

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
AFSCME COUNCIL 24, WISCONSIN STATE	:	Case LXXIV
EMPLOYEES UNION	:	No. 19548 SE-75
	:	Decision No. 14143-B
For Clarification of the Bargaining	:	
Unit for Certain Employees in the	:	
Employ of	:	
STATE OF WISCONSIN, DEPARTMENT OF	:	
ADMINISTRATION (CLERICAL RELATED)	:	
	:	

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Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow,
appearing on behalf of the Petitioner.
Mr. Lionel L. Crowley, Attorney at Law, Department of Administration,
Bureau of Collective Bargaining, appearing on behalf of the
State Employer.

ORDER CLARIFYING BARGAINING UNIT

AFSCME Council 24, Wisconsin State Employees Union, hereinafter referred to as the Petitioner, having on December 13, 1976, filed a petition with the Wisconsin Employment Relations Commission, requesting the Commission to determine whether two individuals occupying the classifications of Administrative Secretary 2 - Confidential, and Administrative Secretary 3 - Confidential ^{1/} University of Wisconsin-Milwaukee, should be included in the state-wide Clerical and Related unit, presently represented by the Petitioner; and pursuant to Notice of Hearing, hearing having been held in the matter at Madison, Wisconsin, on March 28, 1977, Dennis P. McGilligan, Hearing Examiner, being present; and the Commission having considered the evidence, arguments and briefs of counsel, and being fully advised in the premises, and being satisfied that the occupants of the above-stated positions perform duties which are not confidential but are clerical in nature;

NOW, THEREFORE, it is

ORDERED

That the positions of Administrative Secretary 2 - Confidential in the Comptroller's office at the University of Wisconsin-Milwaukee and Administrative Secretary 3 - Confidential in the office of the Acting Dean of the Graduate School at the University of Wisconsin-

^{1/} The petition requested clarification of two Administrative Secretary 2 - Confidential positions. However, the record indicates one of the positions in dispute is an Administrative Secretary 3 - Confidential.

Milwaukee be, and the same hereby are, included in the Clerical and Related unit.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of October, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

BACKGROUND:

The instant dispute involves two clerical positions which are presently excluded from the bargaining unit on the basis of their alleged confidential status as a result of unilateral action by the State Employer. However, by stipulation, the incumbents of both positions were eligible to vote in the representation election wherein the Petitioner was designated as the exclusive bargaining agent for the employees in the unit involved herein. The positions are an Administrative Secretary 2 - Confidential filled by Ellen Quade and an Administrative Secretary 3 - Confidential filled by Mary Mason.

Ellen Quade is employed in the office of the Comptroller at the University of Wisconsin-Milwaukee, hereinafter referred to as UWM, and reports directly to the Comptroller. The Comptroller prepares the budget for UWM and in this regard makes decisions on funding, staffing, etc. for the other departments that make up UWM. The Comptroller also is the Chief administrator for his own office. Ms. Quade has access to all of the Comptroller's files, opens all his mail and types his correspondence. The majority of her duties are in the area of the budget and involve the typing of reports and the handling of correspondence of those persons other than herself who make the decisions with regard to budget matters. She also spends a large portion of her day filing various documents relating to the Comptroller's affairs. Ms. Quade types up employee evaluations. The Comptroller is the second step in the grievance procedure and Ms. Quade would have to type the grievance response, although there were no grievances last year. Ms. Quade has never been involved in the processing of a grievance or the formulation of a response thereto. She has never been privy to the formulation of management policy with respect to suspension or discharge. She never worked on matters involving management bargaining proposals.

Mary Mason works for the Acting Dean of the Graduate School at UWM. The Acting Dean is the chief administrator for the Graduate School, which is one of approximately 21 major divisions at UWM. Ms. Mason performs the following clerical and related duties: types all the Acting Dean's correspondence, including budgetary items; prepares his trip itineraries; takes dictation and also does transcribing; and accounts for some budget expenditures and grant payments. She also performs some clerical duties in support of the chemical research program, which includes completing various forms required by the National Science Foundation; accounting for the academic progress of certain students; acquiring visas for students; and acquiring supplies for research. Ms. Mason has not been privy to management strategy or positions involving collective bargaining. Except in one instance where she intercepted a written communication regarding her reclassification and forwarded same to the Union, Ms. Mason has not been privy to any "confidential" matters involving labor relations between UWM and its employees.

POSITIONS OF THE PARTIES:

The Petitioner basically maintains that neither of the two employees/positions in dispute are "confidential" and both should remain in the Clerical and Related bargaining unit.

In this regard the Petitioner notes that both employes/positions were recognized as "nonconfidential" by the parties herein when the parties agreed that they were eligible to vote in the representation election wherein the Petitioner was designated as the exclusive bargaining agent for clericals. The Petitioner claims that inasmuch as there has been no change in their duties and/or responsibilities, their employe status remains the same.

The Petitioner argues that "confidential" employes are those who in the regular course of their duties assist and act in a "confidential" capacity to persons who exercise managerial functions in the field of labor relations. (Emphasis supplied). The Petitioner contends that the facts adduced at the hearing clearly establish a status other than "confidential." In the alternative, the Petitioner maintains that if some of the work performed by the aforementioned individuals is "confidential," it is of a de minimis nature and is not sufficient to exclude them from the bargaining unit.

The State Employer, on the other hand, claims that the two positions of Administrative Secretary 2 and 3 - Confidential are properly excluded from the aforementioned clerical bargaining unit as both have access to confidential matters affecting the employer-employe relationship.

The State Employer notes that Ms. Quade has access to all of the Comptroller's files, opens all his mail and types his correspondence. The State Employer notes also that the Comptroller formulates and effectuates UWM-wide policy in the fiscal area "which has a definite impact on labor relations."

In regard to Ms. Mason, the State Employer argues that her "confidential" status is demonstrated by the fact that she referred a letter concerning her reclassification to the Union that she opened while performing her normal clerical duties. The State Employer adds that Ms. Mason may have access to other confidential communications.

The State Employer relies on NLRB v. Allied Products Corp., 94 LRRM 2433, 548 F.2d 644 (6th Cir. 1977) to support its position, wherein the Court held that even where a manager "is not directly responsible for the Company's relationship with the Union, and although he does not formulate, determine and effectuate Company labor relations policy' but where he does formulate, determine and effectuate company-wide management policies which critically affect labor relations, the Board may conclude that his personal secretary is confidential." The State Employer contends that in the instant case both the Comptroller and the Acting Dean are clearly such managers and therefore the two positions in dispute are confidential.

DISCUSSION:

In a unit clarification proceeding, the Commission will generally not change the composition of a certified bargaining unit which was voluntarily agreed upon and recognized as being appropriate unless the composition is repugnant to the relevant statute, or intervening events have occurred which materially affect the status of the employes in issue. 2/ In the instant case, there has been

2/ State of Wisconsin (Professional-Education) (15108) 12/76;
Dept. of Administration (Security and Public Safety) (15103-A)
5/77.

no showing by the State Employer of any intervening events which have occurred which materially affect the status of the positions in dispute since the individuals were voluntarily included in the certified bargaining unit noted above. Therefore, an issue remains as to whether the inclusion of the Administrative Secretary 2 - Confidential and Administrative Secretary 3 - Confidential positions in the Clerical Related bargaining unit is repugnant to SELRA.

Section 111.81(15) of SELRA defines an "employee" as follows:

"'Employee' includes any state employee in the classified service of the state, as defined in s. 16.08, except limited term employees, sessional employees, employees who are performing in a supervisory capacity, management employees and individuals privy to confidential matters affecting the employer-employee relationship, as well as all employees of the commission."

Confidential employees are excluded by the above statutory provision from the definition of the term "employee." Section 111.81(3)(b) of SELRA provides that "the Commission shall assign eligible employees to the appropriate statutory bargaining units set forth in par. (a)." The aforementioned clerical and related bargaining unit is one such unit set forth in Section 111.81(3)(a) and hence confidential employees are prohibited from being included in same.

Ms. Mason opened one letter regarding her own reclassification and forwarded same to the Union. However, except for this questionable confidential item, the record does not indicate any other instances where she has been privy to management strategy regarding labor relations and/or collective bargaining. To the contrary, the record indicates that Ms. Mason spends almost all of her time performing routine clerical and related duties. Therefore, Ms. Mason has, at most, a de minimis involvement with confidential matters relating to labor relations, and her position would not be excluded from the aforementioned bargaining unit on the basis that it is confidential. 3/

Ms. Quade, on the other hand, must type up grievance responses although there were none in the past year. She also types employee evaluations and has access to personnel files. However, Ms. Quade has never been privy to management strategy regarding bargaining proposals or employer-employee relations. Access to personnel files, as well as the typing of employee evaluations, does not make an employee "confidential." 4/ An employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations, 5/ or be privy to labor negotiations strategy of the employer, in order to be considered "confidential."

Under this test, in order for the two secretaries to be excluded as confidential, their respective superiors, the head of the graduate school and the Comptroller, either (1) must become involved in labor

3/ Jefferson Jt. School Dist. (15336) 3/77.

4/ Whitefish Bay Jt. School Dist. (14666) 5/76.

5/ Kenosha V.T.A.E. Dist. (14993) 10/76.

negotiations strategy, or (2) must deal in confidential matters relating to labor relations, and, in each case, must do so to the required degree of participation, knowledge or privity.

This record fails to show that the Dean and the Comptroller have the required degree of participation, knowledge or privity as to labor negotiations strategy. Collective bargaining at the university is under the authority of the Department of Administration, and its authority extends not only to all of the campuses within the university system, but also to all of state employment. On this campus, the administrator for labor relations, Allen Cuttrell, is the liaison with the central administration of the university system. He advises the central administration as to position of the campus divisions on labor relations matters involving collective bargaining. Another person representing the entire university system deals directly with the Department of Administration during the course of the process of negotiating the collective bargaining agreement itself. Given this structure of authority and responsibility, therefore, and on this record, neither the Dean nor the Comptroller has sufficient involvement in labor negotiations strategy to warrant the exclusion of their secretaries as confidential.

As to their involvement in confidential matters concerning labor relations, the record shows that as heads of their respective divisions they have responsibility, involvement or authority at a high level for personnel matters, including disciplinary matters, but there is no appreciable evidence that these secretaries have in any way had access to the decision making process in regard to such matters or have otherwise been privy thereto. Accordingly, they cannot be excluded as confidential on the basis of their connection with labor relations matters within the respective divisions themselves.

In the case of budgetary decisions, both the Comptroller and the Graduate Dean have substantial influence within the university. The Employer, however, incorrectly relies on private sector law as requiring a conclusion that secretaries to persons with such authority are confidential employees because of the impact of the exercise of that authority on labor relations. In the public sector, both the open meetings law 6/ and the public records law 7/ expose the budgetary process to public scrutiny. Further, the final authority on budgetary matters are elected representatives whose opinions, decisions and deliberations are the subject of public comment in the media and elsewhere. Consequently, as a general matter there is little confidentiality in the budgetary process in the public sector. Although conceivably certain budgetary issues may arise which are exempt from the open meetings law or the public records law, this record is devoid of any appreciable evidence that these secretaries have had any involvement with such exempt matters.

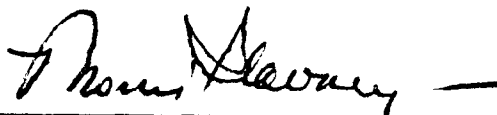
6/ Section 19.81, et seq., Stats.

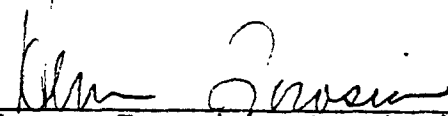
7/ Section 19.21, Stats.

On the basis of the foregoing, therefore, we have concluded that these secretaries may not be excluded from the bargaining unit as confidential employees.

Dated at Madison, Wisconsin this 17th day of October, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoorstra, Commissioner