

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**  
Involving Certain Employees of  
**GREEN COUNTY**

Case 158  
No. 64376  
ME(u/c)-1131

**Decision No. 31387**

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**Appearances:**

**Michael J. Wilson**, Staff Representative, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1093, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

**William E. Morgan**, Corporation Counsel, 1016 16<sup>th</sup> Avenue, Monroe, Wisconsin 53566, appearing on behalf of Green County.

**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

On January 10, 2005, Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter AFSCME, filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission clarify an existing AFSCME bargaining unit of employees of Green County, Wisconsin, hereinafter County, by including the Business Manager and the Confidential Office Associate. Hearing in the matter was held in Monroe, Wisconsin on March 10, 2005, before Commissioner Susan J.M. Bauman serving as Hearing Examiner.

At the commencement of the hearing, the County, contrary to AFSCME, asserted that the Business Manager is a confidential, supervisory and/or managerial employee and the Confidential Office Associate is a confidential employee, both of whom therefore cannot be included in the bargaining unit. Prior to the close of the hearing, AFSCME conceded that the Business Manager is a confidential, supervisory and managerial employee, but continued to contend that the Confidential Office Associate is a municipal employee who should be included in the bargaining unit. The parties filed post-hearing written argument and supplemented the record on June 6, 2005.

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

Dec. No. 31387

### **FINDINGS OF FACT**

1. Wisconsin Council 40, AFSCME, AFL-CIO is a labor organization certified by the Wisconsin Employment Relations Commission as the bargaining representative for “all regular full-time and regular part-time employees of Green County excluding elected officials, professional employees, supervisory employees, managerial employees, confidential employees and employees in previously certified or recognized bargaining units.”

2. Green County is a municipal employer which maintains its principal offices at 1016 16<sup>th</sup> Avenue, Monroe, Wisconsin 53566. Among the departments the County maintains is the Sheriff’s Department (hereinafter Department). Randy Roderick is the duly elected Sheriff. The Department offices are located at 2827 Sixth Street, Monroe, Wisconsin.

3. The Department employs approximately 55 full-time and 20 part-time employees consisting of patrol deputies, jailers, dispatchers, maintenance personnel, kitchen workers, lieutenants, a chief deputy, the Sheriff, as well as the Business Manager and Confidential Office Assistant at issue herein. Six Department employees (four kitchen and two maintenance) are in the AFSCME bargaining unit with all other eligible Department employees being represented for the purposes of collective bargaining by the Wisconsin Professional Police Association (WPPA).

In 1974, the Department employed approximately 20 full-time personnel.

4. Effective January 1, 2005, the position of Business Manager was created and filled by Dana Weber and the AFSCME bargaining unit position of Fiscal Clerk II that she previously held was eliminated. The parties agree that the Business Manager is a confidential, supervisory and managerial employee and thus not in the bargaining unit. The position description for the Business Manager provides as follows:

#### ***SUMMARY***

The purpose of this position is to direct, coordinate and monitor personnel matters, financial accounting and office practices for the Green County Sheriff’s Department. The Business Manager maintains all the financial accounts and records in accordance with standard bookkeeping and accounting practices. The Business Manager will perform confidential technical assistance to the Sheriff.

#### ***ESSENTIAL DUTIES AND RESPONSIBILITIES include the following:***

Furnishes budgetary information and provides fiscal information to the Sheriff, Law Enforcement Committee, Finance Office and auditors and provides all information to the Finance Office for the completion of the county ledger process.

Attends Law Enforcement meetings including closed sessions to take minutes and be available to answer department policy and procedure questions.

Directs and implements office accounting operations and financial and statistical reports.

Participates in collective bargaining as requested by the Sheriff and coordinate department grievances under the Sheriff's directions.

Supervises employees who perform clerical functions.

On a routine basis completes for the Sheriff's Department and jail all departmental business transactions, machinery expenditures and revenues pertaining to civil process, invoices for patrol, records checks and monthly balancing of jail accounts.

Balances and maintains Huber Trust Account which includes the jail commissary.

Reconciles all accounts pertaining to bonds and sends letters/payments to other agencies for arrest warrants.

Assigns fixed asset numbers and completes paperwork.

Types and distributes agendas, minutes, notices and initiates personnel files for department hires and maintains ongoing status changes in wages, vacations, etc.

Records employee work time to appropriate accounts and worksheets.

Coordinates all drug screens and health exams for new employees and assists in registering health and life insurance paperwork and assists employees with insurance, disability and Section 125 questions.

Completes DIHLR workers compensation injury reports, records and monitors medical absences, including light duty status, and maintains these records.

Submits all claims for liability cases against the Sheriff's Department and jail, and all other insurance claims.

Opens the Sheriff's mail and processes as required in the absence of the Confidential Office Associate.

Types confidential and other correspondence for the Sheriff and faxes, receives and distributes confidential correspondence in the absence of the Confidential Office Associate.

Assists in developing the budget and maintains for the Sheriff's Office.

Answers questions from the public or directs them to another source that may be able to answer their questions

And such duties and responsibilities as assigned from time to time.

5. In 2001, a WPPA-represented clerical/dispatch Department position was eliminated and the position of Confidential Office Associate was created by the County to provide clerical and administrative assistance to the Sheriff. The Office Associate has never been in a bargaining unit and, until the creation of the Business Manager position, the Associate was the only position in the Department available to perform confidential labor relations duties. The Position Description of the Confidential Office Associate accurately describes the bulk of what the Associate (Pam Young) does on a daily basis and, in pertinent part, provides as follows:

***SUMMARY***

The confidential office associate will perform confidential clerical, administrative and technical service assistance to the Sheriff. A confidential office associate possessing a master of office skills demonstrating appropriate safeguards for confidentiality of privileged information; skilled in the ability to assume responsibility without direct supervision; exercises initiative and good judgment; and makes decisions within scope of assigned authority.

***ESSENTIAL DUTIES AND RESPONSIBILITIES include the following:***

Performs general secretarial responsibilities such as word processing of confidential correspondence; assist in compiling confidential information pertaining to the Department; data processing of complied [sic] information; and filing correspondence.

Highly skilled working knowledge of office equipment, in particular a personal computer, laser jet printer, and Dictaphone is essential.

Performs the tasks of interpreting budget-related matters.

Provides administrative and clerical duties to coordinate the overall functions and activities of the Green County Sheriff's Department.

Screens phone calls and walk-in traffic into administrative office to determine if the nature of inquiry falls within the Department, directing inquiries to the appropriate division or other agency/resource.

Provides technical assistance, information and administration support to the Sheriff or his designee using appropriate safeguards for confidentiality.

Ability to answer, place and transfer telephone calls in an efficient, courteous manner.

Knowledge of general terms and phrases used in legal procedures and documents relating to law enforcement.

Knowledge of laws pertaining to open records.

Ability to work under stressful situations involving many deadlines and time limits.

Ability to prioritize work.

And such duties and responsibilities as assigned from time to time.

Ms. Young serves as the Sheriff's primary secretary typing his correspondence, and maintaining Department medical records, training records and personnel files.

She types reports and correspondence related to grievances -- most of which are ultimately received by the employee/union involved.

She transcribes tapes of interviews conducted by the Department when investigating complaints against Department personnel.

She has occasional conversations with the Sheriff regarding confidential labor relations matters.

She prepares annual Department reports and other materials used by the County Board during budget deliberations. She performs payroll duties in the absence of the Business Manager.

7. The Confidential Office Associate does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee. The confidential labor relations work of the Confidential Office Associate can be performed by the Business Manager without an undue disruption of the Department's organization.

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

### **CONCLUSION OF LAW**

The Confidential Office Associate 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.

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

### **ORDER CLARIFYING BARGAINING UNIT**

1. The Confidential Office Associate shall be included in the bargaining unit described in Finding of Fact 1.

Given under our hands and seal at the City of Madison, Wisconsin, this 5<sup>th</sup> day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Green County

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,**  
**CONCLUSION OF LAW AND ORDER**

The County, contrary to AFSCME, asserts that Confidential Office Associate (Pam Young) cannot be included in the AFSCME bargaining unit because she is a confidential employee.

The following legal standard set forth by the Commission in MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), and affirmed by the Court of Appeals in MINERAL POINT SCHOOL DISTRICT V. WERC, 251 Wis.2d 325, 337-338 (2002) is used when determining whether an individual is a confidential employee:

We have held that for an employee to be held confidential, the employee must have 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. . . .

While a *de minimis* exposure to confidential materials is generally insufficient grounds for exclusion of an employee from a bargaining unit, . . . 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. . . . 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, . . . 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 to the employer's organization. . . . (Citations omitted.)

As noted above, the critical area of inquiry when we determine an employee's confidential status is the degree of exposure to the employer's strategy in collective bargaining and contract administration. Thus, for instance, the individual who determines the cost of the wage and fringe benefit proposals the employer may make to the union is typically found to be a confidential employee because that person is privy in a very significant way to strategic information which, if known to the union, would compromise the employer's interests at the bargaining table. WINTER SCHOOL DISTRICT, DEC. NO. 28464-B (WERC, 6/96). However,

the payroll individual who supplies the raw data to the person doing the costing typically is not found to be a confidential employee because his or her exposure to the employer's bargaining strategy through the supply of data is minimal. Further, such individual's overall payroll responsibilities (which may also include managing personnel files and leave records) generally do not provide any substantial support for exclusion as a confidential employee because said responsibilities do not expose them to the employer's strategic interests. OUTAGAMIE COUNTY, DEC. NO. 14062 (WERC, 10/75).

It is undisputed that the position of Confidential Office Associate was created to provide the Sheriff with general secretarial and administrative support. Among other duties, the position is also responsible for responding to callers and walk-in customers of the Department; responding to open records requests; file maintenance, including medical records, training records and personnel records of Departmental employees; and a mail run twice a day to the courthouse. Until the position of Business Manager was created, the Confidential Office Associate was the only person in the Department office available to perform confidential labor relations work.

When asserting that the Associate is a confidential employee, the County cites the Associate's: (1) typing of grievance-related documents and correspondence for the Sheriff; (2) transcription of tapes of witness statements obtained during the internal investigation of complaint against employees; (3) maintenance of personnel files; (4) conversations with the Sheriff about confidential labor relations matters; and (5) involvement with budget/payroll matters. A discussion of each of these components follows.

Typing of grievance-related correspondence and reports for the Sheriff gives the Associate access to confidential labor relations information. Even where the correspondence is ultimately received by the employee/union, the typing of drafts and/or the lag time between production and receipt provides confidential labor relations knowledge. CLARK COUNTY, DEC. NO. 16648-B (WERC, 6/04).

When transcribing tapes of witness statements in internal investigations, the only confidential labor relations information would be the Associate's knowledge of non-employee statements. The record establishes that employees/the Union receive copies of employee witness statements and that the Union may be present when the interviews are conducted.

Ms. Young maintains the personnel files of the employees of the Sheriff's Department, both union and non-union. Although these files include information on the employees that may be considered confidential in a traditional sense, we have long held that such information is not confidential in the labor relations sense because the employee/union have knowledge of or access to any of the information that may be relevant for labor relations purposes. See, e.g., OUTAGAMIE COUNTY, SUPRA.

From time to time, Ms. Young has conversations with the Sheriff that involve confidential labor relations information or is privy to such conversations. The Commission has found that management's use of employees as "sounding boards" regarding confidential labor

relations matters does not justify confidential status. See MANITOWOC PUBLIC SCHOOL DISTRICT, DEC. NO. 29711-C (WERC, 7/01); SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 8/02); MOSINEE SCHOOL DISTRICT, DEC. NO. 20479-F (WERC, 8/02).

Finally, Ms. Young helps prepare annual report summaries and other items that are provided to the County Law Enforcement Committee for budget-related consideration and, in the absence of the Business Manager, Ms. Young performs payroll duties. As indicated above, preparation of payroll documents is not a basis for exclusion from the bargaining unit because it does not constitute confidential labor relations work. OUTAGAMIE COUNTY, SUPRA. The preparation of annual report summaries also does not expose Ms. Young to confidential labor relations information.

Given the foregoing, the confidential labor relation work which could warrant the Associate's exclusion as a confidential employee is limited to the typing of grievance-related correspondence and non-employee witness statements taken during internal investigations. Although the Department has nearly tripled in size since the mid-1970's, the record does not persuade us that the amount of confidential labor relations work in question takes more than a *de minimus* amount of the Associate's time. Even a *de minimus* amount of confidential labor relations work can justify a confidential exclusion, if that position is the only one available to perform the confidential work. MINERAL POINT, SUPRA. However, with the creation of the Business Manager who also has confidential duties and skills, there already is an excluded Department position who we are persuaded can perform the small amount of truly confidential labor relations work without undue disruption of the Department's operations. Simply put, we do not believe there is sufficient confidential labor relations work to warrant excluding both the Business Manager and the Associate.

Given the foregoing, we conclude that Confidential Office Associate Young is not a confidential employee and the bargaining unit is clarified to include her position.

Dated at Madison, Wisconsin, this 5<sup>th</sup> day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner