

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**SHEBOYGAN AREA SCHOOL DISTRICT**

Involving Certain Employees of  
**SHEBOYGAN AREA SCHOOL DISTRICT**

Case 13  
No. 54327  
ME(u/c)-847

**Decision No. 10488-B**

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Appearances:

**Ms. Helen Isferding**, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1207 Main Avenue, Sheboygan, Wisconsin 53083, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO, Local 1750, Sheboygan Board of Education Employees Secretary/Clerical Unit.

Davis & Kuelthau, S.C., by **Attorney Lisa Kritske**, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, and **Attorney Paul C. Hemmer**, 605 Eighth Street, Sheboygan, Wisconsin 53081, appearing on behalf of the Sheboygan Area School District.

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

On October 12, 2001, the Sheboygan Area School District filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of secretarial/clerical employees of Sheboygan Area School District represented by Wisconsin Council 40, AFSCME, AFL-CIO, Local 1750, Sheboygan Board of Education Employees Secretary/Clerical Unit by excluding Payroll Clerks as confidential employees.

Examiner Sharon A. Gallagher, a member of the Commission's staff, conducted the hearing in the matter on February 8, 2002, in Sheboygan, Wisconsin. The parties filed briefs which were received by April 29, 2002.

Dec. No. 10488-B

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

Having reviewed the record and being fully advised in the premises, the Commission makes and issued the following

### **FINDINGS OF FACT**

1. Wisconsin Council 40, AFSCME, AFL-CIO, Local 1750, Sheboygan Board of Education Employees Secretary/Clerical Unit, herein the Union, is a labor organization with offices at 1207 Main Avenue, Sheboygan, WI 53083 which functions as the collective bargaining representative of certain secretarial/clerical employees of the Sheboygan Area School District.

2. The Sheboygan Area School District, herein the District, is a municipal employer with offices located at 830 Virginia Avenue, Sheboygan, WI 53081-4427. The District provides educational services in the Sheboygan area, employing 1400 employees, 95 of whom are included in the secretarial/clerical bargaining unit represented by the Union.

3. The Payroll Clerk positions in dispute have existed for at least the past 20 years and have been included in the secretarial/clerical bargaining unit since the unit's inception.

The position description for Payroll Clerk – Classified, currently occupied by Debra Regan, reads in relevant part as follows:

. . .

**RELATIONSHIPS:** Reports to: Comptroller  
Works with: Payroll Clerk – Professional  
District Administrators on payroll matters

### **SPECIAL QUALIFICATIONS OF THE POSITION:**

Thorough knowledge of accounting and bookkeeping principles and procedures.

Work with internal and external auditing personnel.

Ability to apply accounting principles.

Computer knowledge and experience, with spreadsheet and word processing experience.

Knowledge of office practices, procedures, equipment and standard clerical techniques.

Perform work accurately involving written and numeric data.

Ability to understand and carry out complex oral and written instructions.

Ability to work with confidential information.

### **DESIRED EXPERIENCE**

Minimum associate degree in accounting or related experience in large/complex payroll environment.

Prefer advance course work in payroll accounting and/or administration.

Experience in preparation of monthly, quarterly and annual payroll reports.

Experience in bookkeeping and related clerical work.

Experience with employee benefits administration.

### **RESPONSIBILITIES**

Under the direction of the Comptroller he/she shall perform payroll accounting activities involving the classified and administrative staff to the school district. The duties are as follows:

Input to computer all information necessary for processing payroll and all needed payroll reports.

Audit and verify input data and control entries.

Prepare posting of classified and administration payrolls.

Process federal and state withholding tax reports, Social Security reports, Wisconsin Retirement reports and all other reports associated with the classified and administration payrolls.

Handle all inquiries in regard to duties associated with payroll accounting.

Prepare and process monthly billings for group health, dental, prescription drug, group life, long term disabilities, tax shelter annuities, and other employee benefit programs as developed. Maintain and keep all necessary records.

Maintain payroll records and files. Review and perform calculations on attendance reports for deductions.

Have knowledge of master agreements of administrative group all classified unions in regard to salary schedules, related fringe benefits and any deductions pertinent to payroll accounting.

Assist in gathering possibly confidential information for budget construction or negotiation purposes.

Assist district Administrators and Co-ordinators with payroll accounting issues for management of district projects and grants.

Responsible for assisting Payroll Clerk – Professional for the preparation of joint payroll reports.

Responsible for balancing combined payrolls and reconciling payroll liability accounts on a monthly, quarterly, and yearly basis.

Responsible for the timely processing and or filing of all payrolls and related reports.

Back up Payroll Clerk – Professional for all related responsibilities and reports.

Other duties as assigned or necessary.

The Payroll Clerk – Professional position is currently held by Doris Wuestenhagen. The sole distinction between the two Payroll Clerk positions is based on the employee groups for which each Payroll Clerk is responsible. The Payroll Clerk – Classified performs payroll duties concerning classified employees (such as the secretarial/clerical unit employees) while the Payroll Clerk – Professional is responsible for payroll duties concerning professional employees. The Payroll Clerk positions are interchangeable so that Regan and Wuestenhagen fill in for each other when needed and coordinate their vacations so that one of them is present to run the payrolls at all times.

4. The Payroll Clerks' duties include generating all attendance reports, recording, processing and monitoring time sheets and comparing these to employee leave slips and maintaining accumulated leave balances, crediting employees with the leave they are entitled to, and calculating and printing all paychecks after deducting leaves and balancing accounts. Regan performs payroll clerk duties biweekly (all classified employees) while Wuestenhagen does payroll clerk duties once a month (professional employees). Payroll duties take Regan nine business days. On the tenth day, Regan catches up on other paperwork and insurance and benefits questions.

5. The Payroll Clerks check eligibility for employee leaves following initial approval by the employee's immediate supervisor. If the Payroll Clerks discover an employee has exhausted the type of leave requested or conclude the applicable collective bargaining provision does not entitle the employee to use the requested type of leave, they provide that information to management which then decides how to proceed. One management option in such circumstances is to investigate whether discipline against an employee is appropriate.

In October, 2001, Regan determined that a secretarial/clerical unit employee had been granted leave for which the employee was not eligible. Regan reported the matter to management who decided to deny the employee the leave which had been initially approved in error. Later, the employee (accompanied by another unit employee) confronted Regan regarding the matter. Regan complained to management and the instant petition was thereafter filed.

6. In 1993, the District began to self-fund employee insurance benefits, using a third-party administrator, Blue Cross/Blue Shield (BC/BS), to administer health, dental and prescription drug coverage for all employees. As a result of this change, the Payroll Clerk position descriptions were amended in the "Special Qualifications . . ." section to list "Ability to work with confidential information" because the Payroll Clerks then became responsible to calculate and track employee insurance payments, to collect and record deposits for all claims, to track monthly claims data from BC/BS and to pay all claims. Over time, the Payroll Clerks have become primary contacts with BC/BS on claims issues, although Assistant Superintendent Leys also serves as an initial contact for claims/benefit inquiries. The Payroll Clerks have access to employee Social Security numbers, hospital and doctor claims and the amounts thereof, although only BC/BS administrators know the medical details that produced the claim.

7. Payroll Clerks attend monthly management meetings of the Department of Business Services and Human Resources. At these meetings, benefit and leave issues are discussed and the Payroll Clerks provide information.

8. On the request, the Payroll Clerks provide payroll information to the District which is then used by the District when developing its own bargaining proposals and responding to union bargaining proposals. Management employees may ask the Payroll Clerks questions about the information so provided and for their reaction to the merits of a possible proposal. On one occasion, a Payroll Clerk suggested a change in contract language which would simplify their work related to administration of leave. In another instance, a Payroll Clerk provided the District with significant assistance developing the District's bargaining position on direct deposit of paychecks.

9. Debra Regan and Doris Wuestenhagen, incumbents in the Payroll Clerk positions, do not have sufficient access to, knowledge of and participation in confidential labor relations matters so as to render them confidential employees.

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

**CONCLUSION OF LAW**

1. The incumbents in the Payroll Clerk – Classified and the Payroll Clerk – Professional positions are not confidential employees within the meaning of Sec. 111.70(1)(i), Stats., and therefore are municipal employees 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**

The Payroll Clerks shall continue to be included in the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin, this 8<sup>th</sup> day of August, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

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Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

SHEBOYGAN SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The District

The District argues that the Payroll Clerk positions are held by confidential employees. It contends that the Payroll Clerks develop collective bargaining positions and strategies for the District, have access to information that is kept confidential from the various unions that represent its employees, attend District meetings where negotiation strategy is discussed, and give District managers input on negotiation issues. The District notes that during the most recent round of negotiations, Regan drafted contract language defining “family” in the personal leave/emergency leave provisions. Thus, in the District’s view, the Payroll Clerks are confidential employees.

The District asserts the Payroll Clerks have access to confidential labor relations information. In this regard, the District notes that the Payroll Clerks and Assistant Superintendent Leys are prime contacts with the BC/BS regarding what is covered and what is not covered under the District’s insurance and prescription drug plan.

In addition, the Payroll Clerks are consulted by management regarding eligibility of employees for paid leave and they monitor employee attendance, which may result in employee discipline.

The District contends that the confidential Payroll Clerk work cannot be reassigned to any other employees without undue disruption of the District’s operations.

The District notes that the Payroll Clerks requested their exclusion from the bargaining unit due to the conflict of interest exposed by the recent confrontation over the granting of employee leave. The District contends that the Union’s position in this litigation ignores the Payroll Clerks’ role in developing District negotiation strategy. In this regard, the District points to the Payroll Clerks’ involvement in such issues as direct deposit of paychecks and asserts that whether or not the District ultimately adopts the Payroll Clerks’ opinions should not be relevant to their confidential status.

Given all of the foregoing, the District asks that the Payroll Clerks be excluded from the unit as confidential employees.

## The Union

The Union argues that Regan and Wuestenhagen are not confidential employees.

The Union contends the Payroll Clerks do not have access to confidential labor relations information and do not make any independent judgments regarding labor relations issues. The Union points out that Regan and Wuestenhagen do not attend negotiation sessions, argues they are not involved in grievance processing, and contends they have no meaningful involvement in District negotiation. The Union alleges the information the Payroll Clerks prepare for collective bargaining is shared with the Union and is not confidential.

The Union asserts Regan and Wuestenhagen are used only as resources on how to implement matters, such as direct deposit, and thus are not involved with the management decisions surrounding these kinds of issues. Furthermore, the Union contends that Regan and Wuestenhagen's ideas regarding collective bargaining have been uniformly rejected by the District.

The Union argues that other confidential employees are available to do the minimal confidential labor relations work performed by the Payroll Clerks.

The Union disputes the District's claim that the Payroll Clerks "have authority to disapprove (leave) requests." The Union argues that the Payroll Clerks only count employee leave days and that the Clerks turn in requests to management if there is a problem. The Union further argues that the Payroll Clerks do not monitor attendance but merely credit or debit employee accounts. The Union also contends that the Payroll Clerks have never questioned employees regarding their leave or benefit use nor have the Payroll Clerks brought an alleged pattern of abuse to the District.

The Union urges that there is no conflict of interest as the District has claimed. The Payroll Clerks have been included in the bargaining unit for many years and the District failed to prove any need to expand the number of confidential employees. Thus, the Commission should continue to include these employees in the bargaining unit.

## DISCUSSION

Section 111.70(1)(i), Stats., defines a municipal employee in pertinent part as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or **confidential**, managerial or executive employee. (Emphasis added.)



The statutory term “confidential . . . employee” is not statutorily defined. With judicial approval (See MINERAL POINT UNIFIED SCHOOL DISTRICT v. WERC, CASE 00-Cv-126, (CT. APP. 1/02) RECOMMENDED FOR PUBLICATION), we have defined a confidential employee as having sufficient 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) be information which is not available to the bargaining representative or its agents. 1/

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1/ *DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).*

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While a *de minimis* exposure to confidential labor relations matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 2/ we have also sought to protect an employer’s right to conduct its labor relations through employees whose interests are aligned with those of management. 3/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 4/ and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her 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 employee without undue disruption of the employer’s organization. 5/

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2/ *BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87)*

3/ *CESA AGENCY NO. 9, DEC. NO. 23863 (WERC, 12/86)*

4/ *TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85)*

5/ *HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88)*

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The District asserts that there are several duties performed by the two Payroll Clerks which warrant their exclusion from the unit as confidential employees.

First, the District argues the Payroll Clerks participate in the development of the District’s collective bargaining positions and strategy.

The record establishes that the Payroll Clerks provide payroll information to the District which is then used by the District when developing its own bargaining proposals and responding to union bargaining proposals. Management employees may ask the Payroll Clerks questions about the information so provided and for their reaction to the merits of a possible proposal. On one occasion, a Payroll Clerk suggested a change in contract language which would simplify their work related to administration of leave. In another instance, a Payroll Clerk provided the District with significant assistance developing the District's bargaining position on direct deposit of paychecks.

We have consistently held that providing payroll information for use in collective bargaining is not in and of itself confidential work because the information in question can also be accessed by the union. CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84). Such duties become confidential only if they expose the employee to the employer's collective bargaining strategy. MANITOWOC COUNTY, DEC. NO. 8152-C (WERC, 6/79). We have further held that exposing an employee to collective bargaining strategy through use of an employee as a "sounding board" does not provide a persuasive basis for finding the individual to be a confidential employee. MOSINEE SCHOOL DISTRICT, DEC. NO. 20479-F (WERC, 5/02).

Applying the facts of this case to existing Commission precedent, we conclude that when providing general payroll information or when asked to provide the costs of a union bargaining proposal, the Payroll Clerks are not performing confidential labor relations duties because the District's strategy is not thereby exposed. When providing payroll information/responding to management questions/assisting in the development of a proposal about a specific issue which has not yet or may never reach the bargaining table, the Payroll Clerks are privy to the District's bargaining strategy and are performing confidential labor relations work. However, the significance of this exposure is lessened to the extent it comes from circumstances where the Payroll Clerks are used as "sounding boards."

Second, the District contends that the Payroll Clerks have knowledge of confidential labor relations information by virtue of their general access to all payroll information and their specific knowledge of the District's self-insured health plan fund balance and payments.

We reject the contention that access to general payroll information provides the Payroll Clerks with confidential labor relations information. All such information relative to wages and fringe benefits is not confidential because it is available to the District's unions and the employees they represent. CITY OF CUDAHY, SUPRA. Information such as employees' Social Security numbers is confidential in the general sense of the word but that type of confidentiality has no relevance in the labor relations context.

As to knowledge of the balance in the insurance fund, we are generally satisfied that in the context of collective bargaining over insurance issues, the balance would be available to the union upon request. Thus, this knowledge is not confidential in the labor relations context. To the extent the District also points to the general need to maintain confidentiality of

information related to the payment of claims for specific employees, we also conclude that such knowledge is not confidential labor relations information. Such information has very limited labor relations applicability and is available to affected employees.

Third, the District contends that the Payroll Clerks' role in administering leave benefits can lead to disciplinary action and includes interpretation of the bargaining agreement on management's behalf.

The record reflects that District management uses the Payroll Clerks as a resource when determining whether to grant or deny employee requests for various types of leaves from work. They provide information that ranges from how many days of leave an employee has left to use, to what the applicable bargaining agreement provides to what the District's practice has been when administering a specific type of leave, to how a new type of leave should best be administered. If the Payroll Clerks believe that a leave request has been granted based on an incorrect interpretation of a bargaining agreement or because the employee has exhausted that type of leave, they bring it to the attention of management which then makes the decision as to how to proceed.

The record also reflects that the Payroll Clerks assist BC/BS in determinations of employee benefit eligibility when claims are filed. We have held that these types of duties do not expose an employee to confidential labor relations information because leave balances, contractual provisions and practices related thereto are all information to which a union has access. SHAWANO COUNTY, DEC. NO. 7197-D (WERC, 8/94); CITY OF MADISON, DEC. NO. 23183 (WERC, 1/86). Thus, they do not provide support for the exclusion of the Payroll Clerks from the unit as confidential employees.

Contrary to the District, the record does not establish that the Payroll Clerks exercise management-type discretion when performing their leave-related duties. They act as a valuable and trusted resource but District management makes the ultimate decision. Nor does the record support the District contention that the Payroll Clerks' duties involve them in any significant way in District disciplinary decisions. While the information provided as to leave balances and contract provisions may provoke District management to further investigate an issue, the Payroll Clerks' role in any resultant discipline (the record is devoid of any specific examples) is too attenuated to support their removal from the bargaining unit.

Reviewing all of the District's contentions, we find that the Payroll Clerks' access to, knowledge of and participation in confidential labor relations matters is limited to their occasional exposure to the District's bargaining strategy as to payroll/leave related issues. We do not find that to be a sufficient basis for excluding them from the bargaining unit as confidential employees.

In closing, we acknowledge that this petition was triggered by an incident in which a unit employee angrily confronted one of the Payroll Clerks after learning the Clerk had advised management that the employee was not eligible for requested leave. This incident was the first

of its kind during the Payroll Clerks' many years of service and thus does not provide any significant support for the District proposition that the Payroll Clerks' unit status places them in an untenable position of conflict. Further, the District has the option of disciplining employees, where appropriate, if the Payroll Clerks are harassed for doing their job.

Given all of the foregoing, the Payroll Clerks shall continue to be included in the bargaining unit.

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of August, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

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Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner