

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case X
No. 16938 ME-959
Decision No. 12087

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Petitioner.
Spacek, Miller & Rinsel, Attorneys at Law, by Mr. Frederick A. Miller, appearing on behalf of the Municipal Employer.

Local 742 and District Council 48, AFSCME, AFL-CIO, herein jointly referred to as the Petitioner, having petitioned the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Cudahy Board of Education, herein referred to as the Municipal Employer; and a hearing having been conducted on said petition on July 19 and continued on July 26, 1973, Stanley H. Michelstetter II, Hearing Officer, being present; and the Commission having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees of the Municipal Employer;

DIRECTED

Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of August, 1973.

Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing on the instant petition, issues arose with respect to the confidential status of four employes, and as to the proper phrasing of the unit description. The Municipal Employer contended that the Administrative Secretary, General Office Secretary 4 (Business Manager's Secretary), General Office Secretary 4 (Curriculum Secretary), and Payroll Clerk are confidential employes.

ADMINISTRATIVE SECRETARY

The evidence established that the Administration Secretary is the secretary to the Superintendent of the Municipal Employer. As the chief executive of the school district, the Superintendent is a full-time employe who directs the entire operation of the school district on behalf of the Board of Education to which he is solely responsible. The Superintendent attends all meetings, including executive sessions, of the Board of Education and acts as its secretary. The Superintendent does not actively participate in collective bargaining, but is kept aware of the status of negotiations. He receives citizen complaints involving personnel, sensitive information involving student pregnancies, drug involvement, etc. The Superintendent is also the last resort in handling difficult employe problems. He is also responsible for the keeping of employe records.

The Administrative Secretary, in addition to her routine secretarial duties for the Superintendent, maintains the personnel files by typing and filing therein personnel evaluations, recommendations of principals and critical reports. She maintains at least one section of such files which contains information confidential from employe organizations and the public. The Administrative Secretary during the course of her duties receives the same sensitive information which the Superintendent receives.

We find that the Administrative Secretary is a confidential employe in that she maintains confidential personnel records containing information vitally affecting the employer-employe relationship.

GENERAL OFFICE SECRETARY 4
(BUSINESS MANAGER'S SECRETARY)

The Business Manager is, among his other responsibilities, responsible for negotiations with the Petitioner in another unit and has informally negotiated with the employes within the instant unit. It is very likely that he will negotiate with Petitioner in the instant unit, if Petitioner becomes the certified representative. In that regard, he exercises substantial discretion in making new proposals and changing previous proposals to the Petitioner during negotiations. The Secretary to the Business Manager types both the new and changed proposals prior to the time they are given to the Union, if at all. The volume of such work is regular and substantial. We are satisfied that such function is confidential.

GENERAL OFFICE SECRETARY 4
(CURRICULUM SECRETARY)

The Curriculum Secretary is the Secretary to the Research Director and the Assistant Superintendent of Schools. The Research Director, Dr. John Phipps, has negotiated with the teacher Association for the past year. Doctor Phipps is also responsible for negotiating with the principals of the school system. The Municipal Employer presented testimony indicating that the present Curriculum Secretary, Mrs. Mary Zillman, is responsible for typing proposals for such negotiations and Doctor Phipps' notes of such negotiations. The testimony also indicated that, as negotiations require, the Curriculum Secretary might be granted access to the confidential part of the personnel files. Mrs. Zillman testified that she types the initial proposal of the Municipal Employer in all of the negotiations for which Doctor Phipps is responsible. Thereafter, she types a summary of the status of negotiations which is mimeographed and distributed to the labor organization concerned therewith. She does not type Doctor Phipps' notes or future proposals because Doctor Phipps has preferred to handwrite his notes and proposals, though on occasion it appears that she has typed new proposals for distribution to the concerned labor organization. Mrs. Zillman has testified that she has never actually had access to the confidential portion of personnel files.

We conclude that the mere possibility of access to confidential personnel files where the practice has been to not grant such access does not make an employee confidential, nor does the typing of a summary of negotiations where the positions thereon are known by all the parties. We conclude also that the typing of the Municipal Employer's initial proposal and the infrequent typing of new proposals do not require that we deny this employee her rights under the Municipal Employment Relations Act. The two clerical employees, whom we have excluded, are employed in the same general office area and would be free to perform those confidential functions assigned to Mrs. Zillman. The mere vesting of some minor confidential functions in a separate employee where other confidential employees are available cannot be allowed to deprive employees of their rights under the Municipal Employment Relations Act. 1/

PAYROLL CLERK

The evidence presented establishes that the Payroll Clerk works in the Superintendent's office. Jo Ann Lange will assume the position since the previous Payroll Clerk has retired. The main responsibility of the Payroll Clerk is to prepare the payroll, and in that regard she makes routine, primary interpretations of clear language of the collective bargaining agreement and determines eligibility of sick leave and other benefits, and pay determinations. When any question of interpretation arises, she refers the matter to Mr. Millar, the Business Manager. Neither the payroll or payroll records are confidential from employees or labor organizations. The Payroll Clerk fills in when the Superintendent's Secretary is on vacation or sick leave and assists when the Superintendent's Secretary becomes burdened with work. When exercising this function, she may have access to employee records on the same basis as the Superintendent's Secretary.

1/ Menomonee Falls Joint School District No. 1 (11669) 3/73.

We are satisfied that the Payroll Clerk exercises no supervisory or confidential power when she makes routine interpretations of the collective bargaining agreements. We have consistently held that an employee who occasionally fills in for a confidential employee is not confidential. 2/ Since the Payroll Clerk herself keeps no confidential records affecting the employer-employee relationship, she is not a confidential employee.


CASUAL EMPLOYEES

Petitioner's Counsel raised the issue as to whether casual employees should be included in the unit sought. Since the Municipal Employer employs no casual employees, we have stated the unit in accordance with our practice of excluding casual employees.

Dated at Madison, Wisconsin, this 14th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slattery, Chairman


Zel S. Rice II, Commissioner

2/ Adams-Friendship Area Schools (11881) 5/73.