

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DUNN COUNTY COURTHOUSE EMPLOYEES, :
  
LOCAL 727-A, AFSCME, AFL-CIO :
  
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Involving Certain Employes of : Case 4
  
: No. 45161 ME-473
  
DUNN COUNTY (COURTHOUSE) : Decision No. 8170-A
  
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Appearances:

Mr. Steven Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 17 Woodbridge Drive, Eau Claire, Wisconsin 54702  
Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, by Mr. Stephen L. Weld, 715 South Barstow, Suite 111, Eau Claire, Wisconsin 54702-1030.

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

Dunn County Courthouse Employees, Local 727-A, AFSCME, AFL-CIO, on January 22, 1991, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit of certain employes of the County to determine whether the Secretary to the Administrative Coordinator should be included in said unit. Hearing was held in Menomonie, Wisconsin on March 7, 1991. A stenographic transcript was made and received on March 25, 1991. The parties completed their briefing schedule on April 29, 1991. The Commission, being fully advised in the premises, makes an issues the following

FINDINGS OF FACT

1. Dunn County, herein the County, is a municipal employer and has its offices at 800 Wilson Avenue, Menomonie, Wisconsin 54751.
2. Dunn County Courthouse Employees, Local 727-A, AFSCME, AFL-CIO, herein the Union, is a labor organization and has its offices at 17 Woodbridge Drive, Eau Claire, Wisconsin 54702.
3. On October 20, 1967, the Commission certified the Union as the exclusive bargaining representative of County employes in the following bargaining unit:

All regular full-time and regular part-time employes of the Dunn County Courthouse, excluding elected and appointed officials, Welfare Department employes, temporary employes, confidential employes, Sheriff's

Department and traffic officers, supervisors, the court reporter, Juvenile Court worker, professionals, County Nurse, Civil Defense Director and Veterans Service Officer.

4. The disputed position, that of Secretary to the Administrative Coordinator has been in existence for approximately 15 years and has been included in the above-referred to bargaining unit under the position title of Secretary/County Administrator for at least 10 years. It is a part-time position currently consisting of approximately 25 hours per week. In April of 1990 the Administrative Coordinator at the time, Gregory Seefeldt, requested the Union to allow the disputed position to be removed from the bargaining unit. In January of 1991, Patrick Thompson, the current Administrative Coordinator changed the job description and informed the current occupant of the position, Kelly Stark, that she was now a confidential employe and excluded from the bargaining unit as such.

5. On January 22, 1991, the Union filed a petition for unit clarification with the Commission wherein it sought to include the Secretary to the Administrative Coordinator back into the bargaining unit. The County opposes this inclusion contending the position is confidential.

6. Administratively, the County's chief official (aside from the Chairman of the Board of Supervisors) is Administrative Coordinator Patrick Thompson who was hired in August of 1990 and to whom all department heads answer. There are approximately 425 County employes and 15 departments, with 150 of the employes being employed at the County's Health Care Center. The Administrative Coordinator is charged with, among other responsibilities, labor relations, personnel and budget analysis/preparation including personnel components. The County does not employ a Personnel Director. Without considering the disputed position, there are three other confidential employes in the County. Two of the confidential employes are the Administrative Assistant (Olson) and the Administrative Assistant to the County Administrator (Preston) 15/ both of whom are located in the Administrative Coordinator's offices and report to the Administrative Coordinator. Olson is responsible for payroll, workers compensation, health insurance administration, contract costing and plays a major role in preparing the County's budget. Clerical support for this position is provided by Preston and the disputed part-time Secretary. In addition to providing clerical support to the County Administrator and the Administrative Assistant, Preston is responsible for vehicle and liability insurance claims and law suits, risk management, purchasing and the County telephone system. The third confidential employe is located at the Health Care Center and deals primarily with confidential matters relating to the Health Care Center.

7. The disputed position has always been located in the Administrative Coordinator's office but had occupied a back room to minimize exposure to confidential matters prior to the County's changing of the job duties and the recent exclusion of the position from the bargaining unit. The occupant of the position, Kelly Stark, has now been moved to the general reception area in the Administrative Coordinator's office where she also serves as a receptionist for the Administrative Coordinator. Stark sits in front of and has access to personnel files. By virtue of her new location, she is in a position to overhear and has overheard discussions of the Supervisory and Personnel committee as well as conversations between the Administrative Coordinator and department heads. The duties of the position are mainly clerical and

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1/ The position and title of County Administrator has now been changed to Administrative Coordinator.

secretarial as demonstrated in both old and new job descriptions. The new job description differs from the older one in two significant respects. In a category entitled "Distinguishing Features of the Class," the following has been added: "The work may involve responsibility for and access to personnel records and various confidential information dealing with labor and personnel issues." Under "Examples of Work," the following phrase has been added: "Ability to prepare complex records in a confidential manner."

8. Stark spends approximately an hour on Mondays and 30-45 minutes on the other four days receiving, reviewing, and distributing the mail which may contain confidential labor relations/personnel materials such as grievances, correspondence from legal counsel or department heads, etc. Prior to Stark's exclusion, Pat Preston, the Administrative Assistant to the County Administrator, would go through the mail initially to remove anything of a confidential nature prior to giving it to Stark. This practice is now unnecessary. The remainder of Stark's time is spent on office receptionist duties with intermittent typing and filing. Since her exclusion from the unit, in January of 1991, Stark has been given access to the personnel files for both data retrieval and filing of personnel-related information. She estimates that she files two or three letters a day. She also types on average one or two pieces of confidential correspondence each day. Since January 1, she has typed the minutes of the Supervisory and Personnel committee meetings (said minutes are, however, available to the Union), budget information, and a letter or two from the Administrative Coordinator to the law firm serving as the County's labor counsel. Since January 1, she has not typed any grievance responses. She has, however, been informed that she will be typing such responses as well as grievance related correspondence between the Administrative Coordinator and department heads. She will also type misconduct investigation documents and letters from the Administrative Coordinator to the County's Corporation Counsel involving confidential personnel matters in the future. Stark will also type and prepare exhibits and other documents for arbitration proceedings. The new Administrative Coordinator has not been through a round of negotiations at the present time. He has, however, informed Stark that she will be preparing bargaining correspondence, obtaining collective bargaining information, typing documents relating to the County's strategy, and typing bargaining notes in future negotiations and that she will have access to the Administrative Coordinator's bargaining notes.

9. There has not been a significant increase in confidential clerical work in the Administrative Coordinator's office but rather some of the work that was previously performed by the Administrative Assistant to the County Administrator has been assigned to the part-time Secretary. This has occurred in an effort to improve operational efficiency and because of the increased demands on the Administrative Assistant to the County Administrator caused by her responsibilities in the purchasing, insurance administration, risk management and County telephone coordination areas.

10. Stark has sufficient access to and involvement in confidential matters relating to labor relations so as to render her a confidential employe.

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

#### CONCLUSION OF LAW

1. The position of Secretary to the Administrative Coordinator is occupied by a confidential employe and therefore Stark is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Based upon the above Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

16/

The position of Secretary to the Administrative Coordinator shall be excluded from the collective bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 30th day of  
October, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

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A. Henry Hempe, Chairperson

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William K. Strycker, Commissioner

I Dissent:

\_\_\_\_\_  
Herman Torosian, Commissioner

(See footnote 2/ on pages 5 and 6)

2/ 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

2/ 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.

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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 two 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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2/ continued

(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.

DUNN COUNTY (COURTHOUSE)

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

BACKGROUND

The disputed position, Secretary to the Administrative Coordinator is a part-time position which until January of 1991 had been included in the bargaining unit for at least 10 years. In August of 1990 the County hired a new Administrative Coordinator, Patrick Thompson. In an effort to improve operational efficiency, Thompson shifted some of the confidential clerical duties from the Administrative Assistant to the County Administrator to the position in question. This change had been in effect for slightly more than two months at the time of the hearing.

POSITION OF THE PARTIES

County

The County argues that Stark's position meets the standard set forth in Rhineland School District, Dec. No. 17021-A, (WERC, 12/86) for finding her to be a confidential employe. According to the County, her duties satisfy at least two of the three alternative requirements for constituting a confidential employe. She most certainly has access to personnel files which contain materials related to employe grievances, reprimands, evaluations, compensation data and correspondence. It is her responsibility to file these evaluations and reprimands and other grievance/discipline materials. She types letters to the County's labor attorneys as well as minutes of the Salary and Personnel Committee. As the Secretary to the Administrative Coordinator, the County maintains Stark is assigned tasks involving both the typing and filing of materials pertaining to the County strategy or position in collective bargaining, contract administration and grievance handling.

The second alternative prerequisite is that Stark has knowledge of confidential matters because of the proximity of her desk to the personnel files and the room in which the Supervisory and Personnel Committee meets and because her job duties require her to participate in the preparation of confidential materials.

The County stresses that Stark's confidential duties are substantive and not de minimis in nature. The County asserts that approximately 60% of her work week involves confidential or personnel related work. It further asserts that the number of confidential employes retained by the County is not unreasonable.

In sum, the County requests exclusion of Stark's position from the unit as a confidential employe.

## Union

The Union argues that the problem the County has is really one of convenience and that convenience cannot be the basis for excluding a position from the bargaining unit.

It stresses that Stark's confidential duties are de minimis.

According to the Union, the County already has three full-time confidential support positions while the labor relations functions of the Administrative Coordinator's office have decreased because the County now employs both a Corporation Counsel to handle some grievance duties and a labor counsel to bargain on its behalf whereas in prior years the Administrative Coordinator performed all of these duties.

Pointing to Stark's testimony, the Union notes that: Stark: 1) has no knowledge of the County's bargaining strategy for upcoming negotiations with the Union; 2) has never participated in the development of bargaining proposals; 3) has not costed or prepared previous years expenditure and wage projections or participated in discussion of costing bargaining proposals (she or one of the other confidential employees will type or mail these items); 4) does not and will not attend meetings of the Supervisory and Personnel Committee (has typed the general meeting notes which are public information and distributed to the Union); 5) has not been involved in the preparation of reports pertaining to changes in programs which would affect bargaining unit employees (she or one of the other confidential employees would prepare the correspondence); 6) has not prepared or typed any grievance responses, letters of employee discipline nor participated in or performed the clerical function for any grievance arbitration; 7) has not participated in the development of work rules; 8) does not perform investigations of employee misconduct; and 9) has not typed any communications between the Administrative Coordinator, the Supervisory and Personnel Committee, the department heads or the Corporation Counsel in regard to grievances.

Asserting that other confidential employees are available, the Union asserts that Stark's duties are de minimis. Conceding that Stark has access to personnel files, the Union maintains that this is insufficient to establish that she is a confidential employee.

The Union avers that the County has enough confidential employees to handle the confidential workload without Stark and that it is unreasonably spreading confidential work among employees. The Union requests the Commission to find that Stark's position, Secretary to the Administrative Coordinator, is not confidential and to include her in the appropriate bargaining unit.

## DISCUSSION

For an employee to be held confidential, said employee must have access to, knowledge of, or participation in confidential matters relating to labor relations. 17/ For such information to be confidential, it must (A) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (B) be information which is not available to the bargaining representative or its agents. 18/

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3/ Price County, Dec. No. 11317-B (WERC, 9/89).

4/ Supra, at 7.



Having found that a de minimis exposure to confidential materials is insufficient grounds for excluding an employe from a bargaining unit, 19/ the Commission has nevertheless sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with management. 20/ For this reason, an employe may be found to be confidential irrespective of the actual amount of confidential work performed where the management employe to whom the clerical employe is assigned has significant labor relations responsibility unless the confidential work can be assigned to another confidential employe in the employer's organization without undue disruption. 21/

Applying these general principles to the instant case, we find that the Secretary to the Administrative Coordinator is a confidential employe and appropriately excluded from the bargaining unit.

While the Administrative Coordinator and the incumbent's estimate that she spends 10 to 15 hours of her 25 hour work week in confidential labor related matters appears to be high, her confidential duties and anticipated duties as outlined in Finding of Fact 8 are not de minimis. This is especially true here where the new Administrative Coordinator has not completed a round of negotiations on the County's collective bargaining agreements and the secretary in question has not yet had an opportunity to perform the confidential duties projected for her when negotiations commence. 22/

We are also impressed with the fact that the Administrative Coordinator to whom Stark is assigned has sole responsibility for all labor relations and personnel functions. Given the magnitude of these responsibilities in overseeing approximately 425 employes in 15 departments and the expanded responsibilities of the Administrative Assistant to the County Administrator, a request for an additional three-fifths position to be confidential is reasonable under the circumstances. 23/

While it is true that the County has one "Joint Council of Unions" bargaining agreement, it is important to note that there are separate and distinct appendices for each of the following groups of employes: Health Center, Human Services, Court House, Highway Department and Sheriff Department. Thus, we are satisfied that the County generates a confidential work level roughly equivalent to an employer dealing with five units.

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

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

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

22/ La Crosse Area Joint School District No. 5, Dec. No. 15710-A (WERC, 5/79). City of Appleton, Dec. No. 12917-B (Knudson Sec. 227.46(3)(a) final agency decision, 9/82).

23/ With this exclusion, the Administrative Coordinator will have only one full-time and one 25 hour per week position in his office to provide confidential clerical support. The other Administrative Assistant (Olson) performs administrative duties which are identified in Finding of Fact 6. Olson receives her clerical support from both Preston and Stark.

The record further indicates that, because of her increased work load, which includes but is not limited to purchasing, risk management, telephone coordination and insurance administration, the confidential duties assigned to Stark could not be reassigned to Preston who previously performed them, without undue disruption. The record supports the conclusion that Preston could not perform all of the confidential clerical work without slighting or failing to complete some of her current responsibilities. Moreover, the administrative, non-confidential components of Preston's job could not be assigned to Stark, as the Union argues, because they are higher level duties and not contained in her job description. Finding Stark to be confidential also eliminates the need for the extremely inefficient practice of having Preston pre-screen all mail daily to remove confidential documents prior to Stark's processing.

Stark's work station is located outside of the Board Room and close to the Administrative Coordinator's office in front of the personnel records to which she has access. She is in a position to overhear and has even heard conversations between the Administrative Coordinator and County Board members or department heads. While we have not held that these factors, by themselves, warrant a determination that an employe is confidential, these elements are significant when combined with the difficulty of rearranging the work load in a logical manner and the significant labor relations responsibility which the Administrative Coordinator holds.

Our conclusion is the same as reached in Cadott 24/ under similar circumstances. Clerical work previously assigned to the Administrative Assistant of Finance, including that which was confidential, was assigned to the Central Office Secretary/Bookkeeper. The record does not reflect an increase in confidential work but a logical, good faith reassignment of duties. The Administrative Assistant of Finance retained her confidential exclusion and the Commission found the Central Office Secretary/Bookkeeper to be confidential.

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24/ Cadott School District, Dec. No. 22880 (WERC 9/85).

By finding Stark to be confidential, we do not suggest that an employer may increase the number of bargaining unit exclusions by simply redistributing confidential labor relations responsibilities. City of Appleton established "...that an employer is not prohibited from legitimately establishing a new position which draws significant confidential duties from an existing position, thus rendering both positions confidential." 25/ Here, as in City of Appleton, where there is a reasonable basis for a realignment of duties among employes, "...some allowance must be made for the right of the employer to organize and structure its labor relations functions." 26/ Given the broad responsibilities of the Administrative Coordinator, the size and complexity of the organization and the existing number of confidential employes, we believe a reasonable basis for duty realignment has been well founded. 27/ In our view reassignment of Stark's confidential duties to the other employe providing confidential clerical support would be unduly disruptive. 28/ Thus, we find that the secretary to the Administrative Coordinator is a confidential employe and properly excluded from the bargaining unit.

Dated at Madison, Wisconsin this 30th day of October, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_

A. Henry Hempe, Chairperson

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William K. Strycker, Commissioner

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25/ City of Appleton, supra.

26/ City of Appleton, supra.

27/ Our dissenting colleague notes that ". . . the Personnel Department administered labor relations for 17 units and was seeking the exclusion of a second confidential employe." True enough. But those 17 departmental units consisted of 590 employes, excluded six clerical as confidentials, and several of the units conducted their negotiations jointly with each other. In the instant case, the total number of bargaining unit employes is 425 and there are only 3.6 clerical excluded as confidential.

28/ La Crosse Area School District No. 5, supra.

Dunn County

Dissenting Opinion of Commissioner Torosian

I disagree that a third confidential employe in the Administrative Coordinator's Office is warranted under the facts of this case.

It is clear that the vast majority of Stark's time is occupied by matters which are not confidential in the labor relations sense. The County makes much of the fact that she has access to personnel records, the Coordinator's bargaining notes and that she will type grievance responses in the future. We have held that access to personnel files, through the charting of such matters as use of leave time, and typing recommendations for promotion did not indicate confidential status since the affected employes had knowledge of their leave time use and access to such recommendations. Similarly, we found that the mere typing of grievance answers did not give the employe knowledge of the Employer's labor relations position because the bargaining representative would receive that information shortly after the letter was typed. 29/ Employes who have access to confidential files, but who are not privy to management decisions with respect to personnel or labor policies, are not considered confidential employes. 30/

The real test is whether Stark performs confidential duties to a significant degree. To date, aside from her mail and filing duties, she has typed one or two letters(s) from the Administrative Coordinator to the County's Labor Counsel. Her confidential duties are clearly de minimis at present. The County has argued that Stark will share in the performance of more confidential duties in the future along with one of the two Administrative Assistants who have performed such duties to date. The mere vesting of some minor confidential functions in an employe, where other confidential employes are available, cannot be considered to establish that said employe should be excluded from the unit as a confidential, 31/ nor can an employe who occasionally fills in for another employe be held to be a confidential. 32/ As we said in West Salem School District: 33/

The confidential exclusion protects a municipal employer's right to conduct its labor relations through employes whose interests are aligned with those of management,

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29/ City of New Berlin, Dec. No. 13173-B (WERC, 8/83); see also, West Salem School District, Dec. No. 22514-A (WERC, 8/89).

30/ Milwaukee County, Dec. No. 11382-D (WERC, 9/74).

31/ Menomonee Falls Jt. School Dist. No. 1, Dec. No. 11669 (WERC, 3/73); Cudahy Board of Education, Dec. No. 12087 (WERC, 8/73); Baraboo Jt. School Dist. No. 1, Dec. No. 13353 (WERC, 2/75); Adams-Friendship Jt. School Dist. No. 1, Dec. No. 13478 (WERC, 3/75).

32/ Cudahy Board of Education, Dec. No. 12087 (WERC, 8/73); Milwaukee County, Dec. No. 11382-D (WERC 9/74); Palmyra Jt. School Dist. No. 1, Dec. No. 13730 (WERC, 6/75); Vernon County, Dec. No. 13805 (WERC, 7/75); Outagamie County, Dec. No. 14062 (WERC, 10/75).

33/ West Salem School District, Dec. No. 22514-A (WERC, 8/89).

rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. However, we have said that an employer clearly cannot be allowed to exclude an inordinately large number of employes by spreading the work of a confidential nature among such employes or giving them occasional tasks of a confidential nature. We have also held that the physical proximity of confidential and nonconfidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employes are confidential employes. Lastly, it should be noted that access to personnel files is not typically sufficient to confer confidential status because the information contained therein is typically accessible to employes of their union and because the employer can limit access if it chooses.

Here, there appears to be no real increase in the amount of confidential work, but rather the County has reassigned some existing confidential work to Stark rather than having the two confidential employes continue to perform it.

I am convinced from the record that Stark's new confidential duties can be reassigned to one or both of the existing confidential employes who previously performed them (and Stark can continue to perform de minimis confidential work if the employer desires) without undue disruption of the employer's operation.

I so conclude for several reasons. First, as stated above, there has been no increase in the amount of confidential work. Second, there doesn't seem to be a significant amount of confidential work to be performed. While the County administration is responsible for overseeing approximately 425 employes, there

is only one bargaining unit in the County, 34/ and there are already three confidential employes. In the two month period prior to hearing, there were no grievances, and Stark only typed one or two letters to the County's labor counsel. Furthermore, the confidential aspect of her duties with respect to opening the mail can be eliminated or greatly minimized by having mail containing confidential labor relations material marked "Confidential" or "Personal". 35/ Finally, since the parties agree that the existing two confidential employes in the Coordinator's office should continue to be excluded as confidential, it can reasonably be concluded these employes continue to be available to perform more than a de minimis amount of the limited confidential work which exists.

In a strikingly similar case 36/ we held:

As to Blake and Hornick, the Association correctly notes that neither employe had done any significant amount of confidential work at the time of the hearing.

The amount of confidential work performed is reflective of both the recent nature of Keller's assumption of bargaining and contract administration responsibilities as well as of the fact that Keller is only responsible for two small units which will be unlikely to generate large amounts of confidential work. However, where, as here, the employer has made a good faith decision to restructure the manner in which bargaining responsibilities have previously been allocated and where, as here, the result of that change has to our satisfaction given significant bargaining responsibility to a management employe, the clerical employe assigned to that management employe as his or her secretary will be found to be confidential even where the actual amount of confidential work is not significant unless the confidential work can be assigned to another confidential employe without undue disruption of the

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34/ The majority reasons that because there are separate appendices for five separate groups of employes, the confidential work level generated would be roughly equivalent to an employer dealing with five units. While I agree that the level of confidential work generated by Dunn County's one unit is probably more than a traditional one-unit relationship, I find it unreasonable to conclude that it is roughly equivalent to that of five units without some record support. Stark's de minimis amount of confidential work at the time of hearing would seem to indicate otherwise.

35/ School District of Bruce, Dec. No. 19318-A (WERC, 5/83).

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

employer's organization. 9/ Here, application of the foregoing would warrant excluding Blake, Keller's secretary, as confidential unless the confidential work Keller's responsibilities produce could be readily performed by another confidential employe. As noted earlier, the District Administrator's secretary has been excluded by agreement of the parties as a confidential employe. Although the District Administrator testified that his secretary does not have enough time to perform Keller's confidential work, we note that she performed said work before Keller assumed his responsibilities (Tr. 98). We also note that Zimdars, the controller, has the skills (Tr. 123-124) and the formal responsibility (Tr. 66, Emp. Ex. 5) to provide back up clerical assistance to Blake and Hornick. Lastly, the record establishes that all the individuals in question work in close physical proximity to each other. Therefore, under these circumstances, we are persuaded that it would not be unduly disruptive for the District to have Rehn and/or Zimdars perform Keller's confidential work. 10/ Therefore, we are persuaded that Blake and Hornick are not confidential employes as neither has performed any significant amount of confidential work and as the confidential work in question which Keller will generate in the future can readily be performed by other confidential employes of the District.

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9/La Crosse School District, Dec. No. 15710-A (WERC, 5/79);  
See also City of Greenfield, Dec. No. 25646  
(WERC, 8/88), (WERC, 12/86).

10/See School District of Bruce, Dec. No. 19318-A (WERC,  
5/83); Wausaukee Schools, Dec. No. 15620-A  
(WERC, 6/83); City of Port Washington, Dec.  
No. 21205-A (WERC, 11/84).

Finally, County reliance on Rhineland School District, *supra*, is misplaced. In that case, the disputed clerical was excluded because the Commission concluded that the disputed clerical's confidential duties were significant and that requiring the managerial employe to rely on two other confidential employes who were not assigned to him would create undue disruption of the employer's organization. As discussed above, in this case, Stark's confidential duties to date have been *de minimis*, and the Administrator Coordinator already has two confidential employes assigned to him to perform confidential work.

In support of its position, the majority relies heavily on the Cadott and City of Appleton cases. In Cadott, however, the Commission was convinced that the existing confidential employe would continue to perform significant confidential work (see Finding of Fact 7 therein). This is an important distinction from the instant case and one that impacts on the determination of confidential status.

In the Appleton case, it is noteworthy that the Personnel Department administered labor relations for 17 bargaining units and was seeking the exclusion of a second confidential employe. Here there is but one bargaining unit and there already exists two confidential employes who report to the

Administrative Coordinator. The majority downplays the significant difference in the number of bargaining units, but in Appleton the Examiner specifically relied on "the number of contracts administered by the City . . ." and ". . . the potential for increased labor relations activity due to the expiration of 12 contracts . . ." 37/

Based on the above, I disagree with the majority's conclusion that a reassignment of Stark's confidential duties would unduly disrupt the County's organization.

Dated at Madison, Wisconsin this 30th day of October, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Herman Torosian, Commissioner

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37/ City of Appleton, supra at p. 5.