

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN BOARD OF EDUCATION

Appearances :

Dr. Warren Soeteber, Superintendent of Schools, Sheboygan public schools, and Mr. John Brozovich, Assistant Superintendent of Business Affairs, Sheboygan public schools, appearing on behalf of the Municipal Employer.

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain employees of the Sheboygan Board of Education; and a hearing on said petition having been conducted at the Sheboygan County Courthouse, Sheboygan, Wisconsin, on April 16, 1971, before John T. Coughlin, Hearing Officer; and the Sheboygan Educational Secretaries Association having been permitted to intervene in the instant proceeding on its claim that it represented certain employees described in the instant petition by virtue of an existing collective bargaining agreement between itself and the Municipal Employer; and the Commission having considered the petition, evidence and arguments of Counsel and being satisfied a question has arisen concerning representation for certain employees of the above named Municipal Employer;

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Direction among all full time and regular part time secretarial-clerical employes of the Sheboygan Board of Education, excluding all professional, supervisory, confidential, maintenance and custodial

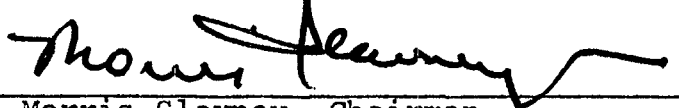
No. 10488

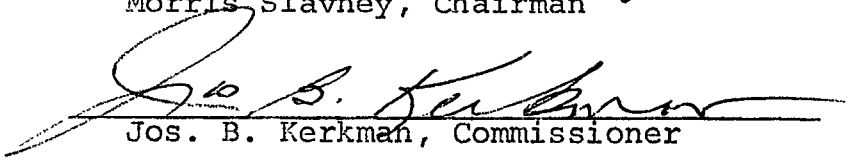
employees, who were employed by the Municipal Employer on the last payroll period prior to August 30, 1971, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or by the Sheboygan Educational Secretaries Association, or by neither of said organizations, for the purpose of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 30th
day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN BOARD OF EDUCATION

Case XIII
No. 14510 ME-632
Decision No. 10488

The Petitioner on March 19, 1971 filed a petition with the Commission requesting a representative election among all regular full time and regular part time employees of the Sheboygan Board of Education, excluding all supervisory and confidential employees. The aforesaid petition did not indicate that any other labor or employee organization claimed to represent or had an interest in the employees described in the above noted petition. On March 30, 1971 Notice of Hearing on the petition was issued, setting the matter for April 16, 1971.

At the outset of the hearing the parties stipulated that the unit set forth in the petition should be amended and that it should read as follows:

"All full time and regular part time secretarial-clerical employees of the Sheboygan Board of Education excluding all professional, supervisory, confidential, maintenance and custodial employees."

The parties stipulated that the following individuals and their respective positions would be excluded from the bargaining unit:

Mary Koehler, Secretary to the Assistant Superintendent of Business Affairs; Delories Nord, Secretary to the Assistant Superintendent of Personnel; Mary J. Van De Wege, Secretary to the Superintendent.

The Hearing Officer then proceeded to take evidence concerning the eligibility of four individuals.

Margaret Hogan is a secretary to the Assistant Superintendent in charge of Instruction. The Employer contends that Hogan is a supervisory and/or a confidential employee in that she works in a "supervisory capacity" because she directs the work of four clericals. Furthermore, the Employer contends that she makes recommendations to the aforementioned Assistant Superintendent regarding the working efficiency of the employees in her department in terms of both dismissal and hiring, and that she is

a confidential employee in that she is in a position to furnish information to the Assistant Superintendent, who is a resource person to the negotiating team of the Sheboygan public schools.

The Union contends that Hogan is not a supervisor and that, if she does in fact have access to matters relating to negotiations, said matters pertain to teacher negotiations and as such are not related to the petitioned for employees in the instant case.

Delores Strebe

Delores Strebe is the secretary to the Assistant Superintendent in charge of Pupil Services. The Employer contends that Strebe is a supervisor in that at least four or possibly five girls are under her "supervision". The Employer contends that she makes recommendations to the aforementioned Assistant Superintendent regarding dismissal and hiring. Finally, the Employer argues that Strebe should not be included in the unit because she is a confidential employee.

The Union contends that Strebe is not a supervisor and that any confidential matters that she may have access to relate to employees other than those described in the above noted amended petition.

Rosie Utecht

Rosie Utecht is a secretary to the Assistant Superintendent in charge of Buildings and Grounds. The Employer contends Utecht is a supervisor in that she "supervises" the activity of two secretarial-clerical employees and makes recommendations concerning their possible dismissal and working conditions. Furthermore, the Employer contends she is a confidential employee because she has access to labor relations matters relating to secretarial-clerical employees. The Employer argues that she has access to the aforementioned matters in that her desk is within hearing distance of the Assistant Superintendent in charge of Personnel, who processes labor relations matters pertaining to the petitioned for employees. In addition, the Employer argues that her position is confidential in that all grievances of the custodial and maintenance staff come to her desk and that they are then processed by the Assistant Superintendent of Buildings and Grounds.

The Union contends that the information handled by Utecht is not privileged and hence she is not a confidential employee.

Carol Backey

Carol Backey is secretary to the Recreational Director. The Employer contends that Backey is a supervisor in that she "supervises" three permanent secretarial and clerical employees and a varying number of part time employees. The Employer, by way of summary, argues that she and the three above mentioned individuals, whose positions are in dispute, have access to "what might be confidential information related to the negotiating process and they prepare information for their supervisor when their supervisors are called on as resource personnel to the negotiating

team of the Sheboygan Board of Education." Finally, the Employer avers that the four above mentioned individuals should primarily be considered supervisors and secondarily confidential employees.

The Union contends that Carol Backey is not a supervisor and that any negotiating matters she would process would not be confidential and that such information would not relate to the employees who are subject matter of this proceeding.

DISCUSSION:

During the course of the hearing the parties stipulated that the above mentioned individuals spent 1/8 of their time directing and/or supervising the people under them and the rest of their time was spent in secretarial duties. Consequently, it is uncontroverted that the employees in question spend the vast majority of their time performing secretarial duties and a very minor portion of their time making recommendations to their supervisors concerning subordinate employees or in directing or supervising these employees. Therefore, the four above mentioned employees cannot be considered to be supervisors and should be included within the petitioned for unit. See City of New London, Dec. No. 7505, 3/66 and City of Sheboygan, Dec. No. 7665, 7/66. The fact that the employees in question earn 24¢ more an hour than the top level of the next employee below them is not determinative in that in all other respects their conditions of employment are quite similar.

The record indicates that the Employer at an unspecified time in the future intends to encourage increased participation by its Assistant Superintendents and Principals to act as resource personnel to the Sheboygan Public Schools' negotiating team. However, there is no evidence that this has as yet taken place. In addition, the amount of time spent by the four individuals whose positions are in dispute pertaining to labor relations matters is clearly de minimus. Furthermore, the Employer and the petitioning Union have previously stipulated that the secretary to the Assistant Superintendent of Business Affairs, the secretary to the Assistant Superintendent of Personnel and the secretary to the Superintendent be excluded from the unit. Therefore, the Employer can readily utilize the aforementioned secretaries for confidential labor relations matters.

Finally, the Commission rejects the Employer's contention that Rosie Utecht is a confidential employee by virtue of the fact that her desk is three or four feet from the Assistant Superintendent in charge of Personnel, which individual does handle labor relations matters pertaining to secretarial-clerical employees. The mere possibility that she might overhear a confidential conversation relating to said labor relations does not render her a confidential employee. See Minneapolis-Moline Co., 85 NLRB 597, 601. Furthermore, the fact that grievances of the custodial and maintenance staff already represented by the petitioning Union as a separate unit come to Utecht's desk and are then processed by the Assistant Superintendent of Buildings and Grounds does not make said Utecht a confidential employee. Mere access to grievances does not establish "confidential status". See Minneapolis-Moline Co., *supra*; Hotel Employers Association of San Francisco, 159 NLRB 143, 150; Meramec Mining Co., 134 NLRB 1675; San Diego Transit Co., 182 NLRB No. 66.

Therefore, based upon the above, the Commission finds that Margaret Hogan, Delores Strebe, Rosie Utecht and Carol Backey are neither supervisory employees nor confidential employees and that said employees should properly be included in the petitioned for unit.

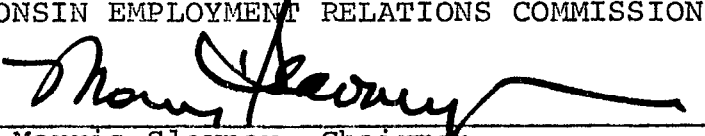
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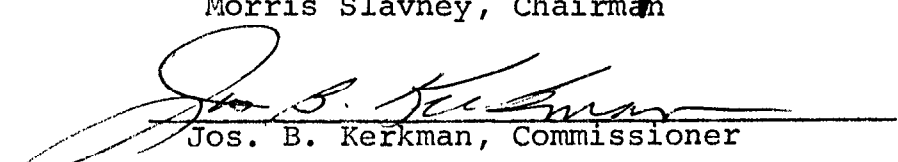
During the course of the hearing it was discovered that there is in existence an agreement between the Municipal Employer and the Sheboygan Educational Secretaries Association. ^{1/} It was further established that the aforementioned Association represents the employees involved in this proceeding and that the Municipal Employer has been bargaining with said Association for three years. The Municipal Employer did not take any position concerning the possibility that the labor agreement between itself and the Association was a contract bar but rather stated that it would let the Commission decide that question. The petition in this case was filed on March 19, 1971. The contract calls for reopening by May 1, 1971. Consequently, under the rule enunciated in Wauwatosa Board of Education, Dec. No. 8300-A, 2/68, the petition in the instant case was timely in that it was filed within the 60 day period prior to the opening of a viable collective bargaining agreement and therefore the presently existing contract would not be a bar to said petition. Finally, although the Association did not make a formal appearance at the hearing, said Association did request in writing that its name be placed on the ballot if an election were directed by the Commission.

Dated at Madison, Wisconsin, this ^{30th} day of August, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


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^{1/} Upon examination it was determined that the agreement is a labor agreement in that it contained provisions relating to wages, hours and conditions of employment.