
In the Matter of the Petition of	:	
MILWAUKEE COUNTY	:	
Involving Certain Employees of	:	Case 1
MILWAUKEE COUNTY	:	No. 8600 ME-10
	:	Decision No. 7135-S
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Mr. Patrick J. Foster, Director of Labor Relations, Milwaukee County Room 309, Courthouse Annex, Milwaukee, Wisconsin 53233, appearing on behalf of the County.

Mr. Alvin R. Ugent, Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Street, Suite 315, Milwaukee, Wisconsin 53202, and Mr. Henry Zielinski, Staff Representative, Milwaukee District Council 48, AFSCME, AFL-CIO, 3427 W. St. Paul, Milwaukee, Wisconsin 53208, appearing on behalf of the Union.

Milwaukee County having, on May 10, 1984 filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit, previously certified by the Commission, consisting of all regular full-time and regular part-time, non-craft and non-professional employees employed by Milwaukee County by determining whether the positions of Clerk Stenographer II to the Deputy Director of Operations and the Clerk Typist III 1/ to the Deputy Director of Programs at the County Museum should be excluded from said unit, which is presently represented by Milwaukee District Council 48, AFSCME, AFL-CIO; and a hearing in the matter having been conducted in Milwaukee, Wisconsin, on August 9, 1984, by Examiner Deborah A. Ford, a member of the Commission's staff; and the parties having filed briefs by October 19, 1984; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

1. That Milwaukee County, hereinafter referred to as the County, is a municipal employer, having its offices at Room 309, Courthouse Annex, Milwaukee, Wisconsin.

2. That Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

3. That the Wisconsin Employment Relations Commission has previously certified the Union as the exclusive collective bargaining representative of the following employees of the County: 2/

All regular full-time and regular part-time employees of the County of Milwaukee, excluding housekeepers, fire fighting classifications, and other craft employees, registered nurses, and other professional employees, confidential employees, supervisors, department heads and exempt positions.

No. 7135-S

4. That included within the above described unit are approximately 113 museum employees represented by the Union.

5. That the County, on May 10, 1984, initiated the instant proceeding by the filing of a petition requesting the Commission to exclude from the above-described unit the County Museum positions of Clerk Typist III for the Deputy Director of Programs and Clerk Stenographer II for the Deputy Director of Operations on the ground that the positions are confidential employee positions.

6. That in early 1984, the Museum implemented a reorganization plan which included creation of the two Deputy Director positions to replace the former position of Assistant Director; that the duties of the former Assistant Director were divided among the two new Deputy Director positions; that the Deputy Director of Operations effective March 1984 is Bruno Wolff; that as Deputy Director of Operations, Wolff is primarily responsible for labor relations and personnel matters, preparation of the Museum budget, administration of Museum funds, security and care of the physical facilities; that as chief personnel officer, Wolff answers grievances, serves as the fourth step hearing officer, reviews disciplinary requests from lower level supervisors, makes negotiation proposals; and that the Deputy Director of Programs, Robert Rathburn, is primarily responsible for educational and public programs, including exhibits, acquisitions and collections and public activities including school classes.

7. That the secretary to the Museum Director has been and remains excluded from the unit as the only confidential employee and is not in dispute herein; and that the Museum Director, Kenneth Starr, has not been involved in labor relations matters since the creation of the Deputy Director positions.

8. That the position of the Clerk Stenographer II, which functions as the secretary to the Deputy Director of Operations, is currently held by Brenda Brandt; that Brandt began the job in May, 1984 as the first occupant of the position; that Brandt is responsible for the typing and filing of all Wolff's correspondence, including such personnel and labor relations correspondence as answers to grievances, drafts of proposed disciplinary actions and responses to recommendations for discipline from lower level supervisors-recommendations, which if not followed by Wolff, are not seen by the Union; that Brandt reviews all incoming correspondence to Wolff, including that from the County's labor relations office, the previously-mentioned recommendations for discipline from other supervisors, information concerning the possible creation or elimination of bargaining unit positions in preliminary budget documents, and all correspondence between Wolff and the County's Board of Supervisors, the County Executive, the Director of the Museum and other management employees; that much of such incoming correspondence is not available to the Union; that Brandt is responsible for maintaining the personnel files; that while Brandt does not attend management meetings where labor relations are discussed, occasionally she types minutes from such meetings; that sometime in 1984, Wolff was asked by the County's labor relations office for input as to what types of things the Museum would like to see changed in the collective bargaining agreement during the negotiations for a successor contract; that Brandt typed Wolff's response to said request; and that Brandt also answers the phone, orders office supplies and performs other secretarial duties as required.

9. That Patricia Manning is currently a Clerk Typist III and secretary to the Deputy Director of Programs; that, like Brandt, Manning types and files correspondence and other memoranda, answers the telephone, orders office supplies, and maintains records, along with performing other secretarial duties; that included among the foregoing correspondence are Rathburn's answers to grievances at the third step of the grievance procedure and communications from Rathburn to his subordinates concerning their recommendations for employee disciplinary actions, some of which recommendations he has not always followed; that grievance answers are always available to the Union, but disciplinary recommendations if not followed would not be made available; that in 1984 Manning typed Rathburn's response to the request by the County's labor relations office concerning desired changes in the collective bargaining agreement during the upcoming negotiations; that the response was then forwarded to Wolff for final drafting; and that Manning works with preliminary budget documents for Rathburn's area of responsibility, which documents may involve changes in personnel and which are also forwarded to Wolff for final consideration by a committee composed of Wolff, Starr and Rathburn.

10. That as a result of the 1984 reorganization and the respective responsibilities thereunder of the Deputy Directors for whom they work, the position of Clerk Stenographer II, currently occupied by Brandt, has significant access and involvement in confidential matters relating to collective bargaining or labor relations, whereas the position of Clerk Typist III, currently occupied by Patricia Manning involves only a de minimus amount of confidential information regarding labor relations.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Clerk Stenographer II, currently Brenda Brandt, is a confidential employee and, therefore, is not a municipal employee within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act.

2. That the occupant of the position of Clerk Typist III, currently Patricia Manning, is not a confidential employee and, therefore, is a municipal employee within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 3/

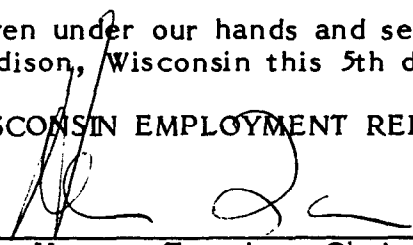
1. That the position of Clerk Stenographer II, occupied by Brenda Brandt, be, and the same hereby is, excluded from the bargaining unit described in Finding of Fact No. 3.

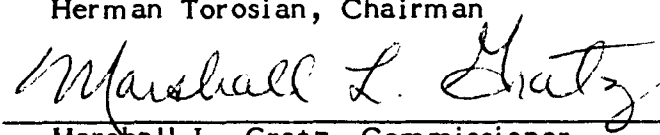
2. That the position of Clerk Typist III, occupied by Patricia Manning, be, and the same hereby is, included in the bargaining unit described in Finding of Fact No. 3.

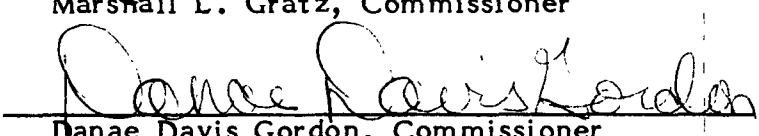
Given under our hands and seal at the City of
Madison, Wisconsin this 5th day of February, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

3/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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

(Footnote 3 continued on Page 4)

(Footnote 3 continued)

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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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. 227.20 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.

MILWAUKEE COUNTY

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

In its petition, Milwaukee County seeks to exclude the Museum positions of Clerk Stenographer II to the Deputy Director of Operations and Clerk Typist III to the Deputy Director of Programs from the unit represented by Council 48 on the ground that the positions are confidential. Contrary to the County, Council 48 contends that the positions are not confidential and should remain in the unit.

Positions of the Parties

The County

The County maintains that because Brandt, as secretary to the chief personnel officer of the Museum is responsible for the typing and filing of correspondence related to personnel matters and labor relations, as well as the screening of all incoming correspondence, she is privy to any material which would come in related to labor relations, including memos from subordinate supervisors regarding discipline, any responses to such memos by Wolff, and communication between management officials. She also has access to personnel files and budget information some of which may pertain to layoffs or termination of personnel which is still in the development stage and as such, not available to the Union. The County argues that in light of the above, she should be excluded from the unit as a confidential employee.

With respect to Manning, the County argues that she should be excluded because not only did she type Rathburn's suggestions for contract proposals and his answers to grievances, but she is privy to private communications between Rathburn and his supervisors regarding discipline and to budget information, sometimes including personnel changes, that is not released to the public and the Union.

The Union

The Union contends that much of the work performed by Manning is not considered confidential within the meaning of the MERA and that with respect to that work which could arguably be considered confidential, it is de minimus. With respect to Brandt, the Union argues that any confidential work done by her is minimal and could be absorbed by Museum Starr's secretary who is already excluded as a confidential employee. The Union notes that the person previously performing Wolff's duties did not have a confidential secretary. The Union also contends that mere access to personnel files is not sufficient to confer confidential status.

Discussion:

The Commission has long held that in order for an employee to be considered a confidential employee, such employee must have access to, knowledge of, or participate in confidential matters relating to labor relations. In order for the information to be confidential for such purposes it must be the type of information which: (1) deals with the employer's bargaining, contract administration, litigation, or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer and (2) is not information that is available to the bargaining representative or its agents. 4/

It is clear from the record that, as secretary to Wolff, the chief personnel officer for the Museum, Brandt reviews all of Wolff's correspondence, including information and materials related to labor relations and personnel matters. While some of the documents seen by Brandt will also be seen by the Union, such as final

4/ Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79); City of Ashland, Dec. No. 18808 (WERC, 7/81).

drafts of grievance answers, other information such as negotiation proposals, denial of disciplinary recommendations from supervisors, and minutes from management meetings, is not available to the Union. Brandt also typed a document containing suggested revisions in the labor agreement proposed by Wolff and Rathburn and which was then sent to the County's labor relations office for use in negotiations.

Although it appears that Wolff's predecessor did not have a confidential secretary, the reorganization has resulted in the realignment of duties and responsibilities previously held by the Assistant Director and Director. Moreover, testimony at hearing indicated that the Museum Director has not participated directly in labor relations matters since the creation of the Deputy Director position. On balance, the evidence supports a finding that the duties of Brandt constitute sufficient access to confidential information so as to justify exclusion from the bargaining unit.

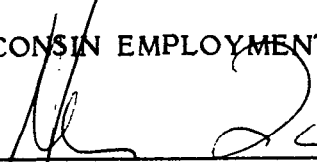
Patricia Manning, as secretary to the Deputy Director of Programs, types files and screens all of Rathburn's correspondence and memoranda. However, Rathburn's involvement in confidential labor relations matters is relatively infrequent. While Rathburn does respond to grievances and to recommendations for employee discipline offered by his subordinate supervisors, he does not have the overall responsibility for personnel and labor relations at the Museum. At hearing, Rathburn admitted he had not had any arbitration cases and only one grievance case. Furthermore, in addition to Manning's close physical proximity to the already excluded Director's secretary, much of the confidential work performed by Manning is subsequently forwarded to Wolff for final disposition and typing by Brandt. Rathburn estimated that Manning spent a maximum of five percent of her time on confidential matters. Manning's exposure to confidential information is of a de minimus nature. A de minimus exposure to confidential materials is insufficient basis for exclusion especially where there is available another confidential employee to do the work. 5/ Therefore, we conclude the position occupied by Patricia Manning is a municipal employee within the meaning of Sec. 111.70(1)(i) and included in the bargaining unit.

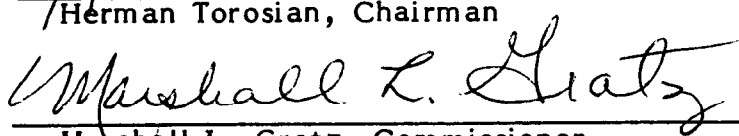
We realize that our decision herein creates a second confidential employee in what appears to be a small clerical group within the Museum. However, we are persuaded that it would not be practicable to expect the County to have Brandt's confidential work performed by Starr's confidential secretary given the primary role in Museum labor relations played by Wolff. Further, the confidential status of Starr's secretary's position is not before us herein.

Dated at Madison, Wisconsin this 5th day of February, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

5/ Wisconsin Heights School District, supra.