

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case III
No. 19600 ME-1240
Decision No. 14177-A

Mr. Alan D. Manson, Executive Director, Northwest United Educators,
16 West John Street, Rice Lake, Wisconsin 54868
on behalf of the Petitioner.
Coe, Dalrymple, Heathman & Arnold, S.C., Attorneys at Law,
by Mr. Edward Coe, P. O. Box 192, Rice Lake, Wisconsin 54868
appearing on behalf of the Municipal Employer.

Northwest United Educators having filed a petition 1/ on January 21, 1980, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of certain employees of the Cooperative Educational Service Agency No. 4; and hearing on said petition having been conducted on March 4, 1980, at Barron, Wisconsin, by Stephen Pieroni, Hearing Officer; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

1. That Northwest United Educators, hereinafter referred to as NUE, is a labor organization representing employes for the purposes of collective bargaining, and has its offices at Rice Lake, Wisconsin.

2. That Cooperative Educational Service Agency No. 4, hereinafter referred to as CESA 4, is a municipal employer, and has its administrative offices at Cumberland, Wisconsin.

3. That following an election conducted by it the Wisconsin Employment Relations Commission certified NUE as the exclusive collective bargaining representative of all regular full-time and

1/ While on the face of the petition it appeared that the Petitioner was seeking an election, at the hearing thereon the Petitioner disclosed that it was seeking to accrete positions to an existing bargaining unit.

regular part-time non-professional employees in the employ of CESA 4, excluding Coordinator, supervisors, confidential and professional employees; 2/ and that in the proceeding leading to said election and certification NUE and CESA 4 agreed, among other things, that the positions of Office Manager/Secretary/Bookkeeper (then occupied by Irene Udelhofen) and the Bookkeeper (then occupied by Sheila Dietrich) were confidential positions; that however the parties could not agree as to the status of the Secretary to Director of Special Education, occupied by Joyce Moriak, in that CESA 4, contrary to NUE, contended that said position was also confidential; that therefore, prior to the election the parties agreed that Moriak's ballot could be challenged should Moriak present herself to vote; that Moriak appeared to vote and her ballot was challenged; that Moriak's ballot did not affect the results of the election and thereafter neither party requested the Commission to determine the employee status of the position occupied by Moriak.

4. That in the instant proceeding the parties agree that the position of Office Manager/Secretary/Bookkeeper, still occupied by Udelhofen is a confidential position; the NUE contends that the Bookkeeper and the Secretary to Director of Special Education, still occupied by Dietrich and Moriak, have never performed sufficient confidential duties to warrant their exclusion from the bargaining unit and that it agreed, prior to the election, to exclude the position of Bookkeeper from the unit on the claim of CESA 4 that Dietrich would perform confidential work; and the CESA 4 maintains that both Dietrich and Moriak are confidential employees.

5. That no question had been raised concerning NUE's majority representative status in the above-described bargaining unit, nor is there a question concerning the appropriateness of the bargaining unit.

6. That neither the Bookkeeper (Dietrich) nor the Secretary to the Special Education Director (Moriak) are exposed to more than a de minimus amount of confidential information regarding labor relations matters.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That since the positions of Bookkeeper and Secretary to the Special Education Director lack confidential status, the individuals occupying said positions are "municipal employees" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act and, therefore, said individuals are appropriately included in the bargaining unit described above.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

That the positions of Bookkeeper and Secretary to the Special

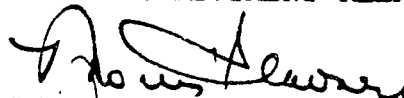
2/ Of 23 employees claimed eligible to vote, 15 cast ballots, 1 ballot was challenged, 11 ballots were cast in favor of NUE, while 3 ballots voted against NUE.

Education Director are hereby included in the collective bargaining unit consisting of all regular full-time and regular part-time non-professional employees in the employ of Cooperative Educational Service Agency No. 4, excluding Coordinator, supervisors, confidential employees and professional employees.

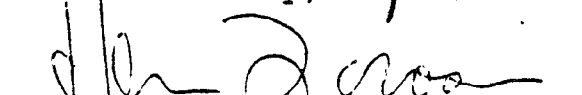
Given under our hands and seal at the City of Madison, Wisconsin this 11th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

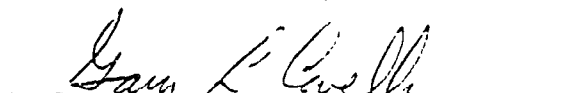
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

COOPERATIVE EDUCATIONAL SERVICE AGENCY NO. 4, Case III,
Decision No. 14177-A

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

BACKGROUND:

On February 4, 1976, the Commission certified that NUE had been selected by a majority of the eligible voting employees of CESA 4 to be the exclusive collective bargaining representative for the unit consisting of all regular full-time and regular part-time non-professional employees excluding Coordinator, supervisors, confidential and professional employees.

On January 21, 1980, NUE filed a petition with the Commission in which it requested the Commission to conduct a new representation election in the bargaining unit involved in the initial election. In said petition NUE indicated that "there was a question regarding the accretion of the bargaining unit."

At the hearing on the instant petition, the only issue which arose concerned the confidential status of the Bookkeeper (Dietrich and the Secretary to the Director of Special Education (Moriak). As noted in the Findings of Fact, the parties stipulated that the Secretary to the Coordinator (Udelhofen) should remain a confidential position.

In support of its argument that the positions of Bookkeeper and Secretary to the Special Education Director should remain confidential, CESA 4 contends that said positions were originally excluded by stipulation as confidential and their duties have not changed substantially since the establishment of the bargaining unit.

CESA 4 points out that the Bookkeeper is in physical charge of the financial records of CESA 4. In that capacity, she assists the Coordinator in the preparation of the budget and assists in costing out salary and fringe benefit proposals. The secretary to the Special Education Director prepares evaluation reports on professional employees and types inter-office memos which on occasion may contain confidential information relating to labor relations. In addition, said secretary has access to all the information which crosses the desk of the director of Special Education.

Contrary to CESA 4, NUE contends that the stipulation to exclude the two positions in question was for the purpose of having an expedited election and was in the context of a unit which was approximately twice as large as presently exists. The present duties of the Bookkeeper, with respect to the costing of salary proposals, could be easily performed by either the Coordinator or the full-time confidential secretary (Udelhofen). Since CESA 4 could not cite one occasion as to when the Secretary to the Director of Special Education performed confidential work relating to labor relations, NUE argues that said position cannot realistically be considered a confidential position.

DISCUSSION:

The Commission has consistently held that in order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, such an employee 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

purpose it must be the type of information that deals with (1) the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and, (2) is not available to the bargaining representative or its agents. 3/

The fact that an employee has access to, and in fact types, evaluation of employees, particularly where those evaluations are provided to the employee as typed, is not an indicia of confidential status in the sense contemplated by the Municipal Employment Relations Act. 4/

Here, the Secretary to the Director of Special Education works in an office where there is only one professional employee other than the Director and no other non-professional employees. CESA 4's arguments relative to the Secretary's access to confidential data of job applicants, employee evaluations and infrequent inter-office memoranda, simply do not provide a basis for exclusion of the position from the bargaining unit. This conclusion is buttressed by the fact that the full-time Secretary to the Coordinator could readily type any confidential memoranda relating to labor relations which may occur from time to time.

The other position in dispute is the Bookkeeper. During the course of the hearing on the original election petition (October 8, 1975), CESA 4 indicated that the Bookkeeper would be used interchangeably with the confidential Secretary to the Coordinator and as such would have access to confidential information relating to labor relations. This has not occurred. The record is clear that the only work of a confidential nature, which is performed by the Bookkeeper, is costing of the employer's salary and fringe benefit proposals during collective bargaining. However, the amount of time involved and the degree of difficulty of this task appears to be minimal. Indeed, the Coordinator testified that he was capable of making said calculations.

Hence, the record clearly demonstrates that the Bookkeeper performs, at most, a de minimus amount of confidential calculations. A de minimus exposure to confidential labor relations materials is insufficient grounds for excluding an employee from a bargaining unit, particularly when there is another confidential employee available to do the work. 5/

3/ Wisconsin Heights School District (17182) 8/79; City of Menasha (14523) 4/76; Juneau County (12814-A) 8/78.

4/ Wisconsin Heights School District, supra.; School District of Drummond (16614) 10/78.

5/ Wisconsin Heights School District, supra.; Sheboygan Board of Education (10488) 8/71; Cudahy Board of Education (12087) 8/73.

Here, any confidential calculations performed by the Bookkeeper could be reassigned to the full-time confidential secretary, or performed by the Coordinator who testified that he was capable of making said calculations.

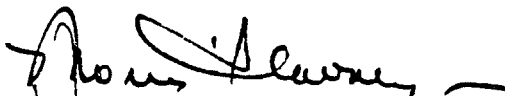
In the election leading to the certification, NUE agreed that the two positions (Office Manager/Secretary/Bookkeeper and Bookkeeper) both included confidential duties, in order to expedite the conduct of that election. Thus the Commission made no determination as to the "confidential" status of either position. Under such circumstances NUE should not now be barred from raising an issue as the alleged confidential status of one of those two positions. Furthermore had the individuals occupying said two positions voted in the original election, their votes would not have changed the results of the election.


Since the only issue raised by the instant petition is whether certain employees are performing confidential duties, it is unnecessary to change the description of the previously certified bargaining unit. Likewise, there is no issue regarding the representative status of NUE, and therefore no useful purpose would be served by directing a representation election among the bargaining unit employees. Thus, the instant petition has been treated as a request for unit clarification and the two positions in dispute have been included in the previously certified bargaining unit. This decision is in no way intended to set a precedent for unit clarification petition seeking to include positions in a unit where such positions were previously specifically excluded by position title, other than supervisory and confidential positions.


Dated at Madison, Wisconsin this 11th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner