

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MENASHA

Case XII
No. 13293 ME-501
Decision No. 9347-A

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

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.

5. That presently there are at least four separate collective bargaining units of employees 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

By Morris Slavney
Morris Slavney, Chairman
Herman Torosian
Herman Torosian, Commissioner
Marshall L. Gratz
Marshall L. Gratz, Commissioner

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 employee 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 employees 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 employee 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 employee response time is gathered from departmental logs and complaints. These records are public records which are open to inspection by both department employees and union representatives. With regard to her typing of termination letters, they are given to the concerned employee and are placed in the employee's personnel file, which is open for inspection by the employee.

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 employee, where, as here, other confidential employees are available to perform such work is not sufficient to establish that said employee should be excluded from the unit as a confidential employee. 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.

3/ 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

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner