

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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: In the Matter of the Petition of :  
: :  
: MAPLE LANE HEALTH CARE FACILITY :  
EMPLOYEES, LOCAL 2648, AFSCME, AFL-CIO : Case 4  
: No. 49191 ME-641  
Involving Certain Employees of : Decision No. 7197-D  
: :  
SHAWANO COUNTY (MAPLE LANE :  
HEALTH CARE CENTER) :  
:  
- - - - -

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 936 Pilgrim Way, #6, Green Bay, Wisconsin 54304, on behalf of Local 2648.  
Godfrey and Kahn, S.C., by Mr. Dennis W. Rader, 333 Main Street, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, on behalf of the County.

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

On April 16, 1993, Maple Lane Health Care Facility Employees, Local 2648, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing collective bargaining unit. Hearing was scheduled for September 16, 1993 at Shawano, Wisconsin, before Examiner Sharon A. Gallagher but on that date, before going on the record, the parties entered into a tentative settlement of the dispute between them regarding the positions of Bookkeeper-Accounting Clerk/Payroll, occupied by Sandra Knutson, and Bookkeeper-Residents' Accounts/Payroll, occupied by June Welch. However, after the study of the tasks of both jobs pursuant to the tentative settlement, the settlement was not finalized and on February 14, 1994 hearing was held at Shawano, Wisconsin. A stenographic record of the proceedings was received by February 23, 1994 and initial briefs were submitted by April 12, 1994. The record remained open until April 29, 1994 when the last reply brief was received.

The Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Maple Lane Health Care Facility Employees, Local 2648, AFSCME, AFL-CIO, hereafter Union, is a labor organization with offices located c/o

No. 7197-D

Mr. James Miller, 936 Pilgrim Way, #6, Green Bay, Wisconsin 54304.

2. Shawano County, hereafter County, is a municipal employer with offices located at P.O. Box 534, Shawano, Wisconsin 54166. The County operates a resident care facility for approximately one hundred residents, known as Maple Lane Health Care Center.

3. The Union seeks to include into its existing collective bargaining unit two previously excluded positions, Bookkeeper-Accounting Clerk/Payroll, currently occupied by Sandra Knutson, and Bookkeeper-Residents' Account/Payroll, currently occupied by June Welch. The Union's collective bargaining unit is described as ". . . all regular full-time and regular part-time employees of the Employer employed at Maple Lane Health Care Facility, except the administrator, assistant administrator, nurse or nurses, clerical employees, psychiatrist, dentist and building maintenance engineer. . . ."

4. The County stipulated in its brief that the position of Bookkeeper-Residents' Accounts/Payroll occupied by June Welch should properly be placed in the Union's collective bargaining unit because any confidential duties she may perform can be shifted to the position of Bookkeeper-Accounting Clerk/Payroll occupied by Sandra Knutson without undue disruption of County operations. Thus, the only issue in this proceeding is whether Knutson is a confidential employee.

5. Sandra Knutson has been employed at Maple Lane Health Care Center since May, 1987 doing bookkeeping, payroll and billing tasks for the Center. Knutson is currently paid \$8.98 per hour. Knutson's job descriptions for the job title of "Payroll Clerk/Billing Clerk," in effect until February 7, 1994, read as follows:

#### Payroll Clerk

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GENERAL DUTIES: Performs a variety of clerical tasks in keeping financial accounts and records; does related work as required.

FEATURES OF THE CLASS: Work involves performance of clerical, payroll, and related tasks. Although the specific assignments of employees whose positions are allocated to this class vary, they are of the same level of difficulty and require clerical, typing and accounting skills and ability to learn readily the procedures and regulations of the office assigned.

#### EXAMPLES OF WORK:

Performs a wide variety of clerical-accounting and related tasks;  
Posts entries, maintains various ledgers and balances accounts;

Computes and maintains payroll records for employees;  
Keeps employee vacations, sick leave, and benefit records;

Performs a variety of clerical duties;  
Prepares, types and submits a variety of monthly and quarterly reports, forms and letters;  
Answers telephone inquiries, relaying messages to appropriate personnel as is necessary;  
Disburse, maintain and balance residents' cash funds;  
Does related work as required.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES: Good knowledge of account-keeping practices, office terminology, procedures, routines, equipment, arithmetic and English; ability to follow oral and written directions; ability to adapt to new situations.

ACCEPTABLE EXPERIENCE AND TRAINING: Some account-keeping experience and completion of a standard high school course, preferably supplemented by related courses or any experience and training which provides the required knowledge, skills, and abilities.

#### Billing Clerk

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SUMMARY: Work involves billing to E.D.S. Federal for Title XIX residents and to individual people for private pay residents. Performs a variety of clerical tasks in keeping financial accounts and records for billing purposes; does related work as required.

DUTIES:

- Keeps a record of the number of days each resident is in the facility.
- Bills E.D.S. Federal on a monthly basis for all residents authorized under Title XIX.
- Types a separate billing for each resident which includes: their diagnoses, level of care, physician's name and address, number of days of regular stay and bed hold, rate per day, total amount of billing, amount available, and the total amount due us from E.D.S. Federal.
- Posts these billings to each individual residents (sic) ledger page.
- When payment has been received from E.D.S., records receipt of payment on each individuals (sic) ledger page.
- Submits adjustments when necessary.

SKILLS: Good knowledge of account-keeping practices, office terminology, procedures, routines,

equipment, arithmetic and English; ability to follow oral and written directions; ability to adapt to new situations.

**EXPERIENCE:** Some account-keeping experience and completion of a standard high school course, preferably supplemented by related courses or any experience and training which provides the required knowledge, skills, and abilities.

Knutson signed both of these job descriptions. On February 7, 1994, one week before the instant hearing, Knutson received and was asked to sign a new job description for "Bookkeeper-Accounting Clerk/Payroll" which read in relevant part as follows:

. . .

**JOB OBJECTIVES:** Tracking and maintaining financial data for revenue, billing, accounts receivable, receipts and payroll.

**JOB QUALIFICATIONS:** High level of accounting knowledge required. 1-2 years at a college/business school. Extensive training or work experience supplemented by related courses in bookkeeping, computer and payroll. Excellent math skills with attention to detail. Computer classes in DOS/Lotus/Word Perfect helpful. Knowledge of office procedures and equipment.

**JOB FUNCTIONS:**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Billing:

1. Responsible for preparing monthly residents' billing and transmitting to Electronic Data Service (EDS) for payment. Post billing and payments to individual residents' accounts on computer. Rebill unpaid claims and adjust incorrectly paid claims, etc.
2. Record incoming monies, making deposits as necessary. Close books at month's end and prepare receipt summary for general account.
3. Record daily census data and summarize for billing and related reports.
4. Prepare reports of admissions/discharges for Social Security Administration, notifying Title 19 of discharges and transfers within the nursing home units.

5. Complete all required year-end closeout reports and forms.
6. Notify guardians or responsible parties of new income available amounts, rate changes, etc.

Payroll:

1. Print out daily activity reports for department heads.
2. Make computer entries daily for special days (sick, holiday, vacation), sick accrual monthly, vacation accruals.
3. Prepare time cards.
4. Edit courthouse printout.
5. Make adjustments to match courthouse printouts.
6. Recalculate part-time employees % for fringe benefit prorations.
7. Process health insurance changes, various insurance forms, verification of employment, payroll changes and related forms.
8. Gather information for courthouse, union grievances, etc. as needed or requested. Assist in costing for union contracts.
9. Prepare accrued payroll report at month's end and all other required reports and forms.
10. Answer questions relating to payroll.
11. Interpret union contract.

**ADDITIONAL DUTIES:** Process Medical Assistance cards; put printouts in binders weekly; back up computer data on a daily basis; prepare necessary forms for beginning of new year; serve as backup for residents accounts and accounts payable; typing forms, envelopes and necessary correspondence; maintaining files; copying; telephoning; attend department meetings; others as directed.

. . .

**EQUIPMENT USED:** Typewriter, calculator, telephone, copy machine, computer terminal, fax machine, laminator, time clock, postage machine & scale, and any other related business equipment.

**WORKING HOURS:** 40 hours per week as assigned.

**RESPONSIBILITY IN AN EMERGENCY:** Expected to respond to emergency situations involving the safety of residents, other employees and the facility. This includes the ability to assist with a possible evacuation of residents.

Knutson did not sign the above-quoted job description because she questioned the duties described in numbers 8 and 11. She has regularly performed the rest of the duties listed in the job description.

6. Knutson's day-to-day duties include performing payroll functions for all Maple Lane employees except nurses aides. She records employee leave

balances and processes all vacation leave requests. Knutson also records employe insurance premium deductions although she does not process claim forms.

She keeps records of revenue, handles all accounts receivable and correspondence thereon, posts payments received to the proper accounts, and enters all this data on her ledgers and the computer. Knutson also does the payroll for all Center employes (except aides) and she handles the billing for residents' insurance and for Medical Assistance. Knutson does not work on accounts payable except as a back-up for Finance Chief, Clarence Manthei, who is her supervisor. Employes except nurses aides take inquiries regarding their vacation, sick leave and insurance eligibility to Knutson who has generally answered their questions by consulting Departmental ledgers, records and time cards. Knutson created the following form (with her supervisor's approval) in order to efficiently process these types of employe inquiries:

REQUEST FOR INFORMATION ON FRINGE BENEFIT BALANCES

NAME \_\_\_\_\_ DATE \_\_\_\_\_

I REQUEST THE BALANCES OF THE FOLLOWING:

\_\_\_ SICK HOURS    \_\_\_ VACATION DAYS    \_\_\_ PERSONAL/FLOATING HOLIDAYS

FOR OFFICE USE ONLY:    BALANCES PER BOOKS @ \_\_\_\_\_

\_\_\_\_\_ SICK HOURS    \_\_\_\_\_ VACATION DAYS    \_\_\_\_\_ P/F HOLIDAYS LEFT

NOTE: Requests must be submitted before noon on Friday.

All requests submitted during the week will be answered and placed on time card on Friday afternoon by 4 PM. Requests should be slid thru the bottom slot in the window by the time clock.

If Knutson is unable to answer an employe's question/request, she asks Manthei. Knutson is aware of past practices relating to fringe benefit eligibility and accrual which are followed by Maple Lane where the applicable labor agreement is silent. Knutson has testified as a witness for the County regarding her knowledge of past practice on two occasions in grievance arbitration cases brought by the Union against the County.

Knutson does not have the authority to approve benefits for employes. Knutson has never costed collective bargaining proposals. She has not attended bargaining sessions and she does not type or otherwise handle confidential labor relations correspondence.

7. The County employs an Administrator at Maple Lane whose assistant, Judy Christoff, is excluded from any bargaining unit. Finance Department Chief Clarence Manthei handles the Center's budget and does the costing on the Union's contracts. Manthei is not a member of any collective bargaining unit.

8. The position of Bookkeeper-Accounting Clerk/Payroll does not have

access to and participation in confidential labor relations matters.



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

CONCLUSION OF LAW

The position of Bookkeeper-Accounting Clerk/Payroll, currently occupied by Sandra Knutson, is not held by a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is held by a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Upon 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 positions of Bookkeeper-Accounting Clerk/Payroll and Bookkeeper-Residents' Accounts/Payroll are included in the bargaining unit described above in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 5th day of August,  
1994.

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

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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.

(Continued on page 8)

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.

(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.

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(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.

Shawano County (Maple Lane Health Care Center)

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

Positions of the Parties:

County:

The County urged that the duties of tracking employee benefit levels, determining employee eligibility for benefits and accrual levels and the attendant assistance to and representation of the County in legal proceedings where County past practices regarding these areas have come into question, make it necessary to continue to exclude Sandra Knutson (incumbent of the Bookkeeper-Accounting Clerk/Payroll position) from any bargaining unit as a confidential employee.

Essentially, the County argues Knutson's duties necessarily require her to administer the labor agreement. The County noted that Knutson is responsible for the day-to-day interpretation of the labor agreement and application of County past practices when the agreement is silent in the area of employee fringe benefits. This is clearly work related to confidential labor relations matters, the County contended. In addition, the County observed, Knutson is the only employee who knows all of the County's past practices, the only employee who has assisted the County in researching litigation relating to benefits and the only one who can accurately testify to those practices and the administration/application thereof.

The County also urged that it would unduly disrupt County operations to assign these duties away from Knutson. The County argued that Knutson must be excluded as a confidential employee because it is essential that the issues in litigation should not be "clouded by union loyalty." The County asserted that Knutson may also have done some costing relating to payroll and benefits if and when her supervisor delegated those duties to her.

The County noted that pursuant to long-standing WERC precedent, it should be allowed to exclude one confidential employee even if that person spends a de minimis amount of time performing confidential labor relations work, if that person is the only person who can perform the confidential duties. City of Kaukauna (Utility Commission), Dec. No. 24787 (Greco, 1/80); Town of Pewaukee, Dec. No. 20759 (WERC, 7/83). The County argued, contrary to the Union, that JoAnn Thiede, a part-time employee, is neither capable of doing Knutson's confidential work nor would she otherwise be considered a confidential employee within the meaning of the Act. Thus, the County argued that Knutson is the only person capable of performing the confidential work involved in this case and that she must be excluded as a confidential employee.

Union:

The Union asserted that the fact that Knutson has testified in two

grievance arbitration hearings does not mean that she performs confidential duties relating to labor relations such that she must remain excluded from the unit. In this regard, the Union noted that no evidence was offered to show that Knutson originated or administered any policies affecting labor relations.

In addition, the Union asserted that Knutson's testimony in the two grievance arbitration cases amounted to her explanation of how the Care Center applied the labor contract and County practices to calculate employee benefit accrual dates, all as a part of her job. In the second case, the Union observed, Knutson merely testified regarding employee insurance eligibility procedures/practices. Furthermore, the Union contended that JoAnn Thiede and the Administrator's Assistant, Judy Christoff, both exempt employees, are available to perform what little confidential work Knutson actually performs and that they could do so without disrupting County operations.

The Union resisted the County's claims that Knutson's involvement in drafting and circulating the benefits balance request form is sufficient to show that Knutson must be excluded as a confidential employee. On this point, the Union argued that the County offered no evidence to show that Knutson actually has access to and participation in the County's strategy or position or that the information she had thereon was not available to the Union. Here, the record showed that Knutson merely compiled and recorded benefit/payroll data as a part of her regular duties which at times revealed County past practice. That Knutson testified regarding the contents of these records and the procedures she had regularly used in her job does not require a conclusion that this constitutes confidential work under the Act. The Union therefore sought the inclusion in the bargaining unit of the disputed position and the incumbent.

#### Reply Briefs

##### County:

The County argued that Knutson's research, preparation for testimony and her testimony at grievance hearings as a County witness made her privy to labor relations strategies and information not available to the Union, citing Madison Area Vocational, Technical and Adult Education District No. 4, Dec. No. 16456-E (WERC, 11/87). The County further urged that the record showed that Knutson interprets unwritten County policies which she was taught by her predecessor. Finally, the County observed that it is not only entitled to one capable employee to perform confidential work, it is also entitled to conduct confidential labor relations work through an employee whose interests are aligned with management, not the Union. Knutson is such an employee, the County urged.

##### Union:

The Union asserted that Knutson's job merely involves application of the labor agreement to employee fringe benefit accounts, not interpretation of the contract and that Knutson has no authority to grant or deny such benefits. In addition, the fringe benefit records kept by Knutson, pursuant to her

supervisor's directives, contain no confidential information. Knutson's duties advising employees of fringe benefit eligibility and her creation of the benefit levels request form were a part of Knutson's regular clerical duties.

The Union also flatly denied that Knutson has been privy to the County grievance arbitration strategies. The Union urged that the knowledge Knutson has regarding application of the contract and past practice need not necessarily be kept a secret from the Union. Even if Knutson is the only employee who can presently testify regarding fringe benefit eligibility, the Union observed the County could train someone in management so that they could perform these research and witness duties. The Union noted that even though she has testified at grievance hearings, she was never actually an advocate for management -- she merely testified to her knowledge as gained in the course of her normal job duties. The Union urged that because the evidence regarding Knutson's involvement in budgetary matters was disputed and could be argued either way, it should not stand to exclude Knutson from the bargaining unit. The Union contended, therefore, that Knutson is not aligned with management and that her duties are not confidential under the statute so that she should properly be included in the unit.

Discussion:

The Commission has consistently held that in order for an employee to be considered a confidential employee, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes it must be the type of information which (a), deals 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), is not information which is available to the bargaining representative or its agents.

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Here, the County asserts Knutson performs three different types of confidential work:

- (1) Administration and interpretation of the collective bargaining agreement.
- (2) Advocating management's position in grievance arbitration.
- (3) Costing bargaining proposals.

We will examine each assertion to determine whether the work is indeed confidential and if so, whether such work warrants Knutson's exclusion from the unit as a confidential employee.

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2/ Wonewoc-Union Center School District, Dec. No. 22684 (WERC, 5/85).

The claim that Knutson administers and interprets the contract flows from her responsibilities recording certain fringe benefit data. When recording the data, Knutson utilizes the bargaining agreement to calculate the amount of vacation or sick leave an employee is entitled to receive and then records an employee's use of the available benefits. When calculating the employee's vacation or sick leave benefits, she uses the express terms of the contract and County past practice.

We do not find the information Knutson uses to calculate initial eligibility <sup>3/</sup> and/or to record employee benefit usage to be confidential information. Clearly, the terms of the collective bargaining agreement and the amount of leave to which an employee is entitled thereunder are available to the Union and/or the employees. To the extent past practice plays a role in determining benefit eligibility, the practices in question are either already common knowledge due to grievance arbitration proceedings or matters as to which the union/employee is entitled to be aware. Thus, we conclude Knutson's involvement with benefit recording does not provide her with access to confidential labor relations information.

The claim that Knutson advocates management positions in grievance arbitration flows from evidence of her testimony at two grievance arbitration hearings and her testimony at the unit clarification hearing that she consulted with management's attorney prior to her arbitration testimony. The County asserts this evidence demonstrates access to or knowledge of the County's strategy in the arbitration hearings and thus establishes Knutson's knowledge of confidential information. We do not find this assertion persuasive.

Knutson's testimony at the arbitration hearings communicated the manner in which she makes initial eligibility calculations and determinations. As earlier discussed herein, that information is not confidential. Nor are we persuaded that Knutson's meetings with the management attorney exposed her to strategically valuable information regarding the employer's position. The record indicates only that during the meeting Knutson and the management attorney "looked over the questions" that he would ask her at hearing. We conclude that such a review is not sufficient to constitute exposure to confidential labor relations information.

Lastly, the County cites Knutson's role in the costing of bargaining

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3/ It is clear that it is either an employee's supervisor or Manthei, Knutson's supervisor, who ultimately decides whether an employee leave request should be granted or denied.

proposals as the basis for a confidential exclusion. The record establishes that Knutson provides management with accurate payroll information which management in turn uses when calculating the cost of proposals. This information is not confidential. The Union is entitled to the same payroll information Knutson provides management. Further, the information is of no strategic value. It is knowledge of the proposals management is contemplating which is confidential, not the raw payroll data.

Given all of the foregoing, we conclude Knutson does not have knowledge of confidential labor relations information. We are further satisfied that she would not acquire such knowledge if she were to begin to perform any of the work of Welch (who the County stipulates is not a confidential employee) pursuant to the transfer of some of Welch's functions to Knutson. This is so because Welch also does not have knowledge of confidential labor relations information. Thus, both Knutson and Welch are included in the bargaining unit.

Dated at Madison, Wisconsin this 5th day of August, 1994.

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