

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MRS. M. STOWASSER AND MRS. M. ACHESON

Involving Certain Employes of

MENOMONEE FALLS JOINT SCHOOL
DISTRICT #1

Case III
No. 16225 ME-859
Decision No. 11669

Appearances:

Mrs. M. Stowasser and Mrs. M. Acheson, Representatives,
appearing on behalf of the Petitioner.
Mulcahy, Gefke and Wherry, Attorneys at Law, by Mr. John F. Maloney, appearing on behalf of the Municipal Employer.

ORDER DENYING MOTION FOR
SUMMARY OF EVIDENCE AND RECOMMENDATIONS AND
DIRECTION OF ELECTION

Mrs. M. Stowasser and Mrs. M. Acheson, on behalf of the Menomonee Falls Secretarial Association, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Municipal Employment Relations Act among certain employes of Menomonee Falls Joint School District #1 of the Village of Menomonee Falls, Butler and Lannon, Waukesha County, Wisconsin; and hearing on such petition having been conducted on December 19, 1972, and January 11, 1973, at Menomonee Falls, Wisconsin, by Marshall L. Gratz, Hearing Officer; and orally during the hearing, and thereafter by letter, the Municipal Employer having requested the Hearing Officer to provide the parties with his summary of evidence and recommendations as to Findings of Fact and Decision in the instant proceeding in order to allow the parties a reasonable opportunity to file written exceptions thereto and to argue thereupon orally and in writing before all the members of the Commission, who are to participate in the decision; and the Commission, having considered the evidence and positions of the parties and being satisfied that it is not required by law to honor the aforesaid request of the Municipal Employer; and the Commission being further satisfied that a question has arisen concerning representation for certain employes of the aforesaid Menomonee Falls Joint School District #1;

NOW, THEREFORE, it is

ORDERED

That the Municipal Employer's motion requesting presentation of the Hearing Officer's summary of evidence and recommendations to the Commission be, and hereby is, denied;

AND, FURTHER, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit

consisting of all clerical employes of Menomonee Falls Joint School District #1, but excluding professional, supervisory, managerial and executive employes, who were employed by the Municipal Employer on March 8, 1973, except such employes as may quit their employment or are terminated for cause prior to the date of election, for the purpose of determining whether a majority of such employes desire to be represented by Menomonee Falls Secretarial Association, for the purpose of collective bargaining with Menomonee Falls Joint School District #1 on questions of wages, hours and conditions of employment.

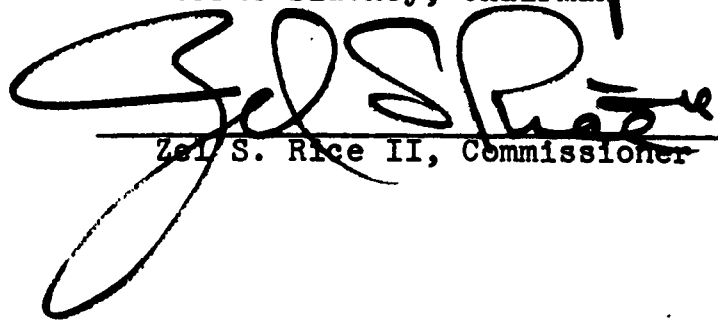
Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION FOR
SUMMARY OF EVIDENCE AND RECOMMENDATIONS AND
DIRECTION OF ELECTION

Denial of Motion for Presentation of Hearing Officer's Summary of
Evidence and Recommendations

Prior to the opening of the second day of hearing in this matter, the Counsel for the Municipal Employer orally requested of the Hearing Officer, which request was later stated in a letter dated January 12, 1973:

"This letter will serve as formal written notice that the undersigned hereby requests that your summary of the evidence as presented at the hearing conducted at Menomonee Falls North High School on January 11, 1973 in regard to the Petition of Mrs. M. Stowasser and Mrs. M. Acheson be submitted to the undersigned together with your recommendations as to the findings of fact and the decision in the proceeding in order to allow the Joint District a reasonable opportunity to file written exceptions to such summary and proposed findings and decision and to argue with respect to them orally and in writing before all the members who are to participate in the decision.

As stated at the hearing of January 11, 1973 my reliance is upon Wisconsin Statute Section 227.12 and arises from the fact that no official transcript of the proceedings at the hearing was made. —

. . ."

The statutory provision upon which the Municipal Employer relies provides as follows:

"227.12 Examination of evidence by agency. Whenever in a contested case, or upon hearing ordered, it is impracticable for the members of the agency who participate in the decision to hear or read all the evidence, the final decision shall not be made until a summary of the evidence prepared by the person conducting the hearing, together with his recommendations as to the findings of fact and the decision in the proceeding has been prepared and furnished to each party, and a reasonable opportunity has been afforded to each party to file written exceptions to such summary and proposed findings and decision and to argue with respect to them orally and in writing before all the members who are to participate in the decision. The agency's findings of fact may be made upon the basis of such summary and the filed exceptions thereto as herein provided. Whenever the ultimate decision of the agency is contrary to the recommendations of the person conducting the hearing, the decision shall include a statement of facts and ultimate conclusions relied upon in rejecting the recommendations of the hearing officer. The parties may by written stipulation waive compliance with this section."

The Hearing Officer announced at the outset of the hearing that he would (and did, in fact) maintain a record of all testimonial evidence adduced at the hearings in the instant proceeding by means of a tape recorder. The resultant tape recordings are made part of the official record herein. Furthermore, the Commission, by letter mailed February 14, 1973, offered both parties the opportunity to examine said tapes for the purpose of raising any exceptions to matters contained therein. Neither party availed itself of said opportunity.

Each of the members of this Commission has available to him a tape recorder capable of playing back said tapes. Therefore, the instant proceeding is not one in which ". . . it is impracticable for all of the members of the agency who participate in the decision to hear . . . all the evidence," Thus, Section 227.12 of the Wisconsin Administrative Procedure Act is not applicable to the instant proceeding, and the Municipal Employer's motion is, for that reason, denied. The members of the Commission participating in this decision have listened to the tapes involved.

Voting Eligibility Issues

At the hearing in this matter, the parties stipulated to the appropriateness of the following bargaining unit description: "All clerical employes of Menomonee Falls Joint School District #1, but excluding professional, supervisory, managerial and executive employes." There presently exists four separate bargaining unit of employes. Inasmuch as its clerical employes constitute the only remaining unorganized class of municipal employes within the Municipal Employer, we hold that the bargaining unit described above is appropriate. The Petitioners claim that all forty-four of the Municipal Employer's clerical positions fall within the aforesaid unit description, and that all forty-four employes holding said positions are therefore eligible to vote. The Municipal Employer contends that eight positions should be excluded because they are either supervisory, confidential or both.

Secretary to the Superintendent

The Municipal Employer asserts that the personal secretary to the Superintendent of Schools, should be excluded as confidential. The Superintendent of Schools advises the School Board with respect to negotiation and administration of all the Board's collective bargaining agreements and serves as liaison between the Board and the bargaining units with respect to negotiations and grievance administration. In such capacities, the Superintendent often finds it necessary to inform the members of the Board by means of typed confidential memoranda as to the progress in negotiations or as to grievances in process. Such memoranda often contain the Superintendent's own comments and advice with respect to the relative desirability of alternative courses of Board action.

The Superintendent's personal secretary transcribes and/or types all of the Superintendent's written communications. In addition, she has been present and taken and transcribed negotiation minutes of some collective bargaining sessions for the Municipal Employer's bargaining team. The Superintendent estimated that his secretary spends 50% of her time on work related to the labor relations of the Municipal Employer.

On the basis of the foregoing facts, the Commission is satisfied that the position of Secretary to the Superintendent of Schools, presently occupied by Joan Holleback, is confidential and is excluded from the unit.

Secretary to the Director of Business Services

The Director of Business Services is a prime resource person to the Municipal Employer's bargaining teams. In addition to numerous other duties, he projects the cost impact on the Municipal Employer of Union proposals and of various possible Municipal Employer counter-proposals and submits position papers concerning the relative merits of various Municipal Employer counter-proposal alternatives. He communicates such cost projections and policy papers to the Superintendent and/or Board by means of typed memoranda. Such memoranda are exclusively prepared (and in some cases also transcribed) by his secretary, or, in her absence, by the District Bookkeeper or Payroll Clerk. His secretary types all of the Director's other correspondence, some of which deals with employment relations matters which are not subsequently communicated to the unions involved. Moreover, the Director's secretary is often involved in informal discussions of the Municipal Employer's counter-proposal alternatives. There was additional testimony that if the confidential correspondence workload of this secretary were transferred, e.g., to the Superintendent's secretary, the Secretary to the Director of Business Services position would be reduced to a part-time position and the secretary to the Superintendent would be unable to complete such confidential work in addition to her present duties as personal secretary to the Superintendent. It was also noted that perhaps 50% of this secretary's time was spent on working with matters of a confidential labor relations nature.

On the basis of all the foregoing facts, the Commission concludes that the Secretary to the Director of Business Services, Gloria Jajtner, is a confidential employe and said position is excluded from the bargaining unit.

District Bookkeeper

The Municipal Employer asserts that the "District Bookkeeper - Central Office Supervision" position, presently occupied by Margaret Wiest, should be excluded because it is both confidential and supervisory. The employe holding this position maintains the Municipal Employer's financial records and serves various other clerical functions. Among those functions are the preparation, in close conjunction with the Director of Business Services, of the various cost impact analyses with respect to wage or salary proposals or counter-proposal alternatives for the Superintendent and/or Board.

The Commission is satisfied that the District Bookkeeper performs a substantial amount of work involving matters of a confidential labor relations nature and that on said basis her position should also be excluded from the unit. The foregoing conclusion makes unnecessary a determination as to the asserted supervisory nature of the District Bookkeeper position.

Payroll Clerk

The Municipal Employer takes the position that the Payroll Clerk, Eileen Janik, should be excluded from the unit as a confidential employe. Her primary responsibility lies in preparing, distributing and then summarizing the payroll encompassing the some 700 persons employed by the Municipal Employer. She receives filing and tabulating assistance from a number of high school students on a part-time basis. In the course of her payroll work, she makes frequent referrals and entries in the payroll records of employes; access to such records is generally restricted to the District Bookkeeper and the Payroll Clerk. The Municipal Employer asserts that if the Payroll Clerk were included within the bargaining unit, her position could become a "pipeline" of information to labor organizations as to relative pay levels, experience levels, leave accumulations and absence classifications among the various classifications of personnel. Such activity in itself would not exclude said individual as a confidential employe.

However, the Payroll Clerk's intimate familiarity with payroll records, statistics and the details of insurance plan coverages, costs and procedures has led the Director of Business Services, and especially the District Bookkeeper, to involve the Payroll Clerk in comparative cost impact analyses and position paper preparations concerning insurance benefit proposals or counter-proposals. While such involvement in negotiations preparations does not usurp a large portion of the Payroll Clerk's time, the record establishes that her particular inputs are heavily relied upon in the Municipal Employer's determinations as to the most desirable direction in which to move in given negotiations.

On the basis of the foregoing facts, the Commission is satisfied that the Payroll Clerk position is confidential and that said position should be excluded from the unit.

Payroll Clerk Trainee

The Municipal Employer has recently employed a Payroll Clerk Trainee, Rita Schwantes, who is being taught the Payroll Clerk job in anticipation of the present Payroll Clerk's promotion to District Bookkeeper. The present District Bookkeeper contemplates retirement sometime in fall, 1973. The trainee now performs all of the functions of the Payroll Clerk, though in smaller, simpler and less responsible loads than will be expected of her when she assumes the Payroll Clerk's job herself. However, we do not deem her activity to be such as to exclude the position from the eligibles at this time.

Secretary to Director of Elementary Education

Among other duties, the Director of Elementary Education serves on the labor negotiations advisory team of the Municipal Employer. In that capacity, he receives confidential labor relations memoranda and other such communications from the Superintendent, the Director of Business Services and others. To a limited extent, he is called upon to analyze (presumably to some extent in writing) the impact of certain proposals or counter-proposals upon the elementary educational programs of the Municipal Employer.

His personal secretary, Marilyn Vander Velde, opens his mail and places same on his desk for review. She also types all of his written correspondence. To a lesser extent, she performs similar services for the Director of Secondary Education. On the basis of those facts, the Municipal Employer asserts that her position is confidential and should be excluded. With that assertion, the Commission cannot agree. The record does not establish that this secretary spends a significant amount of time in working on or with labor relations matters, especially those of a confidential nature. Furthermore, the record suggests that the Municipal Employer would not be unduly inconvenienced if, upon inclusion of the instant position, all of her confidential dictation and typing were transferred to another confidential employe,^{1/} and if all confidential communications sent to her superiors were specially marked "confidential"--to be opened by them personally. The Nature and extent of confidential matters to which the Secretary to the Director of Elementary Education is privy is not sufficient to justify her exclusion; her position is, therefore, included in the unit.

^{1/} We note that the Director of Elementary Education's office is in the Superintendent's suite of offices--i.e., near the Superintendent's secretary and across a hall from other employes herein excluded from the unit.

Secretary to the Principal of North High School

The Municipal Employer asserts that this position, occupied by Gloria Pumroy, should be excluded as supervisory.^{2/} The Principal of North High School testified that the five other full-time and one part-time secretaries employed in his school regard his secretary as a supervisor and that his secretary considers herself their supervisor, as well.

This "head secretary" has the authority to, and does, in fact, make some work assignments to each of the six other secretaries at North High. With respect to three of these employes, however, such assignments are made only under "unusual" workload conditions arising, e.g., at registration and semester-end. Although she allocates work assignments given her by the Principal to the other three secretaries on a more nearly daily basis, such assignments take only "ten or fifteen minutes in the morning" and a short time at the end of the day. Furthermore, she devotes approximately 75% of her time to the same kind of work as she allocates to others. Moreover, the Director of Guidance regularly assigns the work of one of the six aforesaid secretaries, the part-time Audio-Visual Director assigns much of the work done by another of the six, and most of them have some number of routine tasks to perform as to which the "head secretary" has no work assignment authority whatever.

Since the present holder of the Secretary to the Principal position is a recent hire, she has not had occasion to exercise the authority to recommend hire, discipline, suspension or discharge, though it is expected that her opinion will be given weight when and if such situations present themselves in the future. Though she gives the Principal informal oral evaluations of work performance of the six, she does not and will not have authority to effectively recommend

^{2/} Section 111.70(1)(o)(1) defines "Supervisor" as follows:

". . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

In applying the above-quoted statutory considerations, it is not necessary that the Commission find all of those factors present, but rather those factors should appear in sufficient combination in a given case to clearly establish that an employe is a supervisor. Wood County, Dec. No. 10356-A (10/71).

It should also be noted that the underlying purposes served by the exclusion of supervisory employes from the bargaining unit are:

- "1. To avoid conflicts of interests within the employe between management responsibilities and loyalty to members and bargaining representatives of the bargaining unit; and
2. To protect other employes' exercise of rights afforded them by 111.81 from interference by employes closely aligned with management." City of Wauwatosa, Dec. No. 6276 (3/63).

transfer or promotion of any of the six. She is in a higher job classification and pay range than the other six clericals, but that is the only difference in their benefits and privileges. The Principal's secretary is expected to report rule infractions, though the Principal might very well bring such infractions so reported to the attention of the offenders himself rather than having his secretary do so. While his secretary adjusts minor grievances, she reports all such adjustments to the Principal after-the-fact; major (more personal or more serious) grievances or other complaints are generally brought directly to the Principal, and any grievance may be initiated with the Principal without any referral to his secretary. The Principal's secretary maintains attendance records for the six other secretaries, but such recordation is "routine" since it is in strict compliance with a published policy of the Municipal Employer. While his secretary may unilaterally give an employe permission to leave work due to illness, it is with the Principal that any of the six would arrange a day off or for a nonschool-calendared vacation.

In reviewing all of the foregoing facts, the Commission finds that the Principal's secretary at North High School, after more experience on the job, and because of the duties performed by her for the Principal, who has the responsibility for the operation of North High, is deemed excluded from the unit.

Secretary to the Principal of East High School

The Municipal Employer asserts that this position is supervisory.^{3/} The Principal of East High testified that by year-end, 1973, he expected that his secretary would spend 25% of her time in supervising the four full-time and two part-time employes working in his school; 65-75% of her time would, even then, be devoted to work similar to that done by the other clericals. As of the date of hearing, the present holder of the position, Sonia Aguado, had held the position in question for five months, and her Principal testified that she will be granted the authority to regularly allocate work assignments and effectively recommend hire, discipline, suspension and discharge as to the six as she becomes more experienced in her job. At present, 90% of her time is devoted to bargaining unit work.

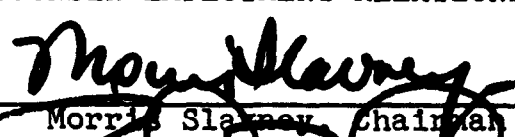
The Principal's secretary is in a higher job classification and pay rate than the other clericals, but their benefits and privileges are otherwise the same. She presently serves as a conduit for Employer instructions to the other six, and is expected to report violations of work rules by the other six clericals, but she does not direct their work and assigns work to them only occasionally. The other clericals' work-related complaints and requests (e.g., for days off) are made to the Principal and not to his secretary except in emergencies.

We deem the Secretary to the Principal of East High School a supervisory employe and is excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 8th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slaney, Chairman


Zel S. Rise II, Commissioner

^{3/} See note 2, supra.