

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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KENOSHA UNIFIED SCHOOL DISTRICT	:	
NO. 1	:	
	:	Case XVIII
Involving Certain Employees of	:	No. 14957 ME-711
	:	Decision No. 10558-B
KENOSHA UNIFIED SCHOOL DISTRICT	:	
NO. 1	:	
	:	

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Appearances:

Davis, Kuelthau, Vergeront, Stover, Werner & Goodland, S.C., by Mr. Mark Vetter, Suites 901 & 1800, 250 E. Wisconsin Ave., Milwaukee, WI, 53202, on behalf of the District.

Mr. Robert Chybowski, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 30203 Poplar Drive, Burlington, WI, 53105, on behalf of the Union.

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

AMEDEO GRECO, HEARING OFFICER On January 14, 1982, the Kenosha Unified School District No. 1, herein the District, filed the instant unit clarification petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to determine whether the position of Secretary to the Administrator of Business Services should be either included in or excluded from a collective bargaining unit consisting of all regular full-time and regular part-time clerical and secretarial employes of the District and represented for collective bargaining purposes by Kenosha Unified School District Employees Local 2383, AFSCME, AFL-CIO, herein the Union. Following unsuccessful attempts by the parties to informally resolve the matter, during which time the parties agreed to hold this matter in abeyance, the Commission, on April 15, 1982, pursuant to Section 227.09(3)(a), Wis. Stats., appointed the undersigned, a member of the Commission's staff, to conduct a hearing on said matter and to issue a final decision on behalf of the Commission. Hearing on this matter was held in Kenosha, Wisconsin, on June 10, 1982. Neither party has filed a brief. Based upon the entire record in this matter, I issue the following findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The District, which operates a school system, is a municipal employer with offices at 625-52nd Street, Kenosha, Wisconsin.

2. The Union is a labor organization with offices at 30203 Poplar Drive, Burlington, Wisconsin and is the certified exclusive collective bargaining representative of all regular full-time and regular part-time clerical and secretarial employes employed by the District, excluding teaching assistants, teacher aides, paraprofessionals, supervisors, and all other employes.

3. In its petition initiating the instant proceeding, the District contends that the position of Secretary to the Administrator of Business Services, which is presently in the collective bargaining unit, should be excluded from the unit because the position is confidential in nature. The Union, on the other hand, contends that the position is not confidential and that, therefore, said position should remain in the bargaining unit.

4. The record establishes that the occupant of the disputed position, Kathleen Kontz, serves as the secretary to Robert Loss, the Administrator of Business Services, who also serves as Secretary to the District's Board of

Education. In the latter capacity, Loss attends closed sessions of the Board of Education where personnel matters are discussed and he thereafter prepares the minutes of those executive sessions. In addition, Loss over the years has served on District bargaining teams which have negotiated contracts with various unions. In serving on those teams, Loss has prepared confidential financial data for the District's bargaining teams, including costing information relating to both District and Union proposals. Loss is also the District's designated grievance representative in several of the collective bargaining contracts the District has with various unions.

5. As Loss' secretary, Kontz types the minutes for closed Board of Education meetings and she also types letters relating to the status of collective bargaining negotiations and grievance matters. In that capacity, Kontz also types materials relating to the costing out of either District or Union proposals and she similarly types letters from Loss to the District's outside lawyer on a wide range of legal matters, including confidential personnel matters. Almost all of these materials - the closed Board minutes, the matters relating to collective bargaining negotiations and grievances, and the correspondence to and from the District's labor relations counsel - are never revealed to the Union or to anyone in the bargaining unit. Kontz also opens all of Loss' mail, including any letters relating to collective bargaining matters. While Kontz performs routine clerical duties for the bulk of her time, she apparently spends about twenty (20) percent of her time in performing the foregoing duties. But for Kontz, there are no other confidential employees in Loss' division of Business Services to perform that work. Furthermore, it is impractical for Loss to assign any of the foregoing duties to any of the District's four (4) other confidential clerical employees, as that would involve the loss of considerable down time and considerable delay in preparing Loss' written materials.

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

#### CONCLUSION OF LAW

That the position of Secretary to the Administrator of Business Board Services is a confidential employe within the meaning of Section 111.70 of the Municipal Employment Relations Act, and therefore, that said position is not occupied by a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

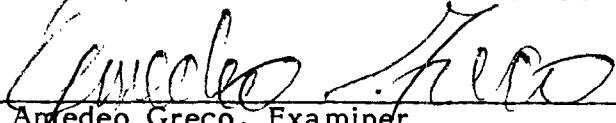
#### ORDER CLARIFYING BARGAINING UNIT 1/

IT IS ORDERED that the position of Secretary to the Administrator of Business Services shall be, and hereby is, excluded from the collective bargaining unit described herein.

Dated at Madison, Wisconsin this 6th day of January, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Amedeo Greco, Examiner

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1/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

(Footnote continued on Page 3)

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW, AND ORDER CERTIFYING BARGAINING UNIT

As noted in Finding of Fact No. 5, Kathleen Kontz, the present Secretary to the Administrator of Business Services, types letters relating to grievance and collective bargaining matters and she also types the minutes of closed Board meetings where personnel and collective bargaining matters are discussed. In addition, she opens Loss' mail and she types all of Loss' letters to the District's outside attorney, including letters relating to collective bargaining matters and she also types information which sets out the various bargaining proposals being made by the parties. Almost all of the foregoing information is confidential in nature and it is not released to either the Union or any employees in the bargaining unit.

Although Kontz does not spend the majority of her time performing such confidential matters, I find, pursuant to other Commission cases which have held that a person is a confidential employe even if he/she did not spend a majority of time on such duties, 2/ that Kontz spends a sufficient amount of time on such duties to warrant finding that the position of Secretary to the Administrator of Business Services is confidential in nature and therefore excluded from the established collective bargaining unit.

Dated at Madison, Wisconsin this 6th day of January, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Amedeo Greco  
Amedeo Greco, Examiner

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2/ See, for example, Loyal School District, Decision No. 18149, (10/80).