

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case 1  
No. 37807 ME-130  
Decision No. 6183-A

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin, 53719 and Mrs. Crystal Jorgenson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 3226 Glenhaven Place, Eau Claire, WI 54703, appearing on behalf of the Union.

Mr. Keith R. Zehms, Corporation Counsel, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin, 54703, appearing on behalf of the County.

Eau Claire County having, on November 11, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employees of Eau Claire County by determining whether the position of Administrative Secretary at the Center of Care should be excluded from said bargaining unit, which unit is represented by Local 1744, Wisconsin Council 40, AFSCME, AFL-CIO; and a hearing in the matter having been conducted on February 3, 1987, in Eau Claire, Wisconsin before Examiner Douglas V. Knudson, a member of the Commission's staff; and a stenographic transcript having been made of the hearing and received on February 19, 1987; and the parties having filed post-hearing briefs, the last of which was received on March 20, 1987; and the Commission, having reviewed the evidence and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

3. That in Eau Claire County, Dec. No. 6183 (WERC, 12/62), after an election conducted by the Commission, the Union was certified as the exclusive collective bargaining representative of the following bargaining unit:

5. That the Eau Claire County Center of Care, hereinafter referred to as the Center, is located approximately three to four miles from the County Courthouse, with an employment complement of 163 including 8 non-represented management positions; that the three certified bargaining units at the Center, i.e., R.N.'s, L.P.N.'s, and the unit set forth in Finding of Fact 3 above, negotiate contracts jointly; that the only clerical employee at the center besides the administrative secretary, is a receptionist-typist, which position is in the bargaining unit, who works on the first floor of the Center; that the administrative secretary works on the third floor of the Center and has been in the bargaining unit; that Leah Nelson occupied the position of administrative secretary for a number of years until her retirement at the end of November, 1986; that as of the date of hearing herein, a permanent replacement for Nelson had not been hired, although a temporary employee was being utilized; that the administrative secretary performs typing and other secretarial duties for the Center Administrator and the other seven management staff at the Center; that those duties have included the typing of a list of suggestions to the County Personnel Department for desired changes in the contract with the Union and also of an analysis for the Personnel Department of the impact on the Center operations of the Union proposals for contract changes; that, during management investigations of employee conduct which may result in discipline to an employee, the administrative secretary may take minutes of some of the employee interviews and type the summary of those interviews, as well as typing the reports of the investigation conducted by management, all of which documents are then forwarded along with management's recommended actions to the Personnel Department and/or the Corporation Counsel for review and advice; that such investigative material is not available to the Union, although some of the information may be given to the Union after a decision to discipline an employee has been reached by the Personnel Department and Center management; that in January, 1987, five employees were disciplined at the Center; that the administrative secretary has been involved in the investigations relating to litigation filed against the Center by maintaining the files in such matters; that in a recent case involving a Center resident who had expired, the administrative secretary typed summaries of interviews with employees, scheduled employees for interviews with the police, had access to the police reports, typed reports of management's investigation, and, typed and filed correspondence between the Center Administrator, Corporation Counsel, Personnel Director and District Attorney; that during an investigation by Center management of a patient abuse case which resulted in the discharge of an employee in December, 1985, the administrative secretary typed the reports of the investigation and other correspondence sent to the Personnel Director concerning the matter prior to a decision being made about what, if any, action should be taken; that the administrative secretary has prepared memos to the Personnel Department seeking an interpretation by the Center Administrator of a provision of the Union contract and has received and filed the responses; that the administrative secretary has typed and filed correspondence between the Center and the Personnel Department concerning possible staffing level changes, possible alternative methods of dealing with staff shortages, such as hiring R.N.'s above the entry rate and scheduling more overtime, possible job reclassifications, and, the establishment of desired salary ranges and progression for new classifications, and, that much of such information is not released to the Union until it has been finalized and a decision made by the County as to the action it will take; that the administrative secretary types and transmits investigative materials and correspondence relating to grievances, which may deal with possible alternative responses to the grievance, as well as typing the formal response to the Grievant; that four grievances were filed in December, 1986; that a number of issues arose from an agreement in September, 1985 between the Union and the County concerning contract concessions and that the administrative secretary was privy to the content of the management discussions and correspondence concerning possible proposals for the resolution of those issues prior to the conduct of meetings between the County and the Union over such issues; that the Center is considering the subcontracting of its Social Work services and has solicited proposals for that purpose; that several bids have been received and while the names of the bidders are public information, the contents of the bids have not been made available to the public or the Union inasmuch as the County has not yet made a decision on whether a subcontract will occur; that the administrative secretary typed the request for proposals document consisting of approximately 25 pages, the scores of the bids as determined by the County's Study Committee, and, the drafts of the Study Committee's preliminary comments and findings concerning the bids, and in addition, has access to the actual bids; that the administrative secretary has access to all Center correspondence and files, including those relating to

personnel, labor negotiations, grievances and litigation information; and that the position of administrative secretary has access to a significant amount of confidential labor relations matters.

6. That there are two confidential clerical positions in the County's Personnel Department which positions are excluded from the bargaining unit; and that the Personnel Department is in the County Courthouse which is located approximately three or four miles from the Center.

#### CONCLUSION OF LAW

That the occupant of the position of administrative secretary at the Center of Care is a confidential employee and, therefore, is not a municipal employee within the meaning of Sec. 111.70(1)(i) Stats.

#### ORDER CLARIFYING BARGAINING UNIT 1/

That the position of administrative secretary at the Center of Care shall be, and hereby is, excluded from the bargaining unit described in Finding of Fact 3 above.

Given under our hands and seal at the City of  
Madison, Wisconsin this 23rd day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman  
Herman Torosian  
Herman Torosian, Commissioner  
Danae Davis Gordon  
Danae Davis Gordon, Commissioner

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

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

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

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under

(Footnote 1 continued on Page 4.)

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

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

. . .

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

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

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

POSITIONS OF THE PARTIES

The Union contends that most of the duties performed by the administrative secretary are of a routine clerical nature and involve information related to grievances, negotiations and discipline which information is readily available to the Union. Although certain of the duties may be deemed confidential, those duties are de minimus. Further, the County employs confidential employees in its Personnel Department and the use of such employees for confidential work performed by the administrative secretary would not cause undue hardship to the County.

The County contends that the administrative secretary has access to, knowledge of, and participates in, confidential matters relating to the County's strategy in collective bargaining, contract administration, litigation of grievance matters and other personnel matters. Much of that information concerns investigative materials and is information not made available to the Union until a decision has been reached by the County on its course of action.

DISCUSSION

The administrative secretary performs numerous duties, as described in the Findings of Fact, which give her access to confidential labor relations information of the County which information either is not available to the Union, or is provided to the Union after the County has reached a decision on a course of action based on the information. For example, the administrative secretary is privy to all correspondence between the Center's administrator and the County Personnel Department and/or Corporation Counsel, including, but not limited to, investigation reports, preliminary thoughts and possible strategies relating to grievances, contract negotiations, employee discipline and other personnel matters, such as the possible subcontracting of social work services by the Center. Although such duties do not consume all of her work time, they clearly are significant and are not de minimus in nature. The two confidential employees in the Personnel Department are located over three miles from the Center. Even if the Personnel Department's confidential employees were located closer, it is not unreasonable for the Center's administrator to have one confidential employee for the management of the Center which employs 163 employees.

Accordingly, the administrative secretary at the Center of Care is appropriately excluded from the bargaining unit as a confidential employee.

Dated at Madison, Wisconsin this 23rd day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

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