

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OUTAGAMIE COUNTY

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Case XXXVII
No. 19477 ME-1232
Decision No. 14062

Ms. LeNore J. Hamrick, Representative, appearing on behalf of
Outagamie County Employees' Union, Local 2046, WCCME, AFSCME,
AFL-CIO.

Ms. Christine A. Eisch, hereinafter referred to as the Petitioner, having filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting that the Commission conduct an election in an existing collective bargaining unit represented by Outagamie County Employee's Union, Local 2046, hereinafter referred to as the Union, for the purpose of determining whether the employees involved therein desired to continue to be represented by said Union; and also requesting that the Commission determine whether the Account Clerk II and Account Clerk I in the payroll department, both employed by Outagamie County, hereinafter referred to as the County, should be included in or excluded from, the existing collective bargaining unit presently represented by the Union, and consisting of "all regular full-time and regular permanent part-time maintenance, custodial, clerical, case aides and homemaking employees of the County of Outagamie, employed in the County Courthouse, Social Services Department, Highway Department (Clerical Employees), Airport and Safety Building, but excluding elected officials, professional employees, Sheriff's Department employees, Highway Department employees (excluding Highway clericals), County Institutions, Riverview Sanatorium employees, department supervisors and confidential secretaries for County Executive, Corporation Counsel and Highway Commissioner"; and hearing on said petition having been held on September 26, 1975 at Appleton, Wisconsin, before Hearing Officer Dennis P. McGilligan; and the Union, having intervened in the proceedings without objection from the parties on the basis that it presently represents the employees involved herein; and the Commission having considered the petition and the record and the arguments of the parties; 1/ and the Commission being fully advised in the premises, and being

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satisfied (1) that the petition filed herein requesting an election to determine whether the employees in the above described collective bargaining unit desired to continue their representation by Outagamie County Employees Union, Local 2046, has been untimely filed; (2) that the classification of Account Clerk II is a confidential position; and (3) that the classification of Account Clerk I is not a confidential position.

NOW, THEREFORE, it is

ORDERED

1. That the portion of the petition filed herein, requesting an election among the employees in the above described collective bargaining unit, be, and the same hereby is, dismissed.
2. That the position of Account Clerk II be, and the same hereby is, excluded from the collective bargaining unit described above.
3. And that the position of Account Clerk I be, and the same hereby is, included in the collective bargaining unit described above.

Given under our hands and seal at the
City of Madison, Wisconsin this *23rd*
day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION
FOR ELECTION AND ORDER CLARIFYING BARGAINING UNIT

Contract Bar

Christine A. Eisch filed a petition with the Commission on July 24, 1975 requesting the Commission to conduct an election among all employees represented by Outagamie County Employee's Union Local 2046, WCCME, AFSCME, AFL-CIO, in the employ of Outagamie County, for the purpose of determining whether said employees desire to continue to be represented by the above Union. At the outset of the hearing, Local 2046 was permitted to intervene in the proceeding without objection from the parties on the basis of its claim that it presently represents the employees covered by the petition, and further that there presently exists a collective bargaining agreement between the County and the Union covering the following employees in the employ of the Employer:

" . . . for all regular full-time and regular permanent part-time maintenance, custodial, clerical, case aides and homemaking employees of the County of Outagamie, employed in the County Court House, Social Services Department, Highway Department (Clerical Employees), Airport and Safety Building, but excluding elected officials, professional employees, Sheriff's Department employees, Highway Department employees (excluding Highway clericals), County Institutions, Riverview Sanatorium employees, department supervisors and confidential secretaries for County Executive, Corporation Counsel and Highway Commissioner."

and further that it presently is involved in negotiations for a succeeding agreement with the County.

The existing collective bargaining agreement became effective on January 1, 1975 and provides that it "shall remain in full force and effect to and including December 31, 1975 and shall automatically be renewed from year to year, unless negotiations are instituted by letter on or before July 1, 1975, or any anniversary thereof."

By letter dated June 19, 1975, the Union informed the County of its intent to open negotiations with the Employer on a collective bargaining agreement for 1976. The parties are currently involved in negotiations although the County, by letter dated September 19, 1975 informed the Union that negotiations should be held in abeyance pending resolution of the representation issue in this proceeding.

The Petitioner contends that, although it is aware of the rule of the Commission not to direct an election where there presently exists a collective bargaining agreement unless said petition is timely filed; nevertheless, the Petitioner contends that such a minority group of employees belongs to and runs the Union that there should be an election to determine its representational status. The Union argues that it is the exclusive current bargaining representative for the employees involved, that there is presently a contract between the Union and the County, and that the petition was not timely filed within 60 days prior to July 1, the date on which the Employer can be notified of an intent to negotiate a new agreement for 1976. The Union would have the Commission dismiss the petition. The County takes no position in regard to this issue.

It is the general policy of the Commission not to direct an election where there presently exists a collective bargaining agreement unless said petition is timely filed. In the instant matter, the petition was filed on July 24, 1975, more than three weeks after the final date for instituting negotiations for a new contract, July 1, 1975.

Where there presently exists a collective bargaining agreement covering the wages, hours and conditions of employment of employees in an appropriate collective bargaining unit, a petition requesting an election among said employees must be filed within the 60-day period prior to the date reflected in said agreement for the announcement of negotiations for changes in wages, hours and working conditions of the employees in the unit covered thereby unless the period of negotiations as set forth therein extends beyond six months prior to the budgetary deadline date of the municipal employees involved. 2/ The Commission has found that a petition filed after the contract re-opening date not timely filed. 3/ On this basis the Commission would have to dismiss the petition as untimely filed since it was received by the Commission on July 24, 1975, more than three weeks after the re-opening date provided for in the contract.

Clarification of Bargaining Unit

The Commission will not entertain petitions for unit clarification filed by individual employees. 4/ However, in the instant proceeding, the County, in effect adopted the Petitioner's position, and a record was made without objection by the parties; consequently, since, in all likelihood, the matter would be before the Commission in the future for a determination in the proper manner, the Commission will proceed with the Clarification of the bargaining unit.

Account Clerk II

The County contends that the Account Clerk II, Fern Speering, should be excluded from the bargaining unit as a confidential employee because of the confidential nature of her work. The Union maintains that said position should remain in the unit, and that Fern Speering is not a confidential employee on the following basis:

1. At the time of the original certification of the bargaining unit said position was not at issue and was included in the bargaining unit.
2. That duties of said position have not changed since that date.
3. The duties of said position are not confidential in nature.

It is undisputed that the Account Clerk II position, along with the Account Clerk I position, existed at the time the Commission directed the election in the unit involved herein and that the occupants of those positions were included in the unit, were permitted to vote in the election without objection by the parties, 5/ and are presently included in the bargaining unit. The evidence of record also supports the Union's contention that the job duties of said positions have not changed since that time. However, the Commission is not persuaded that the County should be barred from obtaining a determination herein because of the previous certification or past bargaining history. It is well established Commission policy that a petition to clarify an existing bargaining unit of municipal employees is not barred by such historical considerations. 6/

2/ Waukesha Voc. Dist. No. 8 (11076) 6/72; Outagamie County (11923) 6/73.

3/ Green County (10720) 1/72.

4/ City of Green Bay (12682) 5/74.

5/ County of Outagamie (11923) 5/72.

6/ Wausau School District (10371-A) 4/72; Racine County (11257) 8/72; City of Waukesha (11342) 1/72; City of Milwaukee (10835-A) 12/72; City of Wauwatosa (11633) 2/73; Manitowoc County (Social Services) (13434) 3/75.

Fern Speering has been an Account Clerk II since May, 1973. Her job duties in the payroll department include: maintaining all retirement records, health insurance records, life insurance records, wage records, unemployment compensation, leave records, submitting all this information to the proper parties, Social Security Administration and the Retirement Fund. She also assists in preparing the payroll for various departments. During the course of her payroll work, she makes frequent referrals and entries in the payroll records of employees, portions of which are open to the public, while the rest are restricted. Her job duties have not changed since May, 1973. She reports directly to Eugene L. Higgins, County Executive, for Outagamie County.

The following policy statement was adopted by the Personnel Committee on August 18, 1975, and distributed to department heads on August 19, 1975:

"The County considers all information set forth in the individual's personnel records as confidential and will not release any information to any other person without the approval of the employee in question.

Further, the County considers most of the information in its payroll records as confidential and will release to an outside person only information as to an employee's gross amount. The County considers the deductions made from an individual employee's paycheck as to withholding taxes, credit union, etc., to be of a confidential nature between the county and the employee."

The record reveals that several members of the County's labor relations and negotiating team, as well as the County's current hired professional labor negotiator, rely on Fern Speering and her knowledge of, and experience with, the records in the payroll department, to gather information upon which to evaluate union proposals and positions and to formulate the County's response to same as well as to make proposals, offers and counter offers on behalf of the County during contract negotiations. The record further reveals that the County has had Fern Speering present to provide information at meetings between the Employer's labor relations team and management personnel or various departments, including the Sheriff's Department, where matters concerning management policy, practice and direction regarding personnel and labor relations were discussed.

Access to the information and records concerning employees as to pay levels, health and life insurance benefits, unemployment compensation, leave, retirement and personnel files and provision of same to the Employer, in itself, does not exclude said individual as a confidential employee. In order for an employee to be considered in a confidential relationship with management and thereby excluded from the unit, the Commission has held that such employee must be privy to decisions of the Employer with respect to personnel and labor relations policies. 7/ The testimony establishes that Fern Speering did attend management meetings where matters were discussed and decisions made concerning personnel and labor relations policies and practices.

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

7/ City of Milwaukee (11971) 7/73.

Account Clerk I

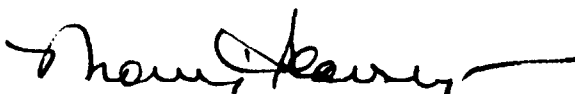
Likewise the County Maintains that the Account Clerk I, Billie Kasperek, should be excluded from the unit as a confidential employe while the Union takes the position that she is not a confidential employe and should remain as part of the unit.


Kasperek's job duties are basically the same as those noted above for the Account Clerk II, Fern Speering. She has worked as an Account Clerk I since May 21, 1973 and her job responsibilities have not changed since that time.

The record reveals that members of the County's labor relations and negotiations team used Billie Kasperek's services sparingly. Normally, they would ask Fern Speering to compile the information they were seeking, and only rely on Billie Kasperek when Speering was unavailable. The Commission has consistently held that an employe who occasionally fills in for a confidential employe is not confidential. 8/ Since the Account Clerk I only supplies information to the County for bargaining purposes when Account Clerk II is unavailable, consequently, on a limited basis, the Commission holds that she is not a confidential employe.

Dated at Madison, Wisconsin, this 23rd day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner

8/ Adams-Friendship Area Schools (11881) 5/73, Cudahy Board of Education (12087) 8/73.