

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 60, AFSCME, AFL-CIO

Involving Certain Employees of

MADISON METROPOLITAN SEWERAGE  
DISTRICT

Case 1

No. 49759 ME-668

Decision No. 9842-A

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME,  
Axley Brynelson, Attorneys at Law, 2 East Mifflin Street, P.O. Box 1767, Madison,

AFL-CIO, 803  
Wisconsin 537

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

On September 1, 1993, Local 60, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission requesting that a collective bargaining unit of employees of the Madison Metropolitan Sewerage District be clarified by the inclusion of the position of Secretary/Receptionist. The District opposed the petition on several grounds, including that the position was confidential. Hearing in the matter was held in Madison, Wisconsin, on December 22, 1993, before Examiner Stuart Levitan, a member of the Commission's staff. A stenographic transcript of that proceeding was made available to the parties by December 30, 1993. On January 12, 1994, Local 60 filed a supplemental petition, requesting that the Commission clarify the bargaining unit by including therein the position of Administrative Secretary. Hearing in the matter was held on February 25, 1994, with a stenographic transcript being made available by March 15, 1994. The parties filed written arguments on April 13, 1994. Local 60 filed a reply brief on April 19, 1994; the District filed its reply brief on June 27, 1994. The Commission, being advised in the premises, hereby makes and issues the following

No. 9842-A

## FINDINGS OF FACT

1. Local 60, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at 1602 South Park Street, Madison, Wisconsin.

2. Madison Metropolitan Sewerage District, herein the District, is a municipal employer with offices at 1610 Moorland Road, Madison, Wisconsin. The District, governed by a five-member Commission, with daily direction provided by the Chief Engineer/Director, employs approximately 86 workers. The District's organization includes the functional areas of wastewater treatment operations, field services, and engineering, plus an administrative services department, consisting of an Office Manager, a Bookkeeper, an Administrative Secretary and a Secretary/Receptionist. The District has delegated to the Chief Engineer/Director the primary responsibility, in conjunction with outside legal counsel, for labor contract administration and collective bargaining.

The entire second floor of the District's offices on Moorland Road is occupied exclusively by unrepresented managerial, administrative, technical and clerical personnel. District managers have the practice of discussing confidential matters relating to labor relations throughout this area, although they do have available conference rooms which afford privacy. The individual offices within this area do not have locks, and the only locked file cabinet is the personnel file.

3. At all times material, the Union has been the exclusive representative for collective bargaining with the District of employes in a unit described in the parties' most recent bargaining agreement as:

... all regular full-time and all regular part-time employees of the Madison Metropolitan Sewerage District excluding seasonal employees, professional employees, supervisory, confidential employees, and employees hired for the purpose of relieving regular employees on Saturday and Sunday ....

There are approximately 50 employes in this bargaining unit.

4. On August 3, 1970, pursuant to an election petition previously filed by the Wisconsin Council of County and Municipal Employees (WCCME), a predecessor to Local 60, the parties voluntarily agreed to a unit appropriate for collective bargaining and to a voting eligibility list for said unit. By that agreement, the parties agreed that the position of Clerk, for which the incumbent was Dorothy Haugen, was to be excluded from the unit on the grounds that it was a confidential position. The eligibility list as agreed-upon by the parties included such positions as maintenance, operators, mechanics, technicians and lab assistants, and did not include any of the three then existant clerical, secretarial or administrative positions. On September 14 and 15, 1970, by a vote of 25-11, the unit employes chose to be represented by WCCME. On September 25,

1970, the Commission certified WCCME as the exclusive bargaining agent for the agreed-upon unit. At the time of the election, the three clerical/administrative/support positions were all located at the District's administrative offices at 104 North First Street, Madison, Wisconsin. Subsequent to the representation vote, the District's operations were unified at the Moorland Road site; a fourth clerical/support position was added in the early-to-mid 1980's. Prior to this proceeding, the Union has not sought to represent any of the clerical/administrative/support personnel. The pending petition is the first representation proceeding filed since certification.

5. The position of Clerk, formerly held by Dorothy Haugen, has since become the position of Secretary/Receptionist, and has, since February 2, 1991, been filled by Debbie Spyros. While the position does not have a published job description, the incumbent's Employee Career Review, dated June 29, 1993, contained the following:

#### EMPLOYEE CAREER REVIEW

...

Description of employee's position:

Secretary/Receptionist: Maintain District library, transcribe dictation and hardcopy letters, memos, reports, forms, occasionally short specifications, etc. to draft and final copy, data entry for Metrogro haulings, assist in preparation of Monthly Discharge Monitoring Reports for DNR, type purchase orders and accident reports, prepare time cards, maintain lists and mailings for plans/specs for bid projects, collate, prepare for mailing and route District documents and packages via U.S. Mail, UPS and Federal Express (an average of 49 pieces per day), maintain vehicle log and safety bingo, act as coordinator for Central States Video Loan Library; serve on Public Education Committee, answer telephone and interoffice intercom (in 1992 after 4 month survey - averaging 88.5 calls per day. This has risen since the Eighth Addition) greet/direct visitors, maintenance of kitchen supplies, responsible for office close-up; coffee turned off, dishes done, lights off, door locked, copier off.

Specific Key accomplishments during the past year:

- . Took over District library work from Cindy's job description; familiarizing myself with its contents.
- . Continued to work on familiarization with wastewater industry and MMSD departmental functions.
- . District representation on CSWPCA Public Education Committee. Assisted in preparation of paper and application for award.
- . Continued maintenance CSWPCA video library project and Adopt-a-School Program.
- . Science Teacher's Conference organization, attendance and manning of booth.
- . DOS course with Curt Witte.
- . Continued work on Metro Interceptor

Spyros spends approximately 50% of her time with typing and clerical duties, 30% of her time with receptionist duty, 10% of her time with library duties and 10% of her time with education-related duties. Spyros spent considerable time typing material relating to the District's development of an apprenticeship program, which program ultimately had implications for contract administration and collective bargaining. The District has also directed Spyros to type, for insertion in personnel files, memoranda about events which may eventually lead to discipline, but which are not shared with the Union at the time of their drafting. Spyros also types correspondence to outside legal counsel concerning all aspects of contract administration, including the District's position regarding pending grievances, which correspondence is not shared with the Union. Spyros also types and handles correspondence relating to litigation brought against the District by current and/or former employees, which correspondence is not all shared with the employees and their legal counsel. In her three years with the District, Spyros has only typed correspondence relating to grievances two or three times. A newly-installed telephone system will significantly reduce the number of telephone calls she will handle, thus providing more time for typing and other activities.

6. Jenny Cox is the incumbent Administrative Secretary, a position which did not exist at the time the Union and the District agreed to the bargaining unit's composition and the list of eligible voters. Her position description, dated January, 1994, reads as follows:

Administrative Secretary  
Description of Employee's Position

Type Commission agenda  
Type Commission minutes  
Type all sewer extension resolutions  
Type other Commission resolutions  
Keep track of Commissioner per diem

Give per diem totals to Joyce at beginning of each month  
Contact Commissioners the day prior to the meeting to remind them of the meeting and to determine whether or not they will be attending  
Communicate to Jim regarding which Commissioners will be attending the meeting  
Distribute copies of the Commission minutes  
Distribute copies of the Commission agendas  
Publish Commission minutes  
Publish Commission agendas  
Clip ads from the legal notices  
When informed of other ads which will appear in the newspaper, clip them

Check writing and signing  
Verify sick leave, vacation, and comp time book  
Enter labor distribution into computer  
Complete and distribute supervisor reports  
Become cross-trained in payroll  
Type annual insurance information, sinking fund reports, etc.  
File vouchers after they have been returned from Houghton Taplick  
File time cards

Records retention program  
Enter and update files in Lotus  
Develop a draft guidance manual on general procedures for records management  
File correspondence  
Begin file reviews for records management  
Create new files and maintain order of records

Type specifications  
Type new policy statements  
Update old policy statements  
Create new policy statement books  
Update sewer extension books every month  
Type annexations, as requested  
Miscellaneous typing, as needed  
Serve as second back-up for front desk  
Other duties as assigned

Cox is responsible for preparing the monthly payroll checks, an assignment that typically occupies two to three days. Cox spends approximately half her time maintaining the filing and records system, a small fraction of which concerns confidential matters relating to labor relations. Cox spends about two days a week working with Bookkeeper Joyce Reis on such time-sensitive

financial transactions as check writing, cash statement preparations and payroll. Office Manger Nancy Borelli handles the invoices, while Cox writes the checks, consistent with the District auditor's requirement that personnel who handle invoices and receipts are different from those who write checks. The check-generating duty makes Cox essentially unavailable for other clerical functions for the three days prior to the monthly Commission meeting. Secretary/Receptionist Spyros is not trained to perform this aspect of Cox's functions in Cox's absence. When Reis is absent, her duties are assumed by Borelli and Cox. Borelli and Cox share an open work area near Chief Engineer James Nemke's office. Cox is also responsible for the ongoing preparation of the District's policies manual, which includes typing both initial and final drafts of policies relating to personnel. The District does not necessarily share all preliminary or initial drafts with the Union. This duty occupies a minimal amount of Cox's time. The District and the Union have not engaged in collective bargaining since Cox's hire on October 5, 1992. At the time of her hire, Cox was informed by Nemke she would be working with confidential matters, which she interpreted to include matters relating to personnel.

7. Nancy Borelli, the incumbent Office Manager, has duties which include: supervising office staff; budgeting for the Administrative Services Department; purchase of all office equipment and supplies, including an upgrade of the computer system; preparation of the annual report and occasional newsletter; handling interceptor connector charges; invoices; and assistance in the preparation and dissemination of bid and specification documents related to ongoing construction projects. During the pendency of this proceeding, the District has utilized the Office Manager Borelli to handle correspondence and other tasks relating to confidential labor relations.

8. Over the past twenty years, the District has assigned confidential duties to the Bookkeeper, Administrative Secretary and the Secretary/Receptionist, based on availability, time constraints, workload and necessary skills. The Office Manager has performed confidential duties relating to contract costing and typing when work loads and time constraints made it necessary. Historically, the person holding the Secretary/Receptionist position has been primarily responsible for performing the District's confidential clerical work. Bargaining team members keep their own handwritten notes of the proceedings, but the team does not prepare or submit formal minutes. No members of the administrative services department attend the bargaining sessions or employer caucuses. The District's bargaining team prepares the list of initial proposals, which it furnishes to outside legal counsel for editorial and other refinement. The parties concluded their negotiations for a successor collective bargaining agreement shortly before Secretary/Receptionist Spyros's hire, and have not engaged in further negotiations during her tenure. Nemke and Director of Wastewater Treatment Operations Paul Nehm have the primary responsibility of costing contract proposals, with the assistance of Borelli and the Bookkeeper. Some of this analysis and information affects the District's strategy in negotiations. In issuing discipline, responding to grievances, and conducting other aspects of contract administration, it is not atypical for Nemke to dictate initial drafts of correspondence, which drafts are then altered prior to issuance. Nemke dictates on tape; Spyros and Cox have the necessary transcription equipment to type such correspondence, in both initial and final form. At each stage in the grievance process, the collective bargaining agreement requires the District to issue an answer within five working days.

9. The amount of confidential work performed in the District does not warrant excluding both the position of Receptionist/Secretary and the position of Administrative Secretary. The incumbent in the Receptionist/Secretary position has sufficient access to, knowledge of and participation in, confidential matters relating to labor relations to render her a confidential employe. The incumbent in the Administrative Secretary position does not have sufficient access to, knowledge of and participation in, confidential matters relating to labor relations to be deemed a confidential employe.

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

#### CONCLUSIONS OF LAW

1. The incumbent in the position of Receptionist/Secretary is a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The incumbent in the position of Administrative Secretary is not a confidential employe and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

#### ORDER CLARIFYING BARGAINING UNIT 1/

1. The position of Receptionist/Secretary shall be, and hereby is, excluded from the bargaining unit described in Finding of Fact 3.

(Footnote 1/ appears on the next page.)

2. The position of Administrative Secretary shall be, and hereby is, included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin,  
this 6th day of April, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

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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.

(Footnote 1/ continues on the next page.)



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(Footnote 1/ continues from the previous page.)

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 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.

MADISON METROPOLITAN SEWERAGE DISTRICT

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

POSITIONS OF THE PARTIES

In support of its position that the subject positions are municipal employees who should be accreted to the bargaining unit, the Union states as follows:

Because the Receptionist/Secretary position was previously excluded on the basis of stated statutory grounds, and because the position of Administrative Secretary did not exist at the time of the 1970 agreement, the Union is not barred from pursuing the unit clarification.

The Administrative Secretary's basic responsibility is to file documents, and handles labor relations matters only on a fill-in, de minimus, basis. She is not a confidential employee.

The Receptionist/Secretary testified she had no recollection of typing documents relating to the employer's strategy in contract negotiation or administration.

The employer's definition of "confidential" goes well beyond the scope of that term as applied by the Commission. Of the huge pile of documents offered as exhibits, very few are in fact confidential as that term is properly applied in this context. After removing the non-confidential material, it is clear that the employer can maintain its legitimate degree of confidentiality by assigning labor relations matters to the Office Manager and the Bookkeeper. Having two confidential employees would be sufficient for the employer, particularly so where there is only one bargaining unit and the employer retains outside counsel for labor relations.

Given the community of interest between the subject positions and the positions already represented, and the mandate to avoid undue fragmentation, a separate bargaining unit just for the clerical positions would not be viable.

There being no compelling reason to deny the Receptionist/Secretary and Administrative Secretary the rights of representation, they should be accreted into the existing collective bargaining unit.

In support of its position that the petition should be dismissed and denied, the District states as follows:

Because positions which have been historically excluded by agreement of the parties cannot be included in a bargaining unit through a unit clarification proceeding, the Union should remain bound by its 1970 agreement to exclude the subject positions. None of the four exceptions to the well-settled policy apply, and the Union should not be allowed to gerrymander this unit. The evidence establishes that both subject positions were excluded from the original certification by voluntary agreement of both parties.

The Union must show that the subject positions which it seeks to accrete share a community of interest with the rest of the unit; the evidence shows that the positions do not share such a community of interest. Given the absence of a community of interest, even if the Commission finds the subject positions to be municipal employees, the existing bargaining unit is not an appropriate one for the clericals, and they should not be accreted thereto.

The subject positions should continue to be excluded from the unit as confidential employees. The positions are part of a bona fide central office in which no employe may practically be denied access to confidential information. The Commission has established that an employer has the right to conduct its operations in an efficient and economical manner, and to conduct its labor relations through employees whose loyalty is solely to the employer. Requiring the District to accept a represented position in its established central office would do grave harm to its legitimate management interests. Over a 24-year period, the District has made a good faith effort to organize its central office operations in an efficient and effective manner; the Union should not now be allowed to manifestly disrupt those successful efforts.

Because the positions of Administrative Secretary and Receptionist/Secretary have historically be excluded from the bargaining unit; because they perform confidential duties, and because they lack any community of interest with the existing represented unit, the petition should be dismissed and the subject positions remain excluded from the bargaining unit.

In reply, the Union further states as follows:

Contrary to the District's assertions, the Administrative Secretary has never typed any minutes of Sewerage District Commission meetings which contained confidential labor relations items. Also, the Administrative Secretary is not the only person available to perform legitimate confidential work.

While the Receptionist/Secretary has typed documents relating to the apprentice program, this work has been of a de minimis amount, and the Union would likely receive most, if not all, of the documents.

The subject positions perform de minimis confidential duties which other available confidential employees could perform. There is no reason to believe all confidential duties could not be assigned to the Office Manager and the Bookkeeper without undue disruption. The District has inflated the amount of truly confidential matters at issue, including a multitude of matters not directly related to its strategy or position in collective bargaining and contract administration.

In its reply, the District further states as follows:

Contrary to the Union's assertion, there is a bar to the instant petition resulting from the composition of the unit as of its 1970 certification. Having completely ignored the clerical/administrative employees then, the Union should not be allowed to force the District to completely reorganize its operations, which operations have long been based on the understanding that the central office was, and would be, unrepresented. Against equity and the spirit of MERA, the Union turns the test for confidential status on its head, and demands that the District act in a manner contrary to its obligation to act consistent with its commercial advantage.

Because the Administrative Secretary and Office Manager share an office, the Union's demand that the Secretary's confidential work be assigned to the Manager is, on a practical and operational level, simply unrealistic. And, while the documents which the Receptionist/Secretary has typed may not precisely address the test which the Commission has used to determine what is confidential work, this information, plus the exposure to actual confidential information which all clerical employees have, shows that the position's loyalties lie with management.

In managing a sprawling enterprise, the District has, over 24 years, made a good faith effort at ensuring a seamless and efficient central office. It is irrational and inequitable for the Union to now be

allowed to compel the employer to completely restructure its operations to accommodate the Union's belated desire to include these two individuals in a bargaining unit with which they have no community of interest.

## DISCUSSION

The District has raised three legal theories in opposing inclusion of the subject positions -- that the Union is foreclosed from seeking representation on the basis of its 1970 voluntary agreement; that there is no community of interest between the subject positions and the existing bargaining unit, and that the positions are confidential.

The District is correct in stating the legal test the Commission applies in determining whether to allow the reopening of a voluntary agreement defining a bargaining unit, but it errs in its application of that test to the facts of this case. Exclusion of a position on the grounds that it fell within one of the statutory exceptions to the definition of a municipal employe (i.e., independent contractor, supervisor, confidential, managerial or executive employes) allows either party, at any time, to petition the Commission for a clarification to include the position. 2/ Here, as established by the original documents from 1970 as well as the testimony of the District's primary operating officer, the position of Clerk -- the predecessor position to the Receptionist/Secretary -- was specifically excluded on the grounds that it was confidential. Thus, the Union is not enjoined by that 1970 agreement from seeking inclusion of this position at this time. Nor is the Union prevented from seeking representation for the position of Administrative Secretary, because that position did not exist in 1970. Again, an exception to the general rule that "a deal is a deal" exists if the position at issue did not exist when the deal was struck. 3/

The District also correctly states the general rule for defining community of interest, but misapplies it in this instance. Simply, the appropriateness of the unit is not in question, as the unit description broadly covers all District employes except for specifically noted exclusions.

We turn, then, to the issue of whether the subject positions are confidential. We find the position of Receptionist/Secretary to be confidential, but that the position of Administrative Secretary is not.

It is well-settled that, for an employe to be held confidential, such employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. For 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)

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2/ Wisconsin Dells School District, Dec. No. 24604-C (WERC, 10/92).

3/ Id.

be information which is not available to the bargaining representative or its agents. 4/

While a de minimis exposure to confidential matters is generally insufficient grounds for exclusion of an employe from a bargaining unit, 5/ we have also sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management. 6/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 7/ and, similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employe without undue disruption of the employer's organization. 8/

The Commission has held that, "the physical proximity of confidential and non-confidential employes or the effect of a finding of a confidential status or a non-confidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employes are confidential employes." Marshfield Joint School District No. 1, Dec. No. 14575-A (WERC, 7/76), cited in West Salem School District, Dec. No. 22514-A (WERC, 8/89).

When analyzing the application of the foregoing to the facts at hand, it is helpful to discuss several specific cases.

In School District of Webster, Dec. No. 22399-A (WERC, 11/92), we held to be confidential both an Administrative Secretary and the Bookkeeper, on the grounds that their inclusion in the bargaining unit "would constitute undue disruption of the District's organization." In Rock County, Dec. No. 8243-K (WERC, 9/91), our conclusion was the same, as we found that it would cause "undue disruption of the employer's organization" to require it to reassign confidential work already being performed by the subject position. We found that the confidential work was of sufficient volume and closely tied to the Administrative Assistant and Administrator's daily interaction that it could not be reassigned without undue disruption.

In Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88), we held the positions of Secretary/Accounts Payable Clerk and Secretary/Receptionist/Payroll Clerk to be municipal employes. The Secretary/Accounts Payable Clerk providing clerical services for the Director of Business Services, who was responsible for negotiations with support staff units; typed the employer's initial bargaining proposal; typed correspondence relating to grievances, including

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4/ Dane County, Dec. No. 22796-C (WERC, 9/88).

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

6/ CESA Agency No. 9, Dec. No. 23863-A (WERC, 12/86).

7/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85).

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

both the rough and final draft of a grievance response; and typed internal correspondence relating to collective bargaining strategy. Both secretarial positions would in the future type bargaining proposals which would not be seen by any of the unions; both had access to files relating to both personnel and negotiations; and neither had attended meetings at which labor relations matters were discussed. We found that, while the employer had made "a good faith effort to restructure the manner in which bargaining responsibilities had previously been allocated," that the availability of other excluded personnel meant it "would not be unduly disruptive" for the District to use other confidential employees for the confidential work.

In Dunn County (Courthouse), Dec. No. 8170-A (WERC, 10/91), we held to be confidential the Secretary to the Administrative Coordinator. There were two clerical positions reporting to the Administrator already excluded as confidential. One position was involved in labor contract costing and only performed bookkeeping/accounting duties. The scope of the other Administrative Assistant position had been expanded to include insurance administration, risk management, purchasing and telephone coordination. As this position assumed more higher-level responsibilities, less time was available to perform the reasonably substantial volume of confidential duties. The part-time Secretary had access to personnel files; was in a physical position to overhear confidential discussions; typed one or two pieces of confidential correspondence daily; opened confidential mail; had not typed any grievance responses at that time, but was informed that she would be doing so; and was informed she would be typing correspondence relating to bargaining strategy and contract administration. The Commission found that the assignment of new, confidential duties to the Secretary was not caused by an increased workload, but was "in an effort to improve operational efficiency." We also found those duties to be more than just de minimus. Focusing on the employer's "logical, good faith reassignment of duties," the Secretary's physical location, the labor relations responsibilities held by the Administrator, and the "difficulty of rearranging the work load in a logical manner," we found the position to be confidential. While making clear that we did "not suggest that an employer may increase the number of bargaining unit exclusions by simply redistributing confidential labor relations responsibilities," we noted that "where there is a reasonable basis for a realignment of duties among employees, some allowance must be made for the right of the employer to organize and structure its labor relations functions."

Here, the record supports a finding that the Receptionist/Secretary is a confidential employee. The position has historically performed the majority of the District's confidential clerical work. Thus, this position has typed information not shared with the Union regarding discipline, grievances and collective bargaining. This position also types correspondence to outside legal counsel regarding contract administration, pending grievances, and negotiations. While the time needed to perform this work in recent months has been minimal, we think that reflects the absence of any contract negotiations during the period prior to hearing. Given the work which contract negotiations will inevitably generate and the additional confidential work which the Receptionist/Secretary will perform following our inclusion of the Administrative Secretary in the unit, we are satisfied that a confidential exclusion is appropriate.



However, the volume of confidential clerical work generated by the District does not warrant excluding the Administrative Secretary position. While the Administrative Secretary has provided some confidential support in the past, it clearly has been in a back-up capacity. Chief Engineer James Nemke testified that a recently-installed telephone system has reduced the volume of telephone calls handled by the Receptionist/Secretary which, in turn, should easily allow the Secretary/Receptionist to absorb the amount of confidential typing previously performed by the Administrative Secretary. Also, the Administrative Secretary's limited exposure to confidential documents in conjunction with her file manager responsibilities is not sufficient to warrant a confidential finding.

The Union argues that both positions should be included in the unit as the Office Manager can perform the confidential clerical responsibilities. The Union points to the fact that she has in the past performed confidential typing when the need has arisen. We reject the Union's argument for several reasons. First, the confidential typing that has been performed by the Office Manager has been incidental and only done because of timing and workload problems. More importantly, however, is the fact that the Office Manager position is an administrative/supervisory position. The Office Manager supervises employees of the administrative services department, prepares the department budget, prepares the District's annual report and newsletter, and prepares bid documents and invoices. The lower-level confidential typing responsibilities do not fall fairly within the scope of the Office Manager's position. Requiring the Office Manager to perform all confidential typing support would be unduly disruptive because, in part, existing higher-level administrative components of her position would need to be distributed to others. If the Office Manager position was more of a "Head Secretary" position that typed correspondence as a major responsibility, the Union's position would have more merit.

The District argues that no employee could practically be denied access to confidential information in the central office. We disagree. The District is in a position to segregate and provide adequate security for the confidential documents. While some changes may need to occur regarding office conversations and document retention, this can be done with minimal difficulty.

Dated at Madison, Wisconsin this 6th day of April, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/

Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner