

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MENOMONEE FALLS SCHOOL	:	Case 12
DISTRICT EMPLOYEES, LOCAL 2765,	:	No. 35012 ME-27
AFSCME, AFL-CIO	:	Decision No. 13492-A
	:	
Involving Certain Employes of	:	
	:	
MENOMONEE FALLS	:	
SCHOOL DISTRICT	:	
	:	

Appearances:

Mr. Richard W. Abelson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2216 Allen Lane, Waukesha, Wisconsin 53186, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Gary M. Ruesch, 815 East Mason Street, Suite 1600, Milwaukee, Wisconsin 53202, appearing on behalf of the District.

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

Menomonee Falls School District Employees, Local 2765, AFSCME, AFL-CIO, having, on May 16, 1985 filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit by determining whether the position of Administrative Secretary to the Director of Support Services and Controller should be included in said unit; and hearing on the matter having been held in Menomonee Falls, Wisconsin on June 25, 1985, before Examiner Jane B. Buffett, a member of the Commission's staff; and a stenographic transcript of the hearing having been received on July 19, 1985; and the District having filed a brief on August 2, 1985; and the Union having notified the Commission on August 14, 1985 that it would waive its right to file a reply brief; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Menomonee Falls School District Employees, Local 2765, AFSCME, AFL-CIO hereinafter the Union, is a labor organization having its offices at 2216 Allen Lane, Waukesha, Wisconsin, 53186.

2. That the Menomonee Falls School District, hereinafter the District, is a municipal employer having its offices at N84 W16379 Menomonee Avenue, Menomonee Falls, Wisconsin, 53051

3. That in Menomonee Falls School District, Dec. No. 11349 (WERC, 5/75), the Commission certified the Union as the exclusive bargaining representative of District employes in the following unit:

All regular full-time and regular part-time clerical employes of Menomonee Falls Joint School District No. 1, but excluding professional, supervisory, managerial, confidential and executive employes.

and that prior to the May 21, 1975 certification, the certified bargaining representative had been the Menomonee Falls Secretarial Association, Dec. No. 11669 (WERC, 5/73).

4. That on May 16, 1985 the Union petitioned the Commission to clarify the unit described above by including it in the position of Administrative Secretary to the Director of Support Services and Controller; and that the District contends that the position should continue to be excluded as confidential.

5. That at the time of the original certification, the District had a Business Manager and a Bookkeeper-Office Manager, the latter of which was excluded from the bargaining unit as confidential; that since that time, the position of Business Manager was eliminated and two new positions were created: Controller in approximately 1978 and Director of Support Service in approximately 1983; that the position of Bookkeeper-Office Manager was eliminated when the last occupant left the District; and that the position of Secretary to the Director of Support Services and to the Controller was created in 1983.

6. That the Director of Support Services coordinates all labor relations and labor contracts for the District; that the current incumbent of the position of Secretary to the Director of Support Services and to the Controller, Anna Groose, is involved in the District's formulation of answers to Union grievances by being present in District personnel meetings when grievances are being discussed, and by typing initial drafts of grievance answers which are subsequently modified before being presented to the Union; that she has been trained to use the District's computer system to process financial data relating to labor relations, such as costing of proposals, and she has used the computer to develop costing information and alternative potential proposals for possible use in contract negotiations; that in preparation for contract negotiations, she has researched information on various health insurance carriers and policy options; and that she types job postings.

7. That the incumbent of the position of Secretary to the Director of Support Services and to the Controller has sufficient access to, knowledge of, and participation in confidential matters related to labor relations so as to be considered a confidential employe.

CONCLUSION OF LAW

That the incumbent of the position of Secretary to the Director of Support Services and to the Controller is a confidential employe and therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and accordingly should be excluded from the collective bargaining unit described in Finding of Fact 3 above.

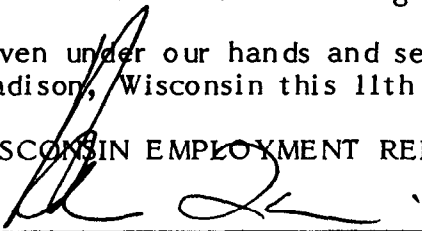
ORDER CLARIFYING BARGAINING UNIT 1/

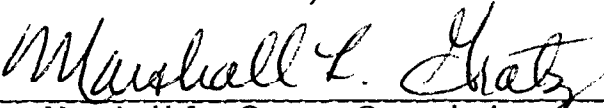
That the position of Secretary to the Director of Support Services and to the Controller shall be excluded from the above-described bargaining unit.

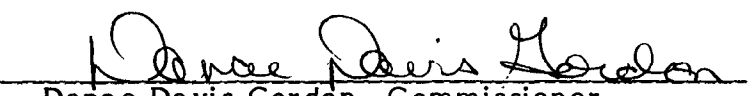
Given under our hands and seal at the City of
Madison, Wisconsin this 11th day of October, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission 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 1 continued on Page 3)

(Footnote 1 continued)

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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MENOMONEE FALLS SCHOOL DISTRICT

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

BACKGROUND AND POSITIONS OF THE PARTIES

The Union initiated this case by petitioning the Wisconsin Employment Relations Commission to clarify the existing certified bargaining unit to include the position of Secretary to the Director of Support Services and to the Controller in the bargaining unit described in Finding of Fact 3. It contends the incumbent of the position does not deal with the District's collective bargaining strategy, contract administration or litigation, and is not privy to information that is not available to the exclusive bargaining representatives. The District argues the incumbent's duties meet the standards of a confidential as established by Commission case law and that those duties are neither de minimus nor duplicative of the duties of other confidential employes.

DISCUSSION

Although the District described the Bookkeeper-Office Manager as the predecessor to the Secretary to the Director of Support Services and to the Controller position, the record does not demonstrate that the two positions were in fact identical. Consequently, the confidential status of the former position of Bookkeeper-Office Manager is immaterial to this proceeding.

The Commission has consistently held that in order for an employe to be considered a confidential employe, such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes it must be the type of information which:

- 1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and
- 2) is not information which is available to the bargaining representative or its agents. 2/

The incumbent of the position of Secretary to the Director of Support Services and to the Controller, Anne Groose, both takes notes at meetings where possible answers to grievances are discussed and types first drafts of grievance answers that are modified before presentation to the Union. She thus gains knowledge of District labor relations positions and strategies which it does not intend for immediate communication to the Union. Additionally, Groose helps the District to prepare for contract negotiations by using the computer system to prepare and cost alternative bargaining proposals, not all of which are necessarily given to the Union, and by researching potential proposals such as various health insurance carriers and options. These preparations give her access to information whose premature release could harm the District's bargaining stance. The Commission has traditionally concluded that employes who perform such pre-negotiation duties should be excluded from the bargaining unit as confidential. 3/

Based on the incumbent's participation in contract administration through the grievance procedure, her preparations for contract bargaining, the Commission

2/ Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

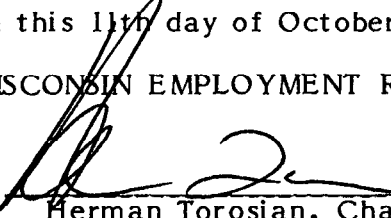
3/ Kenosha Vocational, Technical and Adult Education District No. 6, Dec. No. 14993-F (WERC, 2/80); School District of Drummond, Dec. No. 16614 (WERC, 10/78).


concludes that the Secretary to the Director of Support Services and to the Controller is a confidential employe and as such is excluded from the bargaining unit. 4/

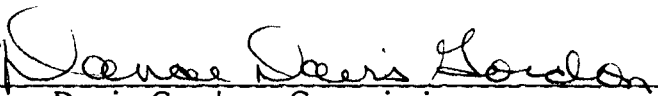
Dated at Madison, Wisconsin this 11th day of October, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

4/ It should be noted that the typing of job postings performed by Groose was not a factor in concluding that she is a confidential employe, since the job posting information is available to the bargaining unit members.