

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
CITY OF OSHKOSH (PUBLIC LIBRARY)	:	Case XVI
For Clarification of Bargaining Unit	:	No. 15728 ME-803
	:	Decision No. 11073-A

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Appearances:

Mr. John Pence, Oshkosh City Attorney, Oshkosh, Wisconsin, appearing on behalf of the City of Oshkosh (Public Library)

Mr. William Sandoval, District Representative, appearing on behalf of Oshkosh Public Library Employees Local 796-A, AFSCME, AFL-CIO

ORDER CLARIFYING BARGAINING UNIT

The City of Oshkosh (Public Library) having requested the Wisconsin Employment Relations Commission to issue an order clarifying the existing collective bargaining unit to determine whether the position of Confidential Extension Secretary should be included or excluded from the existing collective bargaining unit consisting of "all regular full-time and regular part-time employes in the employ of the City of Oshkosh (Public Library), but excluding Librarian I, II, III, IV, supervisory and confidential personnel and all elected and appointed personnel", presently represented by Oshkosh Public Library Employees Local 796-A, AFSCME, AFL-CIO; and the Commission having conducted a hearing in the matter at Oshkosh, Wisconsin, on July 5, 1972 and July 26, 1972, Marshall L. Gratz, Hearing Officer, being present; and the Commission having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and issues the following

ORDER

That the position of Confidential Extension Secretary shall be, and hereby is, excluded from the collective bargaining unit described above.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
 Morris Slavney, Chairman

W. S. Rice II  
 W. S. Rice II, Commissioner

Joe B. Kerkman  
 Joe B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING ORDER  
CLARIFYING BARGAINING UNIT

BACKGROUND

In January, 1972, the Library Director of the Municipal Employer assigned certain additional responsibilities to one of his department heads, the Head of Extension Services. Those additional responsibilities involved (1) participation in both preparations for, and the conduct of, labor contract negotiations with the Union, and (2) advising other department heads and the Director concerning grievance administration decisions and practices. Said labor relations responsibilities extend to all employes of the Municipal Employer who are represented by a union, not simply to employes within the Extension Services department.

The Confidential Extension Secretary is assigned to the Head of Extension Services, and has been, for all times material hereto, classified as a Library Assistant II 1/ and included in the presently existing bargaining unit. Since her "boss" was assigned the above-mentioned labor relations responsibilities, said secretary's former tasks have been streamlined or eliminated and the following tasks have been added to her job:

-transcribing correspondence and memoranda concerning the Municipal Employer's labor relations in general, specific grievances, bargaining approaches, strategies and the like, the contents of many of which are not intended to be disclosed to the Union or to any bargaining unit employes.

-being privy to meetings or informal conversations in the office of the Head of Extension Services or elsewhere which deal with confidential information or opinions concerning the Municipal Employer's labor relations.

-serving as a sounding board for her "boss" concerning "off-the-cuff" ideas he is considering with respect to possible changes in the Municipal Employer's employe relations policies or benefits.

Evidence adduced at the hearing indicated that said secretary was spending approximately one-fifth of her time on labor relations matters which were confidential and would not be communicated to the Union.

Two or three other employes are excluded from the bargaining unit as confidential employes. The Library Director's full-time secretary and her part-time assistant are both excluded from the bargaining unit as confidential employes. In addition, a full-time

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1/ Because of the change of duties the Municipal Employer desires to change the classification to Confidential Extension Secretary.

accountant position, involving confidential personnel-record-keeping, is also excluded, though possibly because it is deemed supervisory in nature. It also appears that said three excluded employes could handle all of the confidential work including that for the Head of Extension Services, if the Municipal Employer were to physically and organizationally radically rearrange its operations.

#### POSITION OF THE PARTIES

The Municipal Employer contends that it has added labor relations responsibilities to the job classification of the Head of Extension Services; that the secretary to that position has been and will increasingly be exposed to materials of a confidential nature, and in that regard the position has been specially classified and a job description, including confidential material, preparation and handling, has been published by the Municipal Employer. Therefore, in order to avoid a conflict of interests within the employe and an untenable strategic bargaining situation for the Municipal Employer, the latter argues that the position of Confidential Extension Secretary should be excluded from the bargaining unit.

The Union contends that the Municipal Employer is attempting to abuse the "confidential employe" exclusion under Sec. 111.70 and the collective bargaining agreement, because there are presently two full-time and one part-time employes excluded as confidential employes, and that said three existing confidential employes could perform the confidential work for the Head of Extension Services, since they spend less than all of their work time on confidential work presently. 2/

The Union further argues that the present secretary to the Head of Extension Services is a member of the bargaining unit and is classified as a Library Assistant II and that as Confidential Extension Secretary, she would do just about the same tasks as she is doing at present, i.e., typing, answering the phone, filing, maintaining lists and compiling data. The Union also contends that the Municipal Employer admits that she will be doing at least 50% non-confidential work, therefore, the cluster of tasks performed and to be performed by the secretary in the position in question belong substantially to the bargaining unit and are not sufficiently confidential to warrant exclusion of the position from the unit, and further, the fact that the Employer has not indicated a willingness to post the "vacancy" created by the "promotion" of the Head of Extension Services' secretary from Library Assistant II to Confidential Extension Secretary is further support for the Union's contention that the position should be considered within the bargaining unit.

#### DISCUSSION

Section 111.70(1)(b) defines "Municipal employe" as ". . . any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe." (emphasis added) Section 111.70 requires municipal employers to bargain collectively, but only with respect to "municipal employes" as defined above. Bargaining as to any other individuals or groups

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2/ Waushara County Electrical Co-op [4875] 9/58.

depends upon the municipal employer's consent to do so. Surely Sec. 111.70 does not require such a reorganization where, as in this case, there has been no showing of an intent on the part of the Municipal Employer to circumvent the purposes of that Section by abuse of the confidential employe' exclusion in 111.70(1)(b). In the Waushara County case cited by the Union, it is likely that the Commission found such a purpose of circumvention of statutory purpose and for that reason refused to permit exclusion of all four of that municipal employer's office employes. In any event, that case dealt with a situation involving one "boss" and four clericals in the same office with the "boss" spreading the "confidential" work thinly among the four; the instant case is different since it involves at least two "bosses" whose offices are separated by two floors and the length of the Library building. Thus, the Waushara holding is not directly applicable to the instant case.

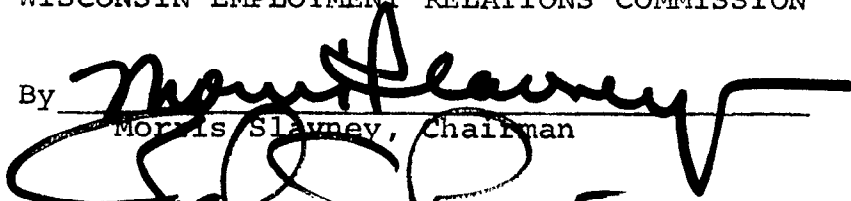
The Union's charge that the Municipal Employer has not indicated a willingness to post a vacant Library Assistant II position, in view of its creation of the "new" "Confidential Extension Secretary" position, appears to be a matter of contract interpretation and application, which may be an appropriate subject for a grievance, but it is not appropriately dealt with in the instant proceeding. Furthermore, the fact that the secretary in question continues to spend a majority of her time on tasks listed on the Library Assistant II job description does not negate the conclusion that she is a confidential employe, calling for exclusion; though she continues to type, file, take phone calls and dictation, etc. as before, however her duties have changed so as to include significant amounts of confidential labor relations items.

Should the facts of this case change by reason of a transfer of labor relations responsibilities away from the Head of Extension Services or of confidential information from his secretary, the Union would be free to request of the Municipal Employer (or the Commission, if necessary) that said position be included within the bargaining unit at that time. Until then, however, the "Confidential Extension Secretary" position is excluded from the bargaining unit.

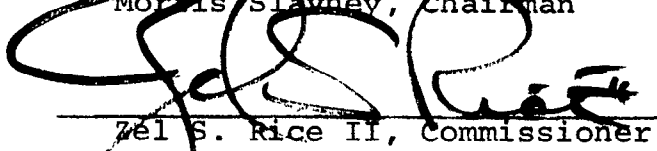
Dated at Madison, Wisconsin, this 2nd day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slawney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner