

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
: WISCONSIN COUNCIL OF COUNTY AND : Case XXI
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO : No. 15197 ME-740
: Involving Certain Employees of : Decision No. 10789
: EAU CLAIRE PUBLIC LIBRARY :

Appearances:

Mr. Guido Cecchini, Representative, for the Petitioner.
Mr. Ted Fischer, City Attorney, for the Municipal Employer.

DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of Eau Claire Public Library; and hearing on such petition having been conducted on January 24, 1972, at Eau Claire, Wisconsin, by Herman Torosian, Hearing Officer; and the Commission having considered the evidence and being satisfied that questions have arisen concerning representation for certain employees of the above Municipal Employer in two separate collective bargaining units;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive among the employees in the following two collective bargaining units for the purpose of determining whether a majority of the eligible employees voting in each unit desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the Eau Claire Public Library on wages, hours and conditions of employment:

UNIT NO. 1

All library employees employed by the Eau Claire Public Library, but excluding professionals, supervisory and confidential employees, and temporary employees, who were employed by the Municipal Employer on January 24, 1972, except such employees as may prior to the election quit their employment or be discharged for cause.

UNIT NO. 2

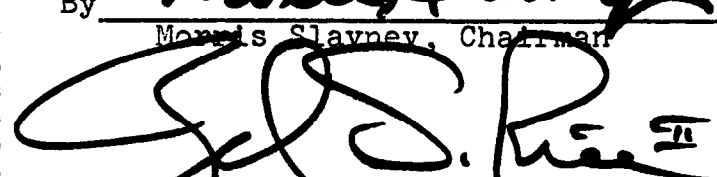
All professional employees employed by the Eau Claire Public Library, excluding supervisors, confidential employees and all other employees of the Municipal Employer, who were employed by the Municipal Employer on January 24, 1972, except such employees as may prior to the election quit their employment or be discharged for cause.

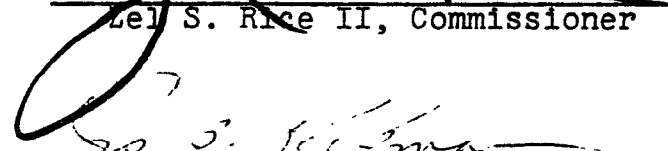
Given under our hands and seal at the
City of Madison, Wisconsin, this 15th
day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Lel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

In its petition, initiating the instant proceeding, the Union requested an election in a unit consisting of "all library employees excluding the Director, Administrative Assistant and custodian." During the course of the hearing held on January 24, 1972, the parties stipulated that the professional librarians should constitute a single appropriate collective bargaining unit. The Commission accepts such stipulation since a separate unit of professionals is an appropriate unit within the meaning of Section 111.70(4)(d)2.a.

During the course of the hearing the parties also stipulated that a unit consisting of all non-professional employees employed by the Eau Claire Public Library, excluding custodial workers, professionals, supervisors, confidential and temporary employees constituted an appropriate unit. The Commission does not accept said stipulation since said "non-professional employee" unit would include all otherwise eligible employees of the Public Library except the one full-time custodian and one part-time custodian. The above noted section of the Municipal Employment Relations Act, in part, provides that the Commission, "shall, whenever possible, avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force..." We believe that the desire of the parties to exclude the custodial employees from a unit of non-professional employees of the Library constitutes an undesirable fragmentation, and therefore, we have found the non-professional employee appropriate unit to consist of "all library employees employed by the Eau Claire Public Library, but excluding professionals, supervisory and confidential employees and temporary employees.

During the course of the hearing an issue arose as to whether the position of Assistant Secretary, presently occupied by Marilyn Walker, is a confidential position.

POSITION OF THE EMPLOYER:

It is the Municipal Employer's position that the Administrative Assistant will not be able to handle all confidential secretarial and related duties affecting matters relating to collective bargaining. The Municipal Employer contends that the position of Assistant Secretary, was established because the Administrative Assistant was not able to perform all of her duties as personal secretary to the Director.

The primary duty of the Assistant Secretary is to provide secretarial services for the Director and the Library Board, which duties the Administrative Assistant does not have time to perform. Accordingly, she would assemble and prepare, under the Director's supervision, materials on bargaining matters, grievances, and other union-related matters for the Director and Library Board. She has administrative responsibilities for maintaining the Director's files, which will contain union-related matters. It is her sole responsibility to reproduce materials on the library offset and xerox machines. On occasions these materials will be related to confidential collective bargaining matters. She also sorts, opens and distributes mail. Confidential bargaining data and other union-related materials will be sent to the Director through the mail. In addition, the Municipal Employer contends that the Assistant Secretary's desk is located in the Director's office, a few feet away from the main inner office, and thus is privy to conversations occurring in the office, and that she would therefore be in a position to overhear the Library Board's deliberations during bargaining sessions.

It is further argued by the Municipal Employer that in considering all of the facts the Assistant Secretary is as confidential a position as the Administrative Assistant, which the Union had agreed is confidential, and therefore that the Assistant Secretary should be excluded from the unit.

POSITION OF THE UNION:

The Union contends that the Assistant Secretary is not a confidential position. It argues that the parties have agreed to exclude the Administrative Assistant position as a confidential position and that the individual occupying such position should be able to perform all of the duties relating to confidential union-related collective bargaining matters.

DISCUSSION:

The Commission has held, where the amount of time spent by an employee pertaining to confidential labor relations matters is clearly de minimus; or where an employee may be located such as to possibly overhear confidential conversations relating to labor relations, or where an employee may have access to grievance data, does not establish said employee as a confidential employee.^{1/}

In the instant case it appears that the Administrative Assistant, rather than the Assistant Secretary will be handling most of the confidential data relating to bargaining matters and that the amount of time the Assistant Secretary will be, or could be, spending in confidential labor relations matters is de minimus. Furthermore, as found in the Sheboygan Board of Education case, the fact that the Assistant Secretary's work location is such that she might overhear confidential conversation relating to labor relations, or that she has access to files containing grievances, does not establish said position as a confidential employee. Therefore, the Commission concludes that the Assistant Secretary is not a confidential position and is properly included in the unit of non-professionals.

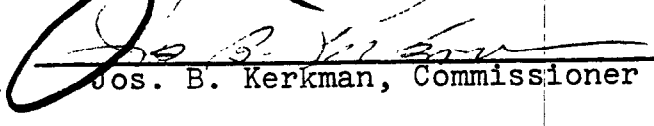
Dated at Madison, Wisconsin, this 15th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slattery, Chairman


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^{1/} Sheboygan Board of Education, Decision No. 10488, 8/71.