

Sanders is afforded a high level of managerial responsibility over the communications equipment and communication systems of the County. Sanders independently evaluates, prioritizes and determines the manner in which communication services are provided by the County. Sanders independently purchases equipment, enters into purchase and lease agreements and contracts with contractors for needed services. Sanders independently prepares a budget based on what he projects to accomplish during the fiscal year, has authority to expend monies for varying purposes and has authority to expend funds in excess of his budget in times of emergency.

Based on the level of authority and discretion Sanders is afforded which affect the nature and direction of the County's communication systems, we are convinced he is a managerial employee and is thus properly excluded from the bargaining unit. Thus, we need not and do not determine whether he is also a supervisor as alleged by the County.

Dated at Madison, Wisconsin this 30th day of November, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner