

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
ROCK COUNTY	:	
	:	
Involving Certain Employes of	:	Case 4
	:	No. 39549 ME-222
	:	Decision No. 8243-J
ROCK COUNTY REPRESENTED BY	:	
LOCAL 1258, AFSCME, AFL-CIO	:	
	:	

Appearances:

Mr. Steve Meyer, Deputy Corporation Counsel, Rock County, 51 South Main Street, Janesville, Wisconsin 53545, appearing on behalf of Rock County.
Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1722 St. Lawrence, Beloit, Wisconsin 53511, appearing on behalf of Council 40, AFSCME, AFL-CIO, and Local 1258, AFSCME, AFL-CIO.

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

Rock County having, on October 15, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employes of Rock County by determining whether a certain position should be excluded from said bargaining unit; and a hearing in the matter having been conducted on December 9, 1987, before Examiner Beverly M. Massing, and a stenographic transcript of the proceedings having been prepared, and received on December 23, 1987; and at hearing, the parties having been given the opportunity to present oral arguments and witnesses; and the parties having stipulated at hearing that no briefs would be filed; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Rock County, referred to herein as the County, is a municipal employer having its offices at 51 South Main Street, Janesville, Wisconsin 53545.

2. That Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Local 1258, hereinafter jointly referred to as the Union, are labor organizations having their offices at 1722 St. Lawrence, Beloit, Wisconsin 53511.

3. That AFSCME Local 1258 is the exclusive bargaining representative of the following bargaining unit in Rock County:

All regular full-time and regular part-time employees of the Rock County Health Care Center, and 51.42 Program, the Developmental Disabilities Board, Rock County Farm, and the Rock County Health Department, but excluding administrators, supervisory, confidential, craft, professional and temporary employees.

4. That on October 15, 1987, the County filed a unit clarification petition with the Commission wherein it sought to exclude from the bargaining unit described in Finding of Fact 3 the position of Administrative Assistant to the 51.42 Board, currently held by Arlene Fitzgerald.

5. That the 51.42 Board is established by state statute as a policy making body of the County; that the Board is composed of five county board supervisors and four community members; that in 1984, the 51.42 programs were separated out from the County Health Care Center; that Dennis Kirchoff is employed by the County as 51.42 Program Director and as such is responsible for program planning, evaluation, and policy recommendations to the Board, including collective bargaining issues; that Kirchoff supervises the Medical Director, an

Administrative Assistant (Fitzgerald), a secretary, and six departments, each of which is headed by a department supervisor; that Kirchoff reports directly to the County Administrator and the 51.42 Board; that there are nine non-bargaining unit employes in Kirchoff's department, all of whom are supervisory or professional staff; that approximately 40-50% of Kirchoff's work involves labor relations issues; that Kirchoff consults with the Personnel Director and the County negotiators on labor relations matters, and holds weekly staff meetings with department supervisors where labor relations issues are regularly discussed; that Administrative Assistant Fitzgerald attends the staff meetings, takes the minutes, and types them up for distribution to the supervisors; that Kirchoff considers the staff meetings the initial step of the collective bargaining process because so many labor relations issues are discussed; that Kirchoff is the second step in the disciplinary procedure established by the collective bargaining contract; that a grievant will initiate the first step of said process by talking with the grievant's supervisor; that if not resolved between the employe and the employe's supervisor, the matter will be brought by the supervisor to Kirchoff who will consult with the supervisor and gather information concerning the grievance; that Kirchoff may ask Fitzgerald to gather such information; that Kirchoff must respond to the grievance within 10 days or the matter goes to the Director of Personnel and ultimately to the County Administrator; that Kirchoff may hold a hearing regarding the grievance at which the grievant, the union representative, and a representative from Kirchoff's office are normally present; that on at least one occasion Kirchoff had Fitzgerald sit in and witness a meeting regarding a possible suspension of an employe; and that there have been approximately 10-15 grievances within the last year.

6. That Arlene Fitzgerald has served as Administrative Assistant for the County for approximately six years; that for the past three years, Fitzgerald has served in this capacity for the 51.42 Board; that her current supervisor is Dennis Kirchoff, although she also performs work tasks for the Medical Director, Dr. Greblo, and Sue McDonald, service chief for the alcohol and drug program; that approximately 90% of her time is spent working for Kirchoff; that Fitzgerald shares an office at the Rock County Health Care Center with a clerk typist who works primarily for McDonald; that Fitzgerald's office is located next to Kirchoff's; and that the job description for Administrative Assistant which Fitzgerald received approximately six years ago when she obtained the position with the County and which has not been updated since that time is as follows:

ADMINISTRATIVE ASSISTANT

JOB RELATIONSHIP

Position: Administrative Assistant
Department: Nursing Services, Materials Department, Mental Health Programs, Inservice/Education
Location: Health Care Center Complex
Supervised by: Nursing Services Administrator, Materials Manager, Inservice Coordinator
Workers Supervised: None

JOB DUTIES

Summary: Perform responsible administrative work under limited supervision in organizing and carrying out one or more phases of a program of a department.

Tasks:

1. Inventory and requisition supplies.
2. Maintain departmental schedules.
3. Assist the department head in routine office administration.
4. Type correspondence and other materials from dictating machine, copy or shorthand notes and may take minutes of meetings and prepare draft of the proceedings. May take and transcribe dictation.
5. Compose letters, memoranda and other correspondence.
6. Prepare and maintain files, records, reports, financial statements and vouchers of a technical nature.
7. May review the work of others.

8. Provide general and technical information regarding departmental policies, procedures and regulations of varying complexity.
9. May make reviews of reports to determine accuracy and compliance with applicable laws and regulations relative to departmental functions.
10. Process incoming and outgoing correspondence.
11. Participate in fire drills.
12. Participate in disaster evacuations when circumstances arise.
13. Use materials and supplies resourcefully. Participate in the maintenance of equipment.
14. Perform related work as required.

MACHINES, TOOLS, EQUIPMENT AND WORK AIDS

Operate a variety of office machines including typewriter, transcriber, calculator, files and forms etc.

7. That Fitzgerald's work tasks were increased in 1984 to include work related to labor relations as a result of the separation of the 51.42 programs from the County Health Care Center; that Fitzgerald's main work task is to type correspondence for Kirchoff or Greblo, although she also maintains the library, orders supplies, and attends meetings in Kirchoff's absence; that Fitzgerald spends a substantial amount of her time on matters related to labor relations; that Fitzgerald types all correspondence from Kirchoff regarding grievances, suspensions, written reprimands, and terminations; that discussions between Kirchoff and an employe's supervisor regarding these matters often occur in Fitzgerald's office or in her presence; that Fitzgerald maintains personnel files in her office containing information on employe grievances, suspensions, written reprimands, and annual evaluations; that Fitzgerald has access to these files and regularly files in them, including Kirchoff's hand written notes; that Fitzgerald has been directed by Kirchoff to contact personnel and initiate correspondence regarding these matters; that Fitzgerald opens all of Kirchoff's mail and is the only employe directed to open Kirchoff's mail marked "confidential"; that Fitzgerald brings grievances to Kirchoff's attention, sets up a file for each grievance, and keeps track of any related correspondence; that she has access to information regarding grievances not available to the employe or union representative; that Fitzgerald may be involved in the investigatory phase of the grievance procedure at Kirchoff's request; that Fitzgerald attends staff meetings that Kirchoff conducts with the supervisory staff each week; that matters regarding labor relations are regularly discussed at staff meetings; that Fitzgerald takes minutes at these meetings and types them up for Kirchoff and the department supervisors; that Fitzgerald types correspondence to the department supervisors regarding labor contract issues to be discussed at staff meetings, which information is only available to the supervisors and Kirchoff; that Fitzgerald has access to and maintains the files relating to collective bargaining matters, and said files are kept in her office; that Fitzgerald is not present at any County strategy or negotiations sessions because she is a member of the bargaining unit, however, she has access to and types up information from executive sessions for County Board meetings; that there are approximately 4 to 6 executive sessions each year; that the detailed notes taken by Kirchoff at the executive sessions are kept by Fitzgerald and are accessible only to Fitzgerald and Kirchoff; that these notes often contain information relating to County positions and strategy on labor relations matters; that Fitzgerald attends the monthly board meetings, and types up the minutes for distribution; that Fitzgerald types all correspondence for Kirchoff regarding County collective bargaining proposals, bargaining strategy and positions, and proposed program changes which correspondence is not available to the bargaining representative; that Fitzgerald maintains files on subcontracting proposals which are accessible only to herself and Kirchoff, and records bids returned to the County from potential subcontractors; that information on bids remains under seal and is only accessible to Fitzgerald and Kirchoff until all bids are in; that Fitzgerald solicits information from other counties for Kirchoff on subcontractor costs, issues regarding employe classifications, and from department supervisors on personnel problems; that Fitzgerald compiles this information for Kirchoff to give to the County labor negotiator and Personnel Director for purposes of collective

bargaining; and that the position of Administrative Assistant to the 51.42 Board has sufficient access to and participation in confidential matters relating to labor relations so as to constitute a confidential employe.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Administrative Assistant to the 51.42 Board of Rock County is a confidential employe and therefore not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Administrative Assistant to the 51.42 Board of Rock County shall be, and hereby is, excluded from the collective bargaining unit of employes in the employ of Rock County, and presently represented by Wisconsin Council 40, AFSCME, AFL-CIO, Local 1258, described in Finding of Fact 3, supra.

Given under our hands and seal at the City of
Madison, Wisconsin this 26th day of February, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

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.

(Footnote 1/ continued on page 5)

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.

. . .

(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.

ROCK COUNTY

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

POSITIONS OF THE PARTIES

County

Rock County filed a petition on October 15, 1987 seeking to exclude the position of Administrative Assistant to the 51.42 Board from the existing bargaining unit. The County contends that the position of Administrative Assistant to the 51.42 Board, currently held by Arlene Fitzgerald, is confidential in nature and therefore should be excluded from the unit. In support of its position, testimony was elicited at hearing regarding the expansion of Fitzgerald's job tasks to include matters relating to labor relations including access to correspondence and discussions regarding the County's position on collective bargaining strategy and proposals, attendance at weekly staff meetings and monthly board meetings where labor relations matters are routinely discussed, the typing of executive session minutes, and correspondence relating to grievance matters, and the maintenance of files on subcontracting bids and personnel matters.

Union

The Union maintains that the position of Administrative Assistant is properly includable in the unit, and that Fitzgerald is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats. In its closing statement, the Union argued that many of the work tasks performed by Fitzgerald relating to labor relations matters are responsibilities which should be performed by her supervisor, Kirchoff. Further, the amount of work of a confidential nature which Fitzgerald performs is de minimis and is mainly the typing of correspondence which is given to the employe or Union. Finally, the Union argues that the County can create confidential employes through the budget process, where necessary. The additional work tasks assigned Fitzgerald are not an integral part of her job description as defined by her employer, but rather the result of an independent decision by her supervisor.

DISCUSSION

The Commission has held that in order for an employe to be considered a confidential employe, such employe must have access to, 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:

1. Deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer and
2. Is not available to the bargaining representative or its agents. 2/

A de minimis exposure to confidential labor relations matters generally is insufficient ground for exclusion. 3/

It is clear from the record that as of approximately 1984, Arlene Fitzgerald's responsibilities as Administrative Assistant to the 51.42 Board were increased to include several work tasks related to labor relations, 4/ including

2/ Laona School District, Dec. No. 22825 (WERC, 8/85).

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

4/ We reject the Union's argument that the addition of these duties by the supervisor was improper or beyond the supervisor's authority.

attending monthly board meetings and typing the minutes for distribution, typing up the minutes from executive sessions where labor relations matters are often discussed, attending weekly staff meetings with her supervisor and the supervisory staff where labor relations matters are routinely discussed, opening all of her supervisor's mail including mail marked confidential and including confidential mail pertaining to labor relations, and typing all correspondence for her supervisor related to County collective bargaining issues, labor negotiations strategy and proposals, employe grievances, suspensions, written reprimands, and terminations. In addition, Fitzgerald is often privy to discussions between her supervisor and other County supervisors regarding labor relations and personnel matters. Fitzgerald has access to and maintains files kept by her supervisor on employe grievances, suspensions, written reprimands, and annual evaluations, as well as files on subcontracting proposals, which information is not all available to the Union or its representatives. Fitzgerald has access to and maintains files in her office relating to collective bargaining matters which information is not available to the Union or its representatives. Fitzgerald also gathers and compiles data from other counties on subcontracting and personnel issues which ultimately goes to the County negotiator for collective bargaining purposes. While it is true that there are other employes working for the County who have been characterized as confidential, the 51.42 Board programs were separated from the County Health Care Center in 1984 and no longer have such an employe on staff. Fitzgerald spends a substantial amount of her time on matters related to labor relations, and therefore has more than a de minimis exposure to them. Accordingly, the position of Administrative Assistant to the 51.42 Board is confidential in nature and should be excluded from the collective bargaining unit described herein.

Dated at Madison, Wisconsin this 26th day of February, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

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