

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MUNICIPAL EMPLOYEES ASSOCIATION

Involving Certain Employees of

THE CITY OF DE PERE

Case 64
No. 58239
ME-996

Decision No. 30311

Appearances:

Kasdorf, Lewis & Swietlik, S.C., by **Attorney Cynthia Haney Flynn**, 727 East Walnut Street, Green Bay, Wisconsin 54301, appearing on behalf of the Municipal Employees Association.

Attorney Judith Schmidt-Lehman, City Attorney, 335 South Broadway, De Pere, Wisconsin 54115, appearing on behalf of the City of De Pere.

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

On November 24, 1999, the Municipal Employees Association filed with the Wisconsin Employment Relations Commission a petition to clarify a bargaining unit of employees of the City of De Pere represented by the Association.

Through the petition, the Association seeks to include the following positions in the Association bargaining unit: Payroll Clerk (Betty Aerts); Administrative Secretary – Police Department (Kerry Krueger); Administrative Secretary – Human Resources (Lori Phillips); Administrative/Legal Secretary (Tara Thomas) and Administrative/Legal Secretary (Janice

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Arndt). The City contends that all of these positions are held by confidential employees who should continue to be excluded from the Association bargaining unit. The Association concedes that the City is entitled to one confidential employee, but argues that four of the five employees in dispute should be placed in the Association unit.

Hearing was scheduled for March 29, 2000, but was held in abeyance pending efforts at settlement, which proved unsuccessful. Hearing was thereafter held in De Pere, Wisconsin before Examiner Stuart D. Levitan, a member of the Commission's staff, on August 7, 2001. The parties filed written argument, the last of which was received on November 5, 2001.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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

FINDINGS OF FACT

1. The Municipal Employees Association, herein the Association, is a labor organization with offices in care of Kasford, Lewis & Swietlik, S.C., 727 East Walnut Street, Green Bay, Wisconsin. The Association is the collective bargaining representative of a blue collar/white collar unit of City of De Pere employees.

2. The City of De Pere, herein the City, is a municipal employer with offices at 335 South Broadway, De Pere, Wisconsin. At all times relevant herein, the City had collective bargaining relationships with the Association, the De Pere Telecommunicators Association, the De Pere Professional Fire Fighters Association, IAFF Local 1998, the De Pere Police Benevolent Association, and the De Pere Engineering Department Employees Union. Shortly after the hearing in this matter, it was anticipated that the telecommunicators employed by the City would become Brown County employees and thus that the telecommunicators bargaining unit would cease to exist.

3. Michael John Walsh has been Mayor of De Pere since 1996. The position is part-time and he is generally not at City Hall during the day. Walsh chairs the City's Personnel and Finance Committee, which, among other duties, sets parameters for collective bargaining, reviews tentative agreements, and acts as the second step in contractual grievance procedures. His secretary is Janice Arndt.

James Grassman assumed the full-time position of City Administrator in November 2000. He is the chief administrative officer for the City, responsible for oversight of its daily operations. Grassman is a member of the City's bargaining team for all bargaining units and his secretary is Janice Arndt.

Janice Arndt is classified as a part-time Administrative/Legal Secretary, and works eight-hour days on Tuesday, Thursday and Friday.

Arndt performs administrative and clerical work for the Mayor and City Administrator and has complete and unrestricted access to their offices. She spends the majority of her time working for the City Administrator.

Arndt maintains the files of the City Administrator and Mayor, some of which include confidential labor relations information. Both the City Administrator and the Mayor receive confidential labor relations correspondence. After opening the City Administrator's mail, Arndt reads it and directs it as appropriate. She typically does not read the Mayor's mail after she opens it.

Arndt receives assignments from the City Administrator, Mayor, or City Attorney to type, format and/or distribute correspondence relating to confidential labor relations issues. Her duties also include assisting in the preparation of the agenda and supporting materials for meetings of the Finance and Personnel Committee, including confidential matters relating to labor relations.

4. City Attorney Judith Schmidt-Lehman is a member of the City's bargaining team for all bargaining units and also has responsibilities as to the administration of collective bargaining agreements. Tara Thomas is the City Attorney's secretary and holds the following position description:

JOB SUMMARY

Provides administrative/secretarial support to the Mayor, City Administrator and City Attorney. Performs other duties as assigned.

. . .

PRINCIPAL DUTIES AND RESPONSIBILITIES

- A. Performs all secretarial functions for the offices of the Mayor, City Administrator, and City Attorney: takes dictation; types correspondence, legal documents, reports, City budget, etc.; receives, screens and relays incoming calls; schedules appointments; responds to inquiries regarding various City functions. (50%)
- B. Prepares ordinances, resolutions, recommendations and agendas, etc. for meetings of the Common Council and Finance/Personnel Committee. Prepares and distributes packets for monthly meetings of the Finance/Personnel Committee. (30%)
- C. Maintains Municipal Court records. Maintains accurate record of trials. Prepares witness subpoenas as needed. Prepares motions, petitions and orders for submittal to appropriate court as needed. (10%)
- D. Maintains legal filing system. Prepares purchase orders. Shares receptionist duties with other office staff. (10%)

KNOWLEDGE, SKILLS AND ABILITIES

- A. Considerable knowledge of standard office and legal practices and procedures including business English, legal terminology, business document format, spelling, grammar, punctuation vocabulary, filing and arithmetic. Sufficient knowledge of all City functions to effectively screen inquiries and process related documents. Proficiency in WordPerfect 6.1 For Windows and Quattro Pro 6.1 For Windows.
- B. Skill in: the operation of equipment needed to effectively perform the duties and responsibilities of the position including personal computer, typewriter, computer terminal, calculator, Dictaphone, telephone, photocopier, fax machine, etc. Typing speed of 70 WPM.
- C. Ability to: organize, schedule, prioritize and perform work with limited supervision; establish and maintain effective working relationships; communicate effectively and deal with the public, elected officials, department heads and other City employees with courtesy and tact; process confidential information with discretion; accurately complete assignments within deadlines; and work independently.

MINIMUM EDUCATION AND EXPERIENCE

- A. Associate Degree or equivalent in Administrative Assistant or related field.
- B. Two to three years' secretarial experience.
- C. Minimum of one year legal office experience.

An equivalent combination of education and experience may be considered.

The above is intended to describe the general content of and requirements for the performance of this position. It is not to be construed as an exhaustive statement of duties, responsibilities or requirements.

Effective: .. January 1998

Although Thomas does the majority of her work for the City Attorney, she also performs secretarial work for the Mayor, Human Resources Director and Director of Planning and Development. Her work includes typing bargaining proposals and preliminary and final drafts of correspondence relating to the City's response to grievances in the Department of Public Works and Fire Department. She organizes and has full access to the City Attorney's files which include confidential labor relations information.

5. Police Chief David Tellock manages and directs the Police Department and is a member of the City's bargaining team for negotiations with the De Pere Police Benevolent Association. Kerry Krueger has been the Administrative Secretary for the De Pere Police Department since November, 1999, with the following position description:

JOB SUMMARY

Provides administrative/secretarial support to the Police Chief and Captains.
Performs other duties as assigned.

PRINCIPAL DUTIES AND RESPONSIBILITIES

- A. Performs secretarial functions for the Police Chief and Captains: receives, screens and relays incoming calls; responds to routine correspondence; transcribes correspondence, memos and other documents from hand-written copy or taped dictation; answers inquires regarding functions of the department. Types, files and maintains confidential reports and records. Performs other duties as assigned. (40%)
- B. Manages criminal records database programs, prepares specialized queries and reports; responsible for record keeping, user modifications, etc., affecting system use and maintenance (20%)
- C. Assists with the preparation of the monthly reports of department operations. (10%)
- D. Assists with the preparation of the monthly invoices for payment. 20%
- E. Schedules approved training for department personnel and maintains records of all training. (10%)

KNOWLEDGE, SKILLS AND ABILITIES

- A. Considerable knowledge of. standard office practices and procedures including business English, business document format, spelling, grammar, punctuation, vocabulary, filing and arithmetic. Sufficient knowledge of City and Department functions to effectively screen inquiries and process related documents. Sufficient knowledge of spreadsheet programs to maintain and update files and records. Proficiency in WordPerfect 6.1 or similar word processing program.
- B. Skill in: the operation of equipment needed to effectively perform the duties and responsibilities of the position including personal computer, typewriter, computer terminal, calculator, Dictaphone, telephone, radio, photocopier, fax machine, etc. Typing speed of 70 WPM.

- C. Ability to: organize, schedule, prioritize and perform work with limited supervision; establish and maintain effective working relationships; communicate effectively and deal with the public, elected officials, department heads and other City employees with courtesy and tact; process confidential information with discretion; accurately complete assignments within deadlines; and work independently.

MINIMUM EDUCATION AND EXPERIENCE

- A. Associate Degree or equivalent in Administrative Assistant or related field.
- B. Two to three years' secretarial experience.

An equivalent combination of education and experience may be considered.

The above is intended to describe the general content of and requirements for the performance of this position. It is not to be construed as an exhaustive statement of duties, responsibilities or requirements.

Effective: May 1999

The Administrative Secretary position held by Krueger was created in 1999 at the recommendation of Police Chief Tellock and Captain of Administrative Services Edwin Janz who concluded there was a growing need for clerical support within the Department and were dissatisfied with the delays they were experiencing when confidential labor relations clerical work was submitted to existing confidential employees in City Hall.

At the time of hearing, Police Department employees were in three different bargaining units. Shortly after the hearing, it was anticipated that the number of bargaining units containing Department employees would be reduced to two when the telecommunicators became County employees. Krueger maintains the Chief's collective bargaining files that include his personal notes and assembles information for the Chief's use during the collective bargaining process. To assist Krueger in the information gathering process, the Chief has advised Krueger as to the strategic collective bargaining purposes that prompt his need for the information.

Tellock and Krueger from time to time discuss ongoing Department labor-management issues.

Employee grievances by Department employees under existing labor agreements are filed with the Chief. Krueger types the Chief's responses to grievances – including drafts. Krueger is sometimes present when the Chief and other management personnel discuss how the Department should respond to a grievance and sometimes assembles information for the Chief's use when he is responding to a grievance.

Krueger provides clerical support for Captain Janz when he is conducting an internal Department investigation of alleged employee misconduct. In this regard, Krueger transcribes interviews and types memos and reports used by the Captain and the Chief.

6. Jackie Nystrom is the City's current Human Resources Director, with the following Job Summary:

This position is responsible for administration of all personnel policies and insurance plans; responsible for development, implementation and maintenance of merit review, performance appraisal and classification/compensation plans; participates in labor relations issues; performs other duties as required. Supervises Administrative Secretary.

The Human Resources Director is a member of the City's bargaining team for all bargaining units.

Lori Phillips is Nystrom's Administrative Secretary. She worked part-time in that position beginning in March, 1992, before assuming the position on a full-time basis in January 1997 with the following position description:

JOB SUMMARY

Provides administrative/secretarial support to the Human Resources Manager and Director of Planning and Economic Development. Performs other duties as assigned.

PRINCIPAL DUTIES AND RESPONSIBILITIES

- A. Performs secretarial functions for the offices of Director of Planning and Economic Development and Human Resources Manager: receives, screens and relays incoming calls; responds to routine correspondence; transcribes correspondence, memos and other documents from hand-written copy or taped dictation; answers inquires regarding planning and economic development and human resources functions. (20%)

- B. Prepares materials (agendas and minutes) and distributes packets for meetings of the Plan Commission, Redevelopment Authority and the Police and Fire Commission. Where necessary, assists Administrative/Legal Secretary in the preparation of materials for Common Council meetings, Finance/Personnel Committee meetings and in the preparation of various documents for the Mayor, City Administrator and City Attorney. (10%)
- C. Performs duties related to the recruitment process: types employment bulletin, advertisements, postings, and related documents; places advertisements; mails job bulletin and application materials; accepts/processes applications; assists in the administration and correction of tests; schedules interviews; maintains recruitment files. (25%)
- D. Assists Human Resources Manager in gathering data and updating spreadsheet reports related to hours worked report, insurance, labor negotiation/costing; wage surveys, etc. (10%)
- E. Maintains files of Human Resources Manager. Maintains various employee rosters and mailing lists. Prepares mailings for Employee Assistance Program. (15%)
- F. Shares receptionist duties with other office staff, including screening calls and answering general questions; assist water division secretary as needed in accepting payments, preparing work orders, scheduling meter readings/installations. Maintains/requisitions supplies for the Human Resources Department, Planning Department and second floor office staff. Distributes mail. Prepares purchase orders, processes invoices. Prepares I.D. cards, maintains City's Photo I.D. Albums. (20%)

KNOWLEDGE, SKILLS AND ABILITIES

- A. Considerable knowledge of- standard office practices and procedures including business English, business document format, spelling, grammar, punctuation, vocabulary, filing and arithmetic. Sufficient knowledge of City functions in general and of Human Resources related functions in more detail to effectively screen inquiries and process related documents. Sufficient knowledge of spreadsheet programs to maintain and update files and records. Proficiency in WordPerfect 6.1 or similar word processing program.

- B. Skill in: the operation of equipment needed to effectively perform the duties and responsibilities of the position including personal computer, typewriter, computer terminal, calculator, Dictaphone, telephone, radio, photocopier, fax machine, etc. Typing speed of 70 WPM.
- C. Ability to: organize, schedule, prioritize and perform work with limited supervision; establish and maintain effective working relationships; communicate effectively and deal with the public, elected officials, department heads and other City employees with courtesy and tact; process confidential information with discretion; accurately complete assignments within limited deadlines.

MINIMUM EDUCATION AND EXPERIENCE

- A. Associate Degree or equivalent in Administrative Assistant or related field.
- B. Two to three years of secretarial experience.

An equivalent combination of education and experience may be considered.

The above is intended to describe the general content of and requirements for the performance of this position. It is not to be construed as an exhaustive statement of duties, responsibilities or requirements.

Phillips types and files Nystrom's notes of meetings to investigate and discuss grievances. She prepares materials for Nystrom's use during collective bargaining. For instance, she collects bargaining agreements from comparable jurisdictions, which Nystrom uses to prepare and maintain spreadsheets utilized by the City during bargaining. Information Phillips is directed to collect is for the City's exclusive use and is not shared with the unions representing City employees except as negotiations warrant.

Since 1996, Phillips has administered the City's random drug testing procedure on the 40 or so employees with commercial driver's license, by which eight to ten drivers per quarter are randomly identified and tested. After the random selection, Phillips schedules particular drivers for testing on particular days and prepares the cards and paperwork to process the test.

7. Joseph Zegers has been the City's Finance Director since December 1998. His primary responsibilities include budget preparation and monitoring, preparation of financial work sheets and monitoring of case and investment balances. His office staff consists of an Accounts Payable Clerk and a Utility Billing Clerk, who are both in the Association bargaining

unit, and Payroll Clerk Betty Aerts, who is not so included. Zegers is not directly involved in contract negotiations on behalf of the City.

Betty Aerts has been the Payroll Clerk since June, 1992, with the following position description:

JOB SUMMARY

This position is responsible for preparation and distribution of biweekly payroll for all City employees; preparation of related reports, processing of all leave vouchers, including the benefit enrollments and maintaining related records. Assists Water Division secretary as needed. Performs other duties as assigned.

PRINCIPAL DUTIES AND RESPONSIBILITIES

- A. Prepares biweekly payroll for all City employees: processes time cards; determines appropriate wage rate, premium pay, deductions, etc.; calculates wages; enters data into computer; runs payroll backup and prepares payroll; prepares checks for distribution. Prepares and submits all semi-monthly, monthly, quarterly, and annual payroll reports. Calculates retro pay upon completion of contract negotiations. (37½ %)
- B. Prepares and processes unemployment and worker's compensation claims, calculates wage adjustments due employees. Prepares vouchers for payment of monthly life, medical, dental, and disability insurance premiums, verifies accuracy of employee numbers and premium amounts. Processes vacation and sick leave vouchers, maintains related records. (12½ %)
- C. Maintains personnel files of all current and former employees. Maintains records of time sheets for all exempt employees. Completes employment and wage verification for financial institutions. Conducts new employee orientation. Verifies employee coverage data on daily insurance payment reports. Conducts reconciliation of health and dental insurance accounts. (10%)
- D. Assists Water Division secretary by responding to customer calls, data entry of meter readings and payments, updating meter books, mailing fluoride notices, making copies, etc. (25%)

- E. Types and files various documents. Shares receptionist duties with other office staff, assists other office staff as needed. (10%)
- F. Computes wages and employee benefit contribution for all employees for preparation of the annual budget. Assists Financial Services Manager in preparation of asset report, computerized posting of payroll, etc. Assists auditors as needed in providing payroll information and reports. Prepares principal and interest spreadsheets. Other duties as assigned. (5%)

KNOWLEDGE, SKILLS, AND ABILITIES

- A. Thorough knowledge of the principles and practices of fundamental accounting and bookkeeping, including knowledge of payroll accounting. Knowledge of basic office practices and procedures. Sufficient knowledge of spreadsheet programs to effectively maintain related files and reports.
- B. Skill in the operation of equipment needed to perform the duties of the position, including calculator, personal computer, computer terminal, typewriter, telephone, copier, fax machine, radio, etc. Typing speed of 70 WPM.
- C. Ability to: organize, schedule, prioritize, and perform work with limited supervision; establish and maintain effective working relationships; communicate effectively and deal with the public, elected officials, department heads, and other City employees with courtesy and tact; process confidential information with discretion; accurately complete assignments within limited deadlines.

MINIMUM EDUCATION AND EXPERIENCE

- A. Associate degree or equivalent in Accounting.
- B. Three months to one year of related experience.

An equivalent combination of education and experience may be considered.

The above is intended to describe the general content of and requirements for the performance of this position. It is not to be construed as an exhaustive statement of duties, responsibilities, and requirements.

The City's bargaining team consults with Aerts on the fiscal and administrative impact of potential City bargaining proposals. Aerts' input has led to modification of City proposals. Not all proposals on which the City has had Aerts comment have ultimately been offered in bargaining. Aerts is also asked on occasion by City negotiators for her thoughts on the fiscal and administrative impact of union bargaining proposals. Aerts runs spreadsheets annually showing wage and benefit projections for the coming calendar year. When running the projections covering a workforce where there is not yet a settled collective bargaining agreement, Aerts will use a projected wage increase as given to her by the City Administrator.

Aerts' major responsibilities are the preparation of the biweekly payroll and its attendant verifications; maintenance and distribution of various employee records, and reporting to state and federal agencies on employee wage and hour activity. The City biweekly payroll ranges from 175 to 195 regular employees; adding seasonal and casual employees brings the total payroll to about 300 employees. The City uses two styles of three-part vouchers for vacation, compensatory or other time off and holidays; employees complete a voucher when they use time off, and Aerts verifies the particulars of their usage. If an employee presents a voucher which Aerts cannot verify because they do not have sufficient time to cover their usage, or because it is not in compliance with the provisions of the relevant collective bargaining agreement, Aerts will inform the appropriate supervisor of the situation. Because the City does not let employees run a negative balance in their leave accounts, Aerts' actions at verification may result in the denial of requests for leave. Aerts' actions in this regard have resulted in grievances, which have led to Aerts providing information to the City Attorney, Human Resources Director and the relevant department head.

Aerts is the City's contact person with its worker's compensation insurance carrier, Wausau Insurance, and has on occasion recommended an investigation to verify the details of a claim. She coordinates the inquiry when such an investigation is undertaken, either at her initiative or that of the carrier. At the time of hearing, there was litigation pending regarding a worker's compensation claim which the carrier disputed. Aerts is also responsible for reconciling worker's compensation payments with payments made by the City's health insurance carrier. If she finds that someone has received an excessive benefit, she reports the discrepancy to the health insurance carrier, Humana, who then notifies the employee for reimbursement.

8. The incumbents in the positions of Administrative/Legal Secretary (Thomas and Arndt), Administrative Secretary – Human Resources (Phillips), Administrative Secretary – Police Department (Krueger) and Payroll Clerk (Aerts) have sufficient access to, knowledge of or participation in confidential matters relating to labor relations to be confidential employees.

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

CONCLUSION OF LAW

The incumbents in the positions of Administrative/Legal Secretary (Thomas and Arndt), Administrative Secretary – Human Resources (Phillips), Administrative Secretary – Police Department (Krueger) and Payroll Clerk (Aerts) are all confidential 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), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The incumbents in the position of Administrative/Legal Secretary (Thomas and Arndt), Administrative Secretary – Human Resources (Phillips), Administrative Secretary – Police Department (Krueger) and Payroll Clerk (Aerts) shall continue to be excluded from the Municipal Employees Association bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of April, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commission Chairperson Steven R. Sorenson did not participate.

THE CITY OF DE PERE

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

POSITIONS OF THE PARTIES

In support of its position that the subject positions should be included in the bargaining unit, the Association asserts the vast majority of the duties performed by the five secretaries do not involve any work that qualifies as confidential under Commission standards, in that the incumbents are excluded from closed sessions of the Finance and Personnel Committee, strategy meetings for union negotiations, contract negotiations as a bargaining team member, any strategy or meetings related to labor related matters and investigating or taking statements on police personnel investigations.

The secretaries access to information involving personnel files, pay levels, health benefits, and the like does not give them access to confidential labor relations information under Commission rulings. Further, gathering information used by the employer in collective bargaining and preparing rough and final drafts in response to grievances does not rise to the level of confidential information sufficient to exclude them from the bargaining unit. Nowhere in the job descriptions is it indicated that they are required to attend meetings or be involved in any matters that deal with the employer's strategy in collective bargaining, contract administration and/or litigation. The City does need a secretary classified as confidential, but one would be sufficient. The Commission should determine which one of the five positions should be classified as confidential.

In support of its position that the incumbents in the subject positions are all confidential employees, the City contends the record is clear that all the subject positions have substantial duties which are directly related to confidential labor issues. The confidential work required of all positions is well in excess of *de minimus*.

The Human Resources and City Attorney positions are held by the support staff for key management employees with significant labor responsibility who thus are immersed in daily and continuous confidential tasks. The Mayor/City Administrator's secretary must likewise be considered confidential, as the Mayor and City Administrator have the ultimate responsibility for labor and employment relations. The Administrative Secretary in the Police Department performs confidential tasks for the Chief of Police and Captain of Administrative Services. The Payroll Clerk is the only employee in the Finance Department with the capability of assessing the fiscal impact of bargain proposals.

Because each incumbent has access to, and knowledge of confidential information relating to labor relations, all subject positions are held by confidential employees and should continue to be excluded from the bargaining unit.

The City asserts the Association misinterprets the law when it argues that since the clerical positions are not involved in the formulation of labor strategy, they are not confidential employees. In fact, access to or knowledge of confidential information can and does form the basis of a confidential exemption.

Further, the fact that some labor relations information may eventually become known to the City's unions does not mean the information is not confidential. The incumbents all have access to and knowledge of notes and drafts which are never disclosed to the union and thus are properly classified as confidential information.

The City contends the duties of these positions cannot be assigned elsewhere. Given the significant labor responsibilities of the City Administrator, Mayor, City Attorney and Human Resources Manager, it is unreasonable to saddle them with a secretary to whom they could not assign labor related issues. The Police Department secretarial position was created because of an actual need of the department. The Payroll Clerk is the only person in the Finance Department to do the various confidential tasks assigned her.

Lastly, the City asserts there is absolutely no evidence that the City has undertaken to spread the confidential work among more employees than needed. The operations of the City would be disrupted should these duties need to be transferred to other individuals. The positions should remain outside the bargaining unit.

DISCUSSION

Section 111.70(1)(I), Stats., defines a municipal employee in pertinent part as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or **confidential**, managerial or executive employee. (Emphasis added).

The statutory term "confidential. . . employee" is not statutorily defined. With judicial approval (See MINERAL POINT UNIFIED SCHOOL DISTRICT V. WERC, Case 00-CV-126, (Ct. App. 1/2002) RECOMMENDED FOR PUBLICATION), we have defined a confidential employee as having sufficient access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must: (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or

other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. 1/

1/ DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).

While a *de minimis* exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 2/ 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. 3/ 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, 4/ and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her 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 employee without undue disruption of the employer's organization. 5/

2/ BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87)

3/ CESA AGENCY NO. 9, DEC. NO. 23863 (WERC, 12/86)

4/ TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85)

5/ HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88)

Administrative/Legal Secretary (Arndt)

The Mayor and City Administrator have significant labor relations responsibilities as to both the bargaining and administration of labor agreements. Arndt provides the primary clerical/administrative support for the Mayor and the City Administrator and thereby has access to and knowledge of confidential labor relations information related to the bargaining and administration of labor agreements.

We have held that the clerical employee assigned to a management representative with significant labor relations responsibilities is a confidential employee unless the confidential labor relations work can be assigned to another confidential employee without undue disruption

of the employer's organization. HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88). Here, given the reliance that the Mayor and City Administrator place on Arndt to efficiently and confidentially perform their labor relations responsibilities, it is clear that Arndt's confidential responsibilities could not be assigned to another employee. Therefore, we conclude Arndt is a confidential employee.

Administrative Secretary - Human Resources (Phillips)

The Administrative Secretary-Human Resources provides the primary clerical support for the Human Resources Director, who is a member of the City's bargaining team and also has a significant role in contract administration.

At the direction of the Human Resources Director, Phillips has prepared information for spreadsheets showing external comparables for the City's use in negotiations. Providing research and support to assist the management team in bargaining is confidential labor relations work because it gives Phillips knowledge of the City's bargaining strategy that is not available to the unions.

Phillips types and files the Human Resources Director's notes of investigations and discussions regarding grievances. Through these duties, Phillips has access to confidential labor relations information relating to contract administration.

Phillips' long-standing role running the drug testing program is another indication of her confidential status. Since 1996, it has been Phillips who has set the schedule for random drug tests on the 40 or so City workers with a commercial driver's license. Thus, Phillips is the first to know several days in advance of who will be tested and when – information with potential labor relations consequences to which unions are not privy. From the record evidence, it is apparent that Phillips' duties cannot be performed by other confidential employees without undue disruption.

For all these reasons, we have ordered the continued exclusion of the Administrative Secretary - Human Resources from the bargaining unit as a confidential employee.

Administrative Secretary - Police Department (Krueger)

The Police Chief has significant labor relations responsibilities on behalf of the City. As set forth in Finding of Fact 5, Krueger provides clerical/administrative support to the Chief and thereby has significant access to and knowledge of confidential labor relations information related to the bargaining and administration of labor agreements covering Department employees.

In addition to her confidential duties for the Chief, Krueger provides clerical support for Captain Janz as to internal investigations he is conducting into alleged employee misconduct.

The record clearly establishes that Krueger's confidential labor relations work cannot be assigned to another existing confidential employee without undue disruption. Krueger's position was created in part because of the delay the Department was experiencing when clerical internal investigation work was performed by existing confidential clerical employees in City Hall.

Given all of the foregoing, we conclude Krueger is a confidential employee.

Administrative/Legal Secretary (Thomas)

As set forth in Finding of Fact 4, Thomas provides clerical/administrative support to the City Attorney who has significant labor relations responsibilities. Her work includes typing bargaining proposals and preliminary and final drafts of correspondence relating to the City's response to grievances in the Department of Public Works and Fire Department. She organizes and has full access to the City Attorney's files which include confidential labor relations information.

As with other confidential clerical employees, we are persuaded from our consideration of the record as a whole that Thomas' confidential duties could not be assigned to other confidential employees without undue disruption of the City's operations.

Thus, Thomas is a confidential employee.

Payroll Clerk (Aerts)

The position of Payroll Clerk was held at the time of hearing by Betty Aerts.

As reflected in Finding of Fact 7, Aerts runs the City's spreadsheets analyzing the cost of bargaining proposals, and comments on proposal's fiscal and administrative impacts. Not all the economic or other offers are given to the unions, and material not so distributed is destroyed. Her fiscal and analytical role cannot be assigned to other employees without undue disruption of the City's operations. Aerts' gatekeeper role in benefit administration provides further support for her confidential status.

Given all of the foregoing, Aerts is a confidential employee.

Conclusion

We have found all five of the contested positions to be held by confidential employees. Four of the five individuals (Arndt, Krueger, Phillips and Thomas) are confidential employees because they provide direct clerical/administrative support to management employees with significant labor relations responsibilities. Through that support, they have access to and knowledge of confidential labor relations information. The fifth employee (Aerts) is confidential because of her significant role in assessing the fiscal impact of bargaining proposals which in turn gives her access to, knowledge of and participation in confidential labor relations matters.

The Association attacks the confidential status of these employees by arguing: (1) one clerical employee devoted exclusively to the performance of confidential work could perform all of the City's confidential clerical work; and (2) the typing/filing/assembling of grievance-related correspondence, bargaining proposals, bargaining resource material etc. (as opposed to participating in bargaining sessions, management strategy meetings) does not justify exclusion of an employee from a bargaining unit as a confidential employee. Neither argument is persuasive.

Acceptance of Association argument (1) would place us in the position of dictating the organizational structure of the City – a role we have historically rejected unless we are persuaded that the employer has proceeded in bad faith to establish a structure unrelated to its needs and designed to deprive employees of their rights as municipal employees. DUNN COUNTY, DEC. NO. 8170-A (WERC, 10/91); GIBRALTAR SCHOOLS, DEC. NO. 17092-E (WERC, 3/98). Here, there is no evidence that City's structure of its management team for the purposes of collective bargaining (and the resultant need for clerical support) results from anything other than the City's good faith assessment of how best to meet its management responsibilities.

Association argument (2) creates a hierarchy of confidential duties that is unrelated to the underlying basis for the exclusion of confidential employees from the definition of a "municipal employee" – management's need/right to conduct its labor relations business using employees who will keep management information confidential because their loyalties/interests are not divided due to inclusion in a bargaining unit. CESA #9, DEC. NO. 23863-A (WERC, 11/87); PRICE COUNTY, DEC. NO. 11317-B (WERC, 9/89). Clerical confidential work needs to be performed by employees in whom management has the same level of confidence as to their loyalty as those management employees formulating management strategy. Breach of that confidentiality as to clerical work can be every bit as damaging to employer labor relations interests as a breach by the strategy makers.

Thus, all of the individuals in question are confidential employees who shall continue to be excluded from the Association bargaining unit.

Dated at Madison, Wisconsin, this 5th day of April, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commission Chairperson Steven R. Sorenson did not participate.

