

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DOUGLAS COUNTY (HIGHWAY
DEPARTMENT)

Case XIII
No. 11769 ME-348
Decision No. 8433-D

Mr. Roy Niemi, Business Representative, General Drivers, Dairy Employees, Warehousemen, Helpers and Inside Employees Local Union No. 346, 2802 West First Street, Duluth, Minnesota 55806, appearing on behalf of the Union.

Douglas County having on March 19, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of its employees, represented by General Drivers, Dairy Employees, Warehousemen, Helpers and Inside Employees Local Union No. 346, by determining whether the Office Clerk 1/ position in the Highway Department occupied by Lori DeSmet should be excluded from said unit; and a hearing on said petition having been conducted in Superior, Wisconsin on June 30, 1982, by Dennis P. McGilligan, an examiner duly appointed by the Commission to conduct said hearing and issue a final decision in accordance with the provisions of Section 227.09(3)(a), Stats.; and the record being closed after oral arguments were presented; and the transcript having been issued on July 23, 1982; and the undersigned, having considered the evidence and arguments of the parties, makes and issues the following

1. That Douglas County, hereinafter referred to as the County, is a municipal employer, and among its functions maintains and operates a Highway Department; and that the County maintains its principal offices at Superior, Wisconsin 54880.

2. That General Drivers, Dairy Employees, Warehousemen, Helpers and Inside Employees Local Union No. 346, hereinafter referred to as the Union, is a labor organization representing employees for the purposes of collective bargaining and has its offices located at 2802 West First Street, Duluth, Minnesota 55806.

3. That the Union is the certified exclusive bargaining representative of certain of the County's employees employed in a bargaining unit described as all regular full-time and regular part-time employees in the employ of the Highway Department of the County, excluding supervisory, managerial, confidential and casual employees.

1/ In its petition the County requested clarification of the applicable collective bargaining unit with respect to a secretary position in the Highway Department. At hearing the parties stipulated that the position in dispute is a part-time office clerk position.

4. That the instant proceeding was initiated on March 19, 1982 by a petition filed by the County, wherein it contends, contrary to the Union, that the Office Clerk position in the Highway Department occupied by Lori DeSmet is confidential in nature, and therefore should be excluded from said unit.

5. That Lori DeSmet, an Office Clerk in the Highway Department, has been employed by the County for approximately two years; that DeSmet works on a regular part-time basis in said capacity; that DeSmet is one of four employees currently employed by the County in the Highway Department office in addition to the Highway Commissioner; that these employees include a Head Bookkeeper and a Bookkeeper who are in the aforesaid bargaining unit and a Patrol Superintendent who is not a member of said bargaining unit; that Judy James, the Head Bookkeeper, assigns DeSmet her work; that this work includes at present general secretarial work and that as part of her secretarial work DeSmet works on the time sheets and also arranges the Highway Committee meetings and sends out notices of agendas and types up the minutes of same.

6. That in the future, if the Office Clerk position is excluded from the aforesaid bargaining unit as confidential, the Highway Commissioner would assign DeSmet additional duties relating to labor relations; that the duties the Highway Commissioner would assign to DeSmet include maintenance of the Highway Department's personnel records which are currently supervised by James and available to any of the employees who work in the Highway Department office; that said duties would also include correspondence with respect to Union matters; that in this regard DeSmet would handle any correspondence relative to contract negotiations between the Union and the County; that said correspondence at present is handled by members of the aforesaid bargaining unit and generally has been available to the Union; that DeSmet would also be responsible for preparation of budget costing data for use in contract negotiations that currently is prepared by James; that in addition DeSmet would type up disciplinary notices which presently both the Highway Commissioner and Patrol Superintendent hand out by utilizing forms available in the Highway Department office; that further DeSmet would type the Highway Commissioner's response to grievances; that at present the Highway Commissioner holds grievance meetings in the Corporation Counsel's office wherein a secretary from that office, who is a member of another bargaining unit, types the Commissioner's responses to employee grievances; and that, however, DeSmet does not, nor will not, attend any closed meetings or have access to information which is unavailable to the Union that deals with the County's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations between the Union and the County.

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

CONCLUSION OF LAW

That, since the position of Office Clerk is not confidential, the occupant of said position, Lori DeSmet, is a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the undersigned makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

That the position of Office Clerk be, and the same hereby is, included in the appropriate collective bargaining unit described in Finding of Fact 3. 2/

Dated at Madison, Wisconsin this 17th day of August, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

2/ See page three

- 2/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

In its petition, the County contends that the Office Clerk should be excluded from the bargaining unit as a confidential employee. The Union maintains that the position should not be excluded because the Office Clerk does not perform confidential duties but instead does the same work as other bargaining unit employees.

The Office Clerk presently does not perform any duties relating to labor relations. The County, however, would like the Commission to find that the Office Clerk is a confidential employee based on duties it is prepared to assign said position in the near future.

The Commission has consistently held that in order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 3/ In order for information to be confidential for such purpose it must be the type of information that deals with (1) 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.

The County would have the Office Clerk type reprimands in the future if she is found to be a confidential employee. However, the fact that the Office Clerk will type reprimands, which are handed to the affected employee, does not contribute to a finding of confidentiality. 4/ The Office Clerk has access to nothing that the individual in question does not see.

Similarly, simply typing the employer's answer at the first step of the grievance procedure cannot be considered confidential. The Office Clerk has access to no more than does the grievant, and obviously the Union. 5/

The County would also assign the Office Clerk certain duties relating to collective bargaining. These proposed duties include the collection of fiscal data for use in contract negotiations and the handling of any correspondence concerning negotiations. However, the record does not establish that the Office Clerk would be privy to matters which are confidential to the County's role in collective bargaining. The fact that the Office Clerk provides information to be utilized by the County in negotiations is not in itself sufficient to conclude that the position is to be considered confidential. 6/ Likewise, the mere fact that the Office Clerk would type correspondence relating to negotiations does not by itself establish her confidential status.

The County further claims that the Office Clerk will be responsible for maintenance of the personnel file. The record indicates that other members of the bargaining unit also have access to said personnel files. Mere access to personnel files is insufficient indicia of confidential status. 7/ In addition, there is no evidence in the record which indicates that the Office Clerk would be privy to management decisions or strategy regarding same.

3/ Green County (Sheriff's Dept.) (16270) 3/78.

4/ Brown County (15054) 11/76; City of Menasha (14523) 4/76.

5/ Wisconsin Heights School District (17182) 8/79.

6/ Sauk County (15315-A) 10/81.

7/ City of Ashland (18808) 7/81.

Finally, the County argues that the Commission should exclude the Office Clerk as a confidential employee because she is the only employee in the Highway Department's office capable of performing said duties citing City of Port Washington (City Hall and Police Department) 8/ in support thereof. However, the facts present in the instant case are clearly distinguishable from those which formed the basis for the City of Port Washington decision. In this regard the record indicates that employees both in and outside of the applicable bargaining unit presently perform, or are available to perform, all of the duties that the County would assign to the Office Clerk. Therefore, the undersigned rejects this argument of the County.

Based on all of the above, it is concluded that the position of Office Clerk is not confidential; and therefore, is included in the bargaining unit.

Dated at Madison, Wisconsin this 17th day of August, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

8/ (18654-B) 4/82.