

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF MENOMONIE

Involving Certain Employees of

CITY OF MENOMONIE

Case 95
No. 66041
ME-1185

Decision No. 32066

Appearances:

Steve Hartmann, Staff Representative, Wisconsin Council 40, Post Office Box 364, Menomonie, Wisconsin 54751, appearing on behalf of City of Menomonie Employees Union Local 734, AFSCME, AFL-CIO.

Richard J. Ricci, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702, appearing on behalf of the City of Menomonie.

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

On July 3, 2006, the City of Menomonie filed a petition with the Wisconsin Employment Relations Commission requesting that the "Confidential Secretary to Chief of Police" be excluded from the City of Menomonie Employees Union, Local 734, AFSCME, AFL-CIO collective bargaining unit because the incumbent will be a confidential employee. AFSCME Local 734 opposes the petition.

A hearing on the petition was held in Menomonie, Wisconsin, on October 5, 2006, before Commission Examiner Danielle L. Carne. A transcript was made, which was received by the Commission on October 18, 2006. The parties thereafter filed written argument, the last of which was received on December 13, 2006.

No. 32066

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

FINDINGS OF FACT

1. The City of Menomonie Employees Union Local 734, AFSCME, AFL-CIO, hereafter AFSCME Local 734, is a labor organization that serves as the exclusive collective bargaining representative for approximately 52 regular full-time, regular part-time, and seasonal employees of City Hall and other related departments, excluding confidential, supervisory, and managerial employees, as well as elected officials and employees in other bargaining units.

2. The City of Menomonie, hereafter the City, is a municipal employer providing services to the citizens of the City through its employees.

3. In addition to the AFSCME Local 734 bargaining unit, there are four other City employee bargaining units, namely, a law enforcement unit, a supervisory law enforcement unit, a fire fighting employees unit, and a supervisory fire fighting unit. Altogether, the City's collective bargaining units include approximately 107 City employees.

4. The City currently employs one confidential employee, Pam Link.¹ Ms. Link is the Administrative Assistant to City Administrator Lowell Prange. She also provides administrative assistance to the Mayor and Public Works Director. Ms. Link works in City Hall, which is located approximately two and one-half miles – or a 10 minute drive – away from the Police Department. The Chief of Police has e-mail access to Ms. Link.

5. The City's Chief of Police is Dennis Beety. Chief Beety has occupied his position for approximately 22 years.

6. Until her retirement in June, 2006, Jean Furuglyas was the Administrative Assistant to the Chief of Police. Ms. Furuglyas occupied that position for approximately 26 years. Ms. Furuglyas also was an active member of AFSCME Local 734, serving for some period of time as a union officer. Because of her bargaining unit status and union involvement, Chief Beety limited the labor relations duties performed by Ms. Furuglyas. However, because a level of trust had been built between Chief Beety and Ms. Furuglyas, she was asked to perform some labor relations functions, even though doing so exposed her to confidential labor relations information. For example, Ms. Furuglyas typed documents related disciplinary matters. She also typed bargaining proposals related to the two law enforcement bargaining units and was responsible for tracking the use, by Police Department employees, of benefits such as sick leave, vacation, compensatory time, and funeral leave. As part of her benefit tracking responsibilities, Ms. Furuglyas was expected to report to Chief Beety any cases of potential benefit abuse she observed.

¹ City Treasurer/Comptroller Judy Shuh, City Clerk JoAnn Kadinger, and Deputy Treasurer Kim Mensing are excluded from the Local 734 bargaining unit on bases other than confidential status.

7. Since July, 2006, Linda Hartung has served as the interim Administrative Assistant to Chief Beety. Ms. Hartung is a bargaining unit member. Because she is in AFSCME Local 734's bargaining unit and because Chief Beety has not built up a level of trust with her, she does not currently perform job duties relating to labor relations matters.

8. If the Commission determines the Administrative Assistant position to be confidential, the City will ask the person who ultimately occupies the position on a permanent basis to resume the labor relations duties Ms. Furuglyas was performing prior to her retirement. The City also will add certain labor relations functions to the Administrative Assistant's job responsibilities.

Currently, Chief Beety, Assistant Chief Chris Langlois, the three Department Lieutenants, and the three Department Sergeants attend monthly ² supervisory staff meetings. In the past, Assistant Chief Langlois has been responsible for taking notes at these meetings. If the Administrative Assistant position is found to be confidential, the person occupying that position would attend the staff meetings for the purpose of taking notes. Disciplinary issues, standards for evaluating personnel, budgetary matters, bargaining proposals, and general Police Department planning issues are discussed at the meetings. Although staff meeting discussions are summarized on a newsletter-type document that ultimately is circulated around the Police Department, City Hall, and the City Dispatch Center, this document does not reflect all of the confidential labor relations details discussed at the staff meetings.

Although Ms. Furuglyas had typed some disciplinary documents in the past, her participation in such activities had been limited. Thus, the burden for typing disciplinary documents also has fallen to Assistant Chief Langlois. Department supervisors also have assumed responsibility for recording various Department investigatory meetings and interviews relating to disciplinary matters. A confidential Administrative Assistant would be used to assist in disciplinary investigations by typing drafts and final versions of disciplinary documents and taking notes at investigatory meetings and interviews.

Neither Chief Beety, nor any other Police Department employee, is a member of any City bargaining team that negotiates with any of the three bargaining units representing Police Department employees. Nevertheless, Chief Beety is responsible for developing bargaining proposals and for communicating such proposals to City Administrator Lowell Prange, who is a member of the City's bargaining team. Chief Beety and Mr. Prange typically communicate with one another before and after bargaining sessions. They do so through letters and e-mails, in-person meetings, and over the telephone. In the past, both Chief Beety and Assistant Chief Langlois have been asked to put information relating to bargaining proposals in writing. Although Ms. Furuglyas had typed bargaining proposals relating to the two law enforcement bargaining units in the past, a confidential Administrative Assistant would assist in the preparation of drafts and final versions of bargaining proposals for all three bargaining units that include Department employees.

² Although the record reflects that only two or three Department meetings occurred during the year preceding the hearing, the Department has resumed meeting on a monthly basis.

A confidential Administrative Assistant to the Chief would assist the Chief by typing drafts and final versions of documents related to the processing of contractual grievances.

9. The incumbent in the position of Administrative Assistant to the Chief of Police will have sufficient access to, knowledge of, or participation in confidential matters relating to labor relations to be a confidential employee.

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

CONCLUSION OF LAW

The Administrative Assistant to the Chief of Police is a confidential employee, within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not 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

The position of Administrative Assistant to the Chief of Police shall be excluded from the AFSCME Local 734 collective bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of April, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

CITY OF MENOMONIE

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

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 (Ct. App., 2002), is used when determining whether a position should be deemed confidential:

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 reflected in our Findings of Fact and Conclusion of Law, we have concluded that the Administrative Assistant to the Chief of Police should be excluded from the bargaining unit as a confidential employee. Our conclusion is based, in part, on the City's assertion that it plans to increase the amount of confidential work Chief Beety's Administrative Assistant will be asked to perform. As we have held in the past, a conclusion regarding confidential status can be based on an employer's good faith assertions as to what will happen in the future, though it will not be based on duties and responsibilities that are too speculative to warrant consideration. CLARK COUNTY, DEC. NO. 16648-B (WERC, 6/04); CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97). The City has convincingly detailed ways in which it has been constrained, in the past, by the non-confidential status of Chief Beety's Administrative Assistant. The City asserts that, in the future, it intends not only to direct the Chief's

Administrative Assistant to perform the same confidential labor relations tasks that were being performed by Ms. Furuglyas, but also to add confidential labor relations duties to the position. We have no reason to believe that the City's assertions are not made in good faith. Thus, in concluding that the Administrative Assistant position is confidential, we have taken into account all the confidential duties the City envisions having the Chief's Administrative Assistant perform.

The Chief's Administrative Assistant will be exposed to confidential labor relations information through involvement in disciplinary investigations and grievance processing. While we recognize that some investigatory interviews regarding matters of discipline are not confidential, because an interviewee facing disciplinary action has the option of having a union representative present, other interviewees who are not facing discipline do not have the option of having a union representative present. These latter interviews, for which an Administrative Assistant would also be asked to keep minutes, are confidential. Further, while it is true that final disciplinary documents are not confidential because they are available to the disciplined employee and his or her union, drafts that the Administrative Assistant will be asked to type would be confidential from a labor relations point of view. The same is true with respect to drafts, as opposed to final versions, of grievance responses composed by Chief Beety and typed by his Administrative Assistant.

The Chief's Administrative Assistant also will be exposed to confidential labor relations information through City bargaining proposals. Although it is true that the Chief is not a member of the City bargaining teams, it is clear that he has a role in developing bargaining proposals for the Department's three bargaining units. The Chief and City Administrator Prange sometimes discuss bargaining proposals in person, over the telephone, or via e-mail, but the Chief also has been asked, in the past, and would prefer to have such documents typed. Whether it is because such proposals are in draft form or, if finalized, simply not yet available to the unions, the work of typing these documents will expose the Chief's Administrative Assistant to confidential labor relations materials.

Contrary to the argument of AFSCME Local 734, we believe that the responsibility for reporting cases of potential benefit abuse to Chief Beety provides support for our conclusion that this position is confidential. In the past, the duty merely to track benefit usage has been found insufficient to make a position confidential, particularly where such information has been freely available to others, including unions and employees. CITY OF RHINELANDER, DEC. NO. 24518-C (WERC, 11/02); SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 8/02); MANITOWOC PUBLIC SCHOOL DISTRICT, DEC. NO. 29771-C (WERC, 7/01); MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), *aff'd* MINERAL POINT SCHOOL DISTRICT v. WERC, 251 Wis. 2d 325, 337-338 (Ct. App., 2002); SHAWANO COUNTY, DEC. NO. 7197-D (WERC, 8/94). However, we have recognized an exposure to confidential labor information where an employee has a duty to evaluate and report cases of possible non-compliance or benefit abuse to a supervisor. CITY OF RHINELANDER, DEC. NO. 24518-C (WERC, 11/02); CITY OF DE PERE, DEC. NO. 30311 (WERC, 4/02); CITY OF BARABOO, ET. AL., DEC. NO. 133353 (WERC, 2/75). Here, the Chief's Administrative

Assistant will be responsible not for only tracking benefit usage, but also for reporting to Chief Beety any cases of potential benefit abuse. While the Local 734 correctly points out that the unions and employees have access to certain leave records, they would not have access to private communications between the Chief and his Administrative Assistant regarding cases of potential abuse, on which the Chief may or may not act. Insofar as these communications have the potential for leading to the denial of benefit usage or even disciplinary action, we are persuaded that they represent confidential information relating to labor relations. Further, in our estimation, a union affiliation could potentially undermine the Administrative Assistant's ability to reliably carry out such reporting duties. In this sense, we are especially mindful of the importance of the City's ability to conduct its labor relations through employees whose interests are aligned with its own.

Further, it is clear to us that the City has a legitimate interest in having a confidential Administrative Assistant take notes at the Department staff meetings. The topics that are addressed at these monthly meetings touch on a wide range of confidential labor relations subjects. The fact that minutes of the meetings are circulated in a newsletter-type a document that is made available to a relatively wide audience does not diminish the confidential nature of the discussions held at the meeting, because said document is a sterilized summary of the discussions held at the staff meeting. Further, although the Assistant Chief has been responsible for taking staff meeting notes, the City has convincingly asserted that this responsibility compromises the Assistant Chief's ability to be an active participant in the discussions.

Considering all of the foregoing confidential labor relations duties, we are persuaded that the obligation to monitor benefit usage and report cases of potential abuse, to attend and take notes at monthly staff meetings where confidential labor relations matters are discussed, and to type materials related to disciplinary matters, grievance processing, and bargaining proposals will result in sufficient exposure to confidential labor relations information to warrant excluding the Chief's Administrative Assistant from the Local 734 bargaining unit as a confidential employee.

AFSCME Local 734 argues that the confidential labor relations work of the Administrative Assistant could be performed by other City employees. However, contrary to Local 734, we conclude the City currently has only one confidential employee, Pam Link. From the evidence presented at hearing, we are satisfied that City Treasurer/Comptroller Judy Shuh, City Clerk JoAnn Kadinger, and Deputy Treasurer Kim Mensing are excluded from the Local 734 bargaining unit on bases other than confidential status.

Ms. Link provides administrative assistance to City Administrator Prange, the Mayor, and the Public Works Director. These obligations apparently more than fill Ms. Link's 35 hour weekly work schedule. Thus, although Administrator Prange conceded that he would have the authority to direct Ms. Link to do the Police Department's confidential work, we conclude it would be unduly disruptive of the City's operations for him to do so, particularly given the variety of locales where the confidential work in question would be performed.

Thus, even assuming, as argued by Local 734, that the amount of confidential labor relations work is *de minimis*, exclusion of the Administrative Assistant would still be warranted under MINERAL POINT, *supra*.

Given the foregoing, we conclude that the position of Administrative Assistant to the Police Chief should be excluded from the AFSCME Local 734 bargaining unit.

Dated at Madison, Wisconsin, this 6th day of April, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

