

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
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 MANITOWOC COUNTY :  
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 Involving Certain Employes of : Case 2  
 : No. 44598 ME-444  
 : Decision No. 7116-C  
 MANITOWOC COUNTY :  
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Appearances:

Mr. Jerry Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, WI 54221-0370, appearing on behalf of the Union.  
Mr. Mark Hazelbaker, Corporation Counsel, Manitowoc County, 1010 South 8th Street, Manitowoc, WI 54220, appearing on behalf of the County.

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

Manitowoc County filed a petition with the Wisconsin Employment Relations Commission on September 17, 1990, asking that the position of Nursing Secretary be excluded from the bargaining unit represented by Local 1288, AFSCME, AFL-CIO. A hearing in the matter was held on January 9, 1991, in Manitowoc, Wisconsin, before Examiner Karen J. Mawhinney, a member of the Commission's staff. The parties exchanged briefs on July 9, 1991, and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Manitowoc County, called the County herein, is a municipal employer with offices at 1010 South 8th Street, Manitowoc, Wisconsin.
2. Manitowoc County Institutional Employees Local 1288, AFSCME, AFL-CIO, called the Union herein, is a labor organization with offices at P.O. Box 370, Manitowoc, Wisconsin.
3. The Union is the exclusive bargaining representative for the employes engaged in the operation of the Manitowoc Health Care Center and maintenance of the Park Lawn Home/Shady Lane complex, excluding the Administrator, Assistant Administrator, Director of Nursing, Pharmacy Director, Director of Social Services, Clinical Care Coordinators, Environmental Services Director, Dietician, Records Director, Social Workers, QMRPs, Purchasing Agent, Recreation Therapist, DD Program Supervisor, Director of Activities, Supervisors, medical personnel, Director of Business Services, Registered Nurses, confidential office employes, temporary employes, and Director of Dietary Services.
4. The County seeks to exclude the position of Nursing Secretary from the bargaining unit on the basis that it is a confidential position.
5. The parties made the following stipulations for the record:
  - (1) Patricia Strege is the current holder of the position of Nursing Secretary at the Manitowoc County Health Care Center since October 3, 1990.

(2) Denise Mecha had held the position of Nursing Secretary from November of 1988 to August 27, 1990.

(3) Denise Mecha currently holds the position of administrative secretary at the Manitowoc County Health Care Center since August 27, 1990, and that this is a full-time position currently designated as a confidential position and recognized by the Employer as such.

(4) The Director of Nursing is the supervisor of the Nursing Secretary.

6. There are two bargaining units at the Health Care Center -- one is the Local 1288 unit involved in this matter and the other is a professional registered nurses unit. There are 249 employes at the Health Care Center.

7. On November 7, 1988, the Union filed a unit clarification petition with the Commission seeking to include two positions -- the Administrative Secretary and the Nursing Secretary -- in the bargaining unit. On March 13, 1989, the parties signed a settlement agreement to that petition, which includes the following statement: "Manitowoc County agrees to inclusion in the bargaining unit of the position of Nursing Secretary. It is agreed and understood this person shall be required to follow the directions of their supervisor."

8. Dawn Holsen, is the Director of Nursing at the Manitowoc Health Care Center. The Nursing Department is in charge of providing direct care to the residents. The Nursing Department is responsible for approximately one half of the Center's operations. The Nursing Secretary provides primary clerical and secretarial support to the Director of Nursing. The Administrative Secretary provides clerical assistance to the Health Care Center Administrator and is excluded from the bargaining unit as confidential. Holsen is responsible to insure that proper nursing care is given to residents and that the Center adheres to state and federal mandates. Holsen reviews disciplinary recommendations and is responsible for the final decision. Holsen conducts disciplinary investigations, the results of which are not shared with the Union. The Director of Nursing writes policy memoranda to supervisory employes in the Department of Nursing. These are copied and distributed by the Nursing Secretary. Some of these policies are not shared with the Union.

9. When the Nursing Secretary position was first created, it was filled for 30 hours a week. The job description included the following responsibilities:

1. Provides secretarial assistance to the Director of Nursing and Nursing Department.
2. Maintains confidential employee and nursing files.
3. Assists with payroll for nursing department.
4. Prepares and maintains nursing schedules within budget and federal and state codes.
5. Coordinates and maintains all reports as directed.
6. Assists with recruitment by setting up interviews and doing reference checks.
7. Coordinates appointments and meetings for the Director of Nursing.
8. Transcribes reports, minutes and memos for the nursing department.
9. Provides back-up services for other administrative staff.
10. Performs other related tasks as directed.

The Director of Nursing, Dawn Holsen, determined that the above responsibilities -- specifically those listed in numbers 1, 5, 7, 8, and 10 -- were not being performed, because preparing schedules took the majority of the Nursing Secretary's time. Holsen proposed to expand the position to a full-time position and establish another position called unit secretary. The Nursing Secretary's position was expanded to full-time, but the unit secretary's position was not created. An expanded listing of the Nursing Secretary's responsibilities, dated January 7, 1991, shows the following responsibilities:

1. Prepares and maintains nursing work schedules within budgeted hours, federal and state codes, compliance with union contracts and nursing department policies.
2. Approves overtime, vacation and holiday requests of nursing department employees.
3. Maintains full authority to coordinate and schedule on-call and agency nurses as needed.
4. Prepares and distributes confidential correspondence and reports for Director of Nursing.
5. Prepares reports and contract language for management during bargaining sessions with unions as they relate to nursing department concerns. Examples are: costing reports on the abuse of sick time, overtime, etc. plus drafting of contract language for an 8/80 scheduling

system.

6. Monitors and coordinates worker's compensation leaves of absence for employees with the County Human Resources Department to ensure that the employees return to work when physically certified by their physician and to assist in the reduction of costs of worker's compensation leaves for the HCC. Contacts employees directly when discrepancy arises between their physician's statement and the employee's return to work.
7. Monitors utilization of sick leave by nursing department employees. Informs Director of Nursing when an employee has used an excessive amount of sick leave so that constructive counseling may occur between the Director of Nursing and the employee.
8. Maintains and has access to confidential employee personnel files, disciplinary actions, etc.
9. Maintains and has access to confidential resident and nursing files.
10. Verifies and provides payroll information concerning nursing employees.
11. Assist the nursing Department in the recruitment of qualified employees through the scheduling of employment interviews and conducting reference checks on qualified applicants.
12. Performs miscellaneous clerical duties as assigned by the Director of Nursing such as typing, filing, etc.
13. Other duties as assigned.

Both Strege and Mecha agree that the expanded list describes the Nursing Secretary's duties in detail.

10. The Nursing Secretary spends the bulk of her time preparing schedules according to state and federal codes, the institution's requirements, and the bargaining agreement's requirements. She is given the numbers needed to staff based on the patient census and can staff at levels greater than the minimum required by code but under the maximum established by the County. The scheduling system is complex, and changes occur in the system based on the census, levels of care of residents, and changes in state or federal codes. The Nursing Secretary is responsible for handling requests for vacations, holidays, scheduling overtime, and time off. She asks employes to work overtime and can mandate overtime if needed. She arranges hours of work for on-call staff and contacts outside pool agencies to provide nursing hours. During a one-year period, the Nursing Secretary authorized nearly \$80,000 in costs for hours contracted with three different nursing agencies to provide LPN and RN hours. The Nursing Secretary types documents relating to disciplinary investigations and letters for the Director of Nursing concerning disciplinary matters and other matters, such as replies to families complaining about

residents' care, letters to physicians, etc. The Nursing Secretary keeps track of attendance and problems with employe attendance which may result in discipline. It is part of her regular duties to contact employes, ask for a physician's statement, and contact physicians in following up on attendance problems. If someone is absent more than once a month, the Nursing Secretary brings the matter to the Director's attention. The Nursing Secretary provides information to the Director which does not become part of an employe's personnel file but is kept in a confidential file in the Director's office, and the Director relies on such information in determining whether or not to discipline employes or call them in for counseling. The Nursing Secretary may make recommendations regarding discipline to the Director. Strege investigated one incident of absenteeism by calling area hospitals to verify whether an employe had been admitted to a hospital and forwarded the information to Holsen. Mecha, the former Nursing Secretary, also kept notes of matters such as an employe who called in sick after being denied a request for the time off, and the remarks of an employe that another employe off duty on worker's compensation was seen at a picnic. Employes have been disciplined based on information provided to the Director by the Nursing Secretary. For instance, an employe who had misused break time was disciplined because of the Nursing Secretary input. The Nursing Secretary collects information and investigates pending grievances. She types minutes from meetings that the Director attends, which may include matters involving confidential labor relations. She verifies payroll information for the payroll department. She communicates with the Human Resources Department for the County concerning worker's compensation issues. She checks references of job applicants. She has access to personnel records and files containing collective bargaining information.

11. The Director of Nursing is part of the bargaining team for the County in contract negotiations with the Union. The Director of Nursing has provided input for County bargaining proposals. The developmental material used to construct the County proposals is not available to the Union. The previous Nursing Secretary, Mecha, helped the former Director of Nursing, Estelle Villwock, draft a bargaining proposal dealing with scheduling. Mecha wrote most of the proposal that was later presented to the Union during 1989. This bargaining proposal, while not adopted into the labor contract, was a significant proposal from the County's standpoint. Mecha made a study of overtime in preparation for the bargaining proposal. Mecha also discussed bargaining proposal with Villwock, and had knowledge of potential bargaining proposals that were not shared with the Union.

12. Mecha's responsibility for confidential matters increased substantially once she learned the scheduling system. Learning to handle the scheduling takes a few months into the job, and once the Nursing Secretary learns this part of the job, she has time to take on other duties.

13. The Nursing Secretary has sufficient access to, knowledge of and involvement in confidential labor relations matters so as to render her a confidential employe.

On the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSION OF LAW

The occupant of the position of Nursing Secretary in the Manitowoc County Health Care Center is a confidential employe and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

1/

The position of Nursing Secretary in the Manitowoc County Health Care Center is excluded from the bargaining unit represented by Local 1288, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

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A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

(See Footnote 1/ on Page 7)

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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 therefore 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 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.

(Footnote 1/ continued on Page 8)

(Footnote 1/ continued)

1/ (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.

MANITOWOC COUNTY

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

BACKGROUND:

While the County and the Union previously agreed in March of 1989 to a voluntary settlement which included the position of Nursing Secretary in the bargaining unit, the County is now asking the Commission to exclude the position of Nursing Secretary from the bargaining unit, on the basis of confidential duties. Initially, the Nursing Secretary was scheduled for 30 hours per week. Dawn Holsen, who became Director of Nursing in September of 1989, concluded that more clerical assistance was needed. As a result the Nursing Secretary position was expanded to full-time.

THE PARTIES' POSITIONS:

The County:

The County asserts that the Nursing Secretary has comprehensive access to, involvement in and knowledge of labor-management relations. The confidential duties include direct involvement in formulating the County's position in collective bargaining, knowledge of discipline and the County's position in grievances, as well as monitoring employe violations of work rules and reporting them to the County. As a practical matter, no one else can handle these duties.

The County contends that the 1989 agreement which included the position in the bargaining unit does not bar the instant petition because the circumstances surrounding the position and its duties have substantially changed since then. The position acquired additional responsibilities, as stated by the first incumbent of the position, Mecha. While the job first consisted entirely of scheduling, Mecha became more involved in confidential matters. At the time the 1989 agreement was reached, the County decided to see if one confidential clerical position met its needs. But the passage of time and course of events showed that one confidential position was inadequate. Moreover, the County points out that the duties of the position determine its status, not the words on paper.

According to the County, the Nursing Secretary was an integral, active participant in formulating the County's proposals for the 1990-91 collective bargaining agreement. Mecha helped develop and draft a document pertaining to one of the core issues in negotiations. Both Mecha and Strege, the incumbent, have ongoing access to confidential labor relations information. The Nursing Secretary also has substantial involvement in employe discipline and grievances, both typing disciplinary letters or grievance answers and responsibility for advising management of problems requiring discipline. The Nursing Secretary is aware of sick leave, worker compensation leave and other attendance issues, and is involved in discipline related to attendance problems. The person holding this position must be loyal to management in order to inform it about abuse of paid leave. The Nursing Secretary also types memoranda related to confidential subjects for management, and types minutes of management staff meetings. The Nursing Secretary is aware of possible disciplinary matters which are considered but not pursued.

The complexity of the functions performed by the Nursing Secretary make it impossible for another confidential employe to perform these tasks. This is the only clerical support provided to the Nursing Department responsible for half of the facility's operations, and the other half is served by the

Administrative Secretary, already excluded as confidential. The County seeks a second confidential position out of a workforce of more than 200, and this is reasonable by itself.

The County also argues that the Nursing Secretary has managerial authority, in that she has discretion to commit the County's resources by hiring outside contract nurses or mandating overtime to meet staff standards. While there are some guidelines in the exercise of this discretion, the guidelines are only a minimum and a target, and the Nursing Secretary decides what level of staffing to accept and authorizes spending money to get to that point.

The Union:

The Union asserts that the Nursing Secretary position does not include a sufficient amount of confidential activity or managerial activity to warrant its exclusion from the bargaining unit. Other employes are available to perform confidential and/or managerial tasks, and the involvement of the Nursing Secretary in such tasks is de minimus.

The Union notes that the former Nursing Secretary stated that secretarial duties assigned by the Director of Nursing took only one to two hours per week, and those duties involved handling various types of correspondence. The current Nursing Secretary had not typed a letter of discipline from the date she started, October 3, 1990, to the date of the hearing, January 9, 1991. Therefore, the Union argues that typing and distribution of termination and other disciplinary notices could be done by an existing confidential employe, the Administrative Secretary.

Further, the disciplinary letters typed by the Nursing Secretary would be delivered to the respective employes, and employe discipline information is available to the Union. Therefore, those letters would not be confidential. The Nursing Secretary is not involved in considering alternative disciplinary actions, which would be confidential information. She is not involved in making recommendations about grievances, she just gathers information. The Nursing Secretary collects worker's compensation information to be exchanged with the Human Resources Department, and such information is not confidential.

The Union calls the logging of employes' calls for sick leave usage "mundane" and not confidential or managerial. The Nursing Secretary does not investigate sick leave usage, and the Director of Nursing investigates to see whether there is an abuse of sick leave. The Nursing Secretary reports sick leave usage to the Director based on the guideline of more than one occurrence per month, and thus no judgment is required. Sick leave usage records could be made available to the Director or to the Administrative Secretary to determine whether abuse is occurring. Employes who choose to report on other employes about sick leave abuse may make such reports to the Director, the Clinical Coordinators, the Health Care Center Director, the Administrative Secretary, and the Director of Medical Records.

The Union considers the former Nursing Secretary's input into bargaining proposals to be de minimus activity. The Nursing Secretary contributed information and ideas from her vantage point in a discussion with the Director of Nursing, and the County's proposal was presented to the Union and discussed. However, the Nursing Secretary was not involved in the consideration of alternative proposals or bargaining strategy. The Union states that modern participatory management theory encourages employe involvement of this kind to foster the development of better methods. To consider a brief and one-time discussion of an issue presented at the bargaining table as a confidential or managerial task would discourage employe participation.

The primary activity of the Nursing Secretary is scheduling of employes, and the scheduling is a full-time job taking up to 40 hours a week. If confidential duties and the development of bargaining proposals were performed by another confidential employe, such as the Administrative Secretary, the Nursing Secretary would still have to work full time at scheduling.

DISCUSSION:

The parties reached a voluntary agreement in March of 1989 to include this position in the bargaining unit. The Commission has held that where the parties have agreed to include or exclude certain positions from a collective bargaining unit, it will honor that agreement and will not allow a party to the agreement to pursue alteration of the bargaining unit's scope through a unit clarification petition unless:

- 1.The position(s) in dispute did not exist at the time of the agreement; or
- 2.The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential, managerial or executive (the so-called "statutory exemptions"); or
- 3.The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
- 4.The existing unit is repugnant to the Act. 2/

The second exception noted above exists in this case. By their agreement, the parties included the Nursing Secretary in the bargaining unit, therefore implying that the position was not a statutory exemption. It is now asserted by the County that the position is confidential, one of the statutory exemptions. Therefore, it is proper for the County to pursue an alteration of its agreement through a unit clarification proceeding.

The Nursing Secretary position was originally created for 30 hours of scheduling duties, and it was expanded to become full time with additional duties added as the Nursing Secretary became adept at scheduling. At the time of hearing, Strege, the incumbent of the position, had not been in it long enough to be able to fully assess the range of her confidential duties. This is consistent with Mecha's experience in this position. Mecha testified that her involvement with confidential labor relations matters increased and changed substantially as her familiarity with the scheduling system increased. We believe the record justifies our anticipation that this will be Strege's experience in this position as well.

In order for an employe to be considered a confidential employe and

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2/ Edgerton School District, Dec. No. 18856-A (WERC, 5/90), City of Sheboygan, Dec. No. 7378-A (WERC, 5/89); see generally City of Cudahy, Dec. No. 12997 (WERC, 9/74), Milwaukee Board of School Directors, Dec. No. 16405-C (WERC, 1/76); West Allis - West Milwaukee Schools, Dec. No. 16405 (WERC, 1/89).

thereby excluded from a bargaining unit, the Commission has consistently held that such an employe must have access to, knowledge of, or participate in confidential matters relating to labor relations. Information is confidential if it (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations, and (2) is not available to the bargaining representatives or its agents. 3/ The Commission has also found that where the duties of the employe are closely related to activity which could lead to discipline of a bargaining unit member, such an employe is confidential. 4/ However, a de minimus exposure to confidential materials in insufficient grounds for excluding an employe from a bargaining unit. 5/ We have also noted that the confidential exclusion protects a municipal employer's right to conduct its labor relations through employes whose interests are aligned with those of management, rather than risk having confidential information handled by someone with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. 6/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in

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3/ Dane County, Dec. No. 22976-C (WERC, 9/88).

4/ Walworth County (Lakeland Nursing Home), Dec. No. 16031-A (WERC, 7/85).

5/ Boulder Junction Joint School District, Dec. No. 24982 (WERC, 11/87).

6/ Cooperative Educational Service Agency No. 9, Dec. No. 23863-A (WERC, 12/86).

question is the only one available to perform legitimate confidential work, 7/ and similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as her or his 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 employe without undue disruption of the employer's organization. 8/

The Director of Nursing is responsible to see that residents of the Health Care Center receive services in accordance with state and federal guidelines. The Director of Nursing is in charge of all employes within the Nursing Department. In addition to administering labor contracts for these employes, the Director of Nursing also serves on the County's negotiating team. She has developed and submitted bargaining proposals. The Director of Nursing has ultimate responsibility for investigating employe discipline matters and taking appropriate disciplinary action. The Director of Nursing promulgates management/supervisory policies which are not shared with the Union. Although some end results of the items identified above are shared with the Union when they are finalized, many of the preliminary drafts leading up to the finalization are not made available to the Union.

The Nursing Secretary works closely with the Director of Nursing and will be the Director's only confidential employe. She investigates grievances and provides the investigation results, which are not shared with the Union, to the Director of Nursing. The Nursing Secretary types notes relating to disciplinary investigations which are not shared with the Union. She types all memoranda directed to supervisors and staff, some of which is not available to the Union. The Nursing Secretary types minutes of supervisory staff meetings which include discussions of labor relations matters. Given the foregoing, the Nursing Secretary's involvement with and exposure to confidential materials is not de minimis.

In addition to providing confidential clerical support to the Director of Nursing, the Nursing Secretary has confidential duties relating to labor relations matters. While Strege has not performed said duties during her short tenure as Nursing Secretary, her predecessor did so. The former Nursing Secretary (Mecha) was involved in developing one of the County's positions for collective bargaining. This proposal required research and discussion with the Director of Nursing. She also reviewed and discussed Union bargaining proposals. Mecha provided personnel costing data for use in collective bargaining. She also compiled data for grievance and arbitration proceedings. This data is particularly necessary and important in dealing with overtime, call in, and scheduling grievances.

While the Union argues that Mecha's involvement drafting a language proposal for management is only an example of participatory management, Mecha's work falls squarely within the definition of a confidential employe. She has access to and knowledge of and participated in confidential labor relations matters, where the information dealt with the County's position in collective bargaining and was not available to the Union. The Union contends that to exclude an employe based on a one-time discussion of an issue presented at the bargaining table would discourage employe participation. We think not. Her involvement in collective bargaining matters as noted above goes well beyond a brief one time discussion. The Nursing Secretary was clearly acting on behalf of management and was acting in a confidential capacity for the management

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7/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85)

8/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).

bargaining team. She was drafting language to assist herself and the Director of Nursing in scheduling employees. The fact that this was a one-time occurrence was due to the fact that this was the only time the parties had engaged in bargaining while this position was in existence with confidential duties.

Additionally, the Nursing Secretary works closely with the Director of Nursing in researching, investigating and developing material for the above areas of responsibility. She may be called upon to gather information for disciplinary purposes by collecting data regarding sick leave usage or work rule violations; she is expected to report potential sick leave abuse to the Director of Nursing. This responsibility has occasionally required verifying/ investigating the legitimacy of employees' absences. She provides investigatory information to the Director which does not become a part of an employee's personnel file, but is kept in a confidential file in the Director's office. This information is not provided to the Union, but is used by the Director in determining whether or not to discipline employees or call them in for counseling.

The similarity between this case and a decision recently issued in Rock County 9/ is striking. In that case, there was a dispute about the confidential status of the secretary to the Associate Administrator for Treatment Services (AATS) at the County's Health Care Center. The AATS managed nursing services, social services, occupational and recreational therapy activities, psychology, volunteer services and other clinical services. The AATS investigated work rule violations and administered discipline. The AATS played a role in the grievance process, participated in bargaining sessions and bargaining proposal development. She also made recommendations about personnel changes and reorganizations as part of the budget process. We found that the disputed Secretary had significant access to confidential information that related to negotiation strategy and contract administration. The Secretary assembled data for collective bargaining proposals and assisted in the investigation of grievances and disciplinary matters. The Secretary was privy to all aspects of her supervisor's labor relations responsibilities. Here, as in Rock County, the supervisor's confidential work appears to be of sufficient volume and so closely tied to her daily interaction with the Secretary that it could not be reassigned without undue disruption. 10/

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9/ Rock County, Dec. No. 8243-K (WERC, 9/91).

10/ Rhineland School District, Dec. No. 17021-A (WERC, 12/86).

Given the foregoing, we conclude that the Nursing Secretary is a confidential employe. Having concluded that the position is confidential, there is no need to consider the managerial status of the position.

Dated at Madison, Wisconsin this 7th day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner