

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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-D

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.

ORDER

On August 8, 2002, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit in the above matter wherein it was concluded that two Payroll Clerks employed by the Sheboygan Area School District are not confidential employees within the meaning of Sec. 111.70(1)(i), Stats., and therefore should continue to be included in the collective bargaining unit represented by Wisconsin Council 40, AFSCME, AFL-CIO, Local 1750, Sheboygan Board of Education Employees Secretarial/Clerical Unit.

On August 26, 2002, the District filed a petition for rehearing pursuant to Sec. 227. 49, Stats.

Dec. No. 10488-D

On September 25, 2002, the Commission issued an Order Granting the Petition for Rehearing for the purpose of determining whether it had made any material errors of fact or law.

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 considered the matter, we conclude that we did not make any material errors of law or fact.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit issued on August 8, 2002 are hereby reaffirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of November, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MEMORANDUM ACCOMPANYING ORDER

In its Petition for Rehearing, the District focuses on the question of whether the Payroll Clerks have sufficient exposure to the District's collective bargaining strategy to warrant their exclusion from the bargaining unit as confidential employees. The District states:

The School District asserts as grounds for rehearing that the August 8, 2002 decision of the Commission in this case, contains both material errors of law and fact, more specifically stated as follows:

1. In its decision, the Commission entered Finding of Fact 8, providing:

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 reactions to 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.

2. In its accompanying Memorandum, at page 10, the Commission stated in part:

. . . 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. . . .

3. The Commission entered Finding of Fact 9:

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

4. The Commission entered a single 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 Section 111.70(1)(i), Stats., and

therefore are municipal employees within the meaning of Section 111.70(1)(i), Stats.

As reflected in the portions of our decision quoted in the District's petition, we concluded that the Payroll Clerks do perform some confidential labor relations work but determined that this work was not "sufficient" to make them confidential employees.

The District argues that our Finding of Fact 8 does not fully describe/understates the extent of the Payroll Clerks' exposure to/involvement in the District's collective bargaining strategy and that when the full extent of the Payroll Clerks' confidential work is properly understood, that work is sufficient to establish their confidential status. We disagree as to both points.

We remain persuaded that Finding of Fact 8 correctly acknowledges the extent of the Payroll Clerks' exposure to/involvement in the District's collective bargaining strategy. For instance, although the District contends that we failed to specifically acknowledge the Payroll Clerks' presence in certain meetings where District bargaining proposals may be discussed, our Finding and the related above-quoted portion of our Memorandum reference the confidential work that may occur at such meetings by noting that the Clerks do provide information and feedback to management about specific proposals and thereby become privy to the District's bargaining strategy.

We also remain persuaded that we properly understand the true extent of the Clerks' confidential work and correctly concluded that it is not sufficient to warrant the exclusion of the Clerks from the unit. We generally find that the best evidence as to the precise nature of the work being performed is provided by the testimony of the employee performing the work. Here, that testimony was provided by Clerk Regan and to a lesser extent by Clerk Wuestenhagen. While Regan provided "Yes" answers to broad questions reflecting exposure to the District's collective bargaining strategy, 1/ we found her later testimony to be more revealing as to the true nature of her work. 2/ It is this more specific testimony that persuades us that the extent of the Clerks' involvement in/exposure to collective bargaining strategy is not sufficient by itself or in conjunction with the Clerks' other duties to warrant their exclusion from the unit as confidential employees.

1/ Q Is the information which you used to develop the exhibits or analyses generally available to the Union and its collective bargaining team?

A No.

Q And do you prepare these exhibits before collective bargaining begins?

A Yes.

Q And are you aware that the District is using these exhibits to develop its strategies for negotiations?

A Yes.

Q Are you ever called upon to prepare new exhibits during the course of collective bargaining?

A Yes.

Q Are you ever asked to analyze issues which arise in the course of negotiations?

A Yes.

Q Are you ever asked to participate in the meetings of the School District to – in meetings – I'm sorry. Are you ever asked to participate in meetings of the School District to the Collective Bargaining Committee?

A Yes.

Q Do you provide information in the course of such meetings?

A Yes.

Q Do the analyses which you prepare, in the course of the collective bargaining, impact upon School District collective bargaining strategies or positions?

A Yes.

Q And do you consult with the other Payroll employee with regard to your analysis?

A Yes.

Q How often do you consult with each other?

A Often.

Q How often would that be?

A Oh, gosh, I don't know.

Q Would you say that you consult only when an issue arises or would you say that you consult just on a daily basis?

A A daily basis.

Q What involvement, if any, do you have in preparing analyses to be used by the District in developing initial proposals for collective bargaining?

A I'm sorry. Can you repeat that, please?

Q If you could talk about your involvement, if any, that you have in preparing the analysis to be used by the District in developing your initial proposals for collective bargaining?

A Well, I'm just asked to prepare reports, like, for the health insurance or the dental insurance, and I prepare them. And then I give them to the administrator that asks for them, and then we can go over them and I have to explain to them to her, exactly, what it is.

Q You have to explain it?

A Sometimes, yeah.

Q Are you involved with such preparing of analyses, right now?

A Right.

Q Prior to negotiations?

A Correct.

2/ Q These sheets that you prepare for negotiations, would I characterize it right if I would say, for instance, it's the amount of a sick leave that's out there. Is that the kinds of things that you were—

A Right.

Q Okay. Or it would be like a scatter sheet saying people at step such-and-such and their seniority is such-and-such? Is that the kind of thing that you prepared?

A Ah-huh. (Affirmative.) That's correct.

Q If I would show you what has been marked as Joint 7, is that the kind of thing we are talking about?

A I'm old, I'm over 40, and I can't see this. (Pause.) This is the information that they would get from me to prepare this report.

Q Okay. And are those the kinds of things that you would prepare for negotiations?

A Yes.

. . .

EXAMINATION BY MS. ISFERDING:

Q Just -- prior -- let's put aside these upcoming negotiations. In the prior negotiations, were you privy to the employer's position during negotiations?

A I'm not understanding what you are asking me.

Q In prior negotiations --

A Right.

Q -- not this one coming up?

A That's correct. Okay.

Q You said you were privy to the employer's strategy. In the prior negotiations, was that also true?

A That's correct.

Q Now, when you say "privy to the strategy," could you explain what you mean by that?

A If I understand the question, you are asking me if I have, if I did reports before coming into negotiations; and yes, I did.

Q Okay.

A I'm doing them more now than I'm doing before but that could be a lot of reasons.

Q Were they the same kind of reports?

A Basically.

Q I mean, without you divulging this, are they the kind of reports that, for instance, list how much sick leave is sitting out there, how many vacation is out there, and those types of things?

A Ah-huh. Yes.

In closing, we acknowledge that this case presents a close question. However, as reflected in our Memorandum, the Clerk's occasional exposure to the District's bargaining strategy is not sufficient to warrant a change in their long time status as unit members.

Dated at Madison, Wisconsin, this 22nd day of November, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner