STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MENASHA CITY EMPLOYEES UNION.

LOCAL 1035-B, AFSCME, AFL-CIO

Involving Certain Employes of

CITY OF MENASHA

Case XII

No. 13293 ME-501

Decision No. 9347-A

Appearances:

Ms. LeNore Hamrick, Business Representative, appearing on behalf of the Petitioner.

Mulcahy and Wherry, Attorneys at Law, by Mr. Dennis Rader, appearing on behalf of the Municipal Employer.

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

Menasha City Employees Union, Local 1035-B, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing collective bargaining unit; and hearing on said petition having been held on May 23, 1978, at Menasha, Wisconsin, before Examiner James D. Lynch; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

- That Menasha City Employees Union, Local 1035-B, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization representing employes for the purposes of collective bargaining and has its offices at 1036 Mt. Vernon, Oshkosh, Wisconsin.
- That City of Menasha, hereinafter referred to as the Municipal Employer, has its offices at Menasha, Wisconsin, and operates a Police Department in which Jan Geibel is employed in the classification of Confidential Secretary/Records Clerk.
- That since November 21, 1969, AFSCME has been the exclusive representative for the purposes of collective bargaining of the following unit of employes:
 - All regular full-time and regular part-time employes of the Menasha City Offices, all regular full-time and regular parttime non-deputized employes of the Menasha Police Department excluding elected officials, managerial, supervisory, confidential, temporary employes, Deputy Treasurer-Deputy Clerk, cashier, garage clerk, and assistant data processing manager.
- That AFSCME filed the instant petition for unit clarification, wherein it requested the Commission to include the position of Confidential/ Secretary Records Clerk employed in the Police Department in the bargaining unit described above; and that during the course of the hearing herein the Municipal Employer opposed such inclusion, contending that the individual occupying such position, Jan Geibel is a confidential employe.
- That presently there are at least four separate collective bargaining units of employes of the Municipal Employer, which can be generally described as a "blue collar" unit, the instant "white collar" unit, a law enforcement unit, and a unit consisting of firefighting personnel; that in

addition to a confidential employe in the City Treasurer's office, a Clerk Stenographer II, attached to the City Clerk's office, performs confidential secretarial and clerical duties for the Mayor and other department heads, including the Chief of Police; and that in said regard said Stenographer II is involved in confidential matters relating to collective bargaining and the administration of collective bargaining agreements involving all units.

6. That the confidential duties performed by the occupant of the position of Confidential Secretary/Records Clerk in the Police Department are de minimis, and that the vast majority of time spent by said individual relates to matters other than those pertaining to labor relations.

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

CONCLUSION OF LAW

That the occupant of the Confidential Secretary/Records Clerk position in the Police Department of the City of Menasha is a "municipal employe" within the meaning of Sec. 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 Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

That the position of Confidential Secretary/Records Clerk be, and the same hereby is, included in the above-described unit.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Morris Slavney, Chairman

Herman Torosian, Commissioner

Marshall L. Gratz, Commissioner

CITY OF MENASHA, XII, Decision No. 9347-A

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

Jan Geibel, the incumbent Confidential Secretary/Records Clerk, has occupied this position since its inception in 1975. Her duties include a wide variety of clerical functions. While largely consisting of routine typing and filing, her duties include the occasional typing of termination letters, the collection of certain department data regarding employe response time to telephone inquiries and, on one occasion, the typing of a memo to the City Clerk regarding contract negotiations. Ms. Geibel testified that in the past year she had spent a total fourteen and one-half hours on duties she deemed to be "confidential."

The Municipal Employer currently has two employes excluded from the unit as confidential. In fact, in April 1976, the white collar unit was clarified to exclude the position of Clerk Stenographer II, attached to the City Clerk's Office as a confidential position. 1/ The Clerk Stenographer II was excluded from the unit since she is involved in labor relations matters affecting the various collective bargaining units, including law enforcement personnel in the Police Department.

The Municipal Employer premises the Confidential Secretary/Records Clerk's alleged confidential status upon her gathering of information regarding employe job performance and its possible consequent use in disciplinary actions, as well as her access to information regarding collective bargaining negotiations. Initially, it should be noted that the information which Ms. Geibel collects regarding employe response time is gathered from departmental logs and complaints. These records are public records which are open to inspection by both department employes and union representatives. With regard to her typing of termination letters, they are given to the concerned employe and are placed in the employe's personnel file, which is open for inspection by the employe.

Any other involvement she may have with confidential matters relating to labor relations is de minimis. 2/ Further, the mere vesting of some confidential functions in an employe, where, as here, other confidential employes are available to perform such work is not sufficient to establish that said employe should be excluded from the unit as a confidential employe. 3/

^{1/} City of Menasha (14523) 4/76.

^{2/} Racine Area Voc., Tech. & Adult Ed. Dist. (9188) 8/69; County of Milwaukee (11382-D) 9/74.

Baraboo Jt. School Dist. No. 1 (13353) 2/75; Adams-Friendship Jt. School Dist. No. 1 (13478) 3/75.

Since the record revealed no other basis for exclusion, the Commission concludes that the position of Confidential Secretary/Records Clerk is not confidential and therefore is included in the collective bargaining unit.

Dated at Madison, Wisconsin this 7th day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morni Pleway

Herman Torogian Commissioner

Marshall L. Gratz, Commissioner