

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LOCAL NO. 727-C, WCCME, AFSCME, AFL-CIO
Involving Certain Employees of
MENOMONIE SCHOOL DISTRICT

Case 15
No. 59221
ME(u/c)-1014

Decision No. 14738-C

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 318 Hampton Court, Altoona, Wisconsin 54720, appearing on behalf of Local No. 727-C, WCCME, AFSCME, AFL-CIO.

Dr. Steven Ashmore, Assistant Superintendent for Human Resources, Menomonie School District, 718 North Broadway Street, Menomonie, Wisconsin 54751 and Weld Riley Prens & Ricci, S.C., by **Attorney Stephen L. Weld**, and **Tom Rusboldt**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702, appearing on behalf of the Menomonie School District.

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

On September 13, 2000, Local No. 727-C, WCCME, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of Menomonie School District employees by including the Payroll Coordinator. The District argues that the Payroll Coordinate is a confidential employee who should continue to be excluded from the existing unit.

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Examiner John R. Emery, a member of the Commission's staff, conducted a hearing on February 8, 2001, in Menomonie, Wisconsin. The parties filed briefs by April 23, 2001, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Menomonie School District, herein the District, is a municipal employer with offices at 718 North Broadway Street, Menomonie, Wisconsin 54751.

2. Local No. 727-C, WCCME, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at 318 Hampton Court, Altoona, Wisconsin 54720.

3. At all times material, the Union has been the certified exclusive bargaining representative for a unit described in the parties' 1998-2001 collective bargaining agreement as:

. . . all regular full-time and regular part-time clerical, custodial and maintenance employees, and food service, excluding all supervisors, managers.

4. Prior to May, 2000, the District maintained a bargaining unit position of Payroll Clerk, which was held by Dianna Hatli. The job description for that position was as follows:

TITLE: Payroll Clerk

NUMBER OF HOURS: 2080

REPORTS TO: Business Manager

QUALIFICATIONS: Demonstrated competency in use of all office machines to include RS6000 computer and Skyward government payroll software. Knowledge of federal and state government payroll regulations. Ability to maintain absolute confidentiality, possess interpersonal relationships

that allow for payroll accuracy, provide a customer-first focus, carry out oral and written instructions, exercise prudent judgment, and work extra time as workload dictates.

JOB GOAL: To efficiently and accurately process district biweekly payroll in excess of 550 employees in a customer-first manner.

EXAMPLES OF DUTIES:

(Essential functions of the job are identified by an asterisk preceding the example. The identification of the essential function is NOT exhaustive and may be supplemented as necessary.)

***Prepare all payroll documentation for entry into computer software to include:**

1. Verify hours worked on time cards with work schedules, policies, and collective bargaining agreements.
2. Prepare substitute teacher and regular staff extended time vouchers for payment from staff absence reports.
3. Create payment vouchers for gameworkers and coaches.
4. Set up new employees in payroll software.
5. Enter any payroll changes to base pay, deductions, and fringe benefits into payroll software.
6. Sort information into pay code categories for easy data entry.
7. Track non-retirement hours worked to determine when eligible for retirement inclusion.

***Enter payroll documentation results into computer software, balance payroll, and distribute compensation to employees to include:**

8. Enter biweekly data in pay code categories for employee payment.
9. Submit payroll vouchers and payroll changes for approval prior to entry.
10. Balance payroll outputs against inputs in pay code categories with Business Manager.
11. Print and distribute checks.
12. Update all salary expense accounts and cast accounts to determine budgetary cash flows.
13. Maintain payroll files to include:
 - a. payroll changes file,
 - b. check register file,
 - c. check summary for budgetary,

- d. labor/distribution file for allocating expenses to proper budgetary accounts,
- e. payroll history of gross payroll by salary, fringe benefits, and deductions,
- f. support file for each payroll comprised of all documentation.

***Prepare payroll related reports to include:**

- 14. Update salary/fringe benefit costs by employee group and create a report of expenditures.
- 15. Create a monthly Employee Transaction Report of any employee changes and report to Wisconsin Retirement Fund.
- 16. Prepare quarterly gross earnings unemployment compensation report.
- 17. Verify wages for weekly unemployment compensation reports and shall all reports with Assistant to the Superintendent.
- 18. Create payroll reports as needed (ie: time-off reports, vacation reports, etc.).
- 19. Prepare W-2 data for transfer to computer software administrator for creating W-2 reports for employees and prepare the W-2 reports for distribution.
- 20. Complete written and telephone verification requests for employee wages and length of employment.
- 21. Prepare payroll reports of benefits and deductions for the budgetary process prior to check printing so that deduction payments can be made to annuity companies, garnishments, payroll taxes, FICA, and retirement.
- 22. Annual DPI Fall Staff Report.

***Provide payroll-related and general office support functions to include:**

- 23. Coordinate employee/agency annuity requests.
- 24. Administer the flexible benefits program to include;
 - a. registration for flexible benefits,
 - b. enter flexible benefits amounts into the employee pay codes as deductions,
 - c. prepare an employee flexible benefit deduction report for budgetary to transfer payment to flexible benefits administrator,
 - d. receive an on-going accounting/use history for each employee participating in flexible benefits.
- 25. Share Administrative Service Center receptionist duties.
- 26. Provide payroll orientation to all new employees and provide direction for completion of necessary forms.
- 27. Research and answer payroll-related questions for customers.
- 28. File payroll-related documents for personnel files with secretary to the Assistant to the Superintendent or personnel secretary.

***Perform all other duties as directed.**

The Payroll Clerk had access to employee personnel files for payroll related purposes, but did not attend meetings regarding collective bargaining or contract administration.

5. In May, 2000, the District created the position of Payroll Coordinator as a non-bargaining unit position to replace the position of Payroll Clerk. The position is salaried and is paid the equivalent to an hourly wage of \$16.51. The previous wage of the Payroll Clerk had been \$12.03 per hour. The Payroll Coordinator is supervised by the District's Business Manager, currently Jeffrey Hoegger. Hatli continued in the new position until July, 2000, when she took the position of Accounting Coordinator, which is also a non-bargaining unit position. The job description for the Payroll Coordinator position is identical to that of the Payroll Clerk in most respects, but does include the following additional duties:

. . .

- 28. Prepare salary negotiation reports through computer software programs.
- 29. Maintain district costing sheets.
- 30. Act as systems administrator for electronic timekeeping system. Coordinate with technical staff to maintain, update, and trouble shoot payroll software.

. . .

6. In July, 2000, Bridget Schroeder became the Payroll Coordinator. She has been employed by the District since 1996 and has previously held bargaining unit positions as Resource Secretary, Middle School Secretary and Accounts Payable Clerk. Prior to taking the Payroll Coordinator position, Schroeder also served as President of Local No. 727-C.

Schroeder participates as a member of the District bargaining team in negotiations with the District's three bargaining units, which are affiliated either with AFSCME or West Central Education Association. In this capacity, she attends meetings with the school board, District administrators and bargaining unit employees. At the present time, the District engages in consensus bargaining with its represented employees in the negotiation of contracts. The AFSCME unit typically bargains on a three-year cycle, whereas the WCEA units bargain on a two-year cycle. The District addresses the wages and benefits of its unrepresented employees annually.

In its consensus bargaining process, the District's bargaining team meets in open session with the union's bargaining team and all issues raised by the parties are addressed collectively. The parties do not break into individual caucuses during negotiating sessions to confer, as is typically the case in a traditional bargaining model, and all pertinent information is shared with all team members from both sides. However, prior to the commencement of the consensus process, the management team meets to determine the issues it wishes to raise and to discuss the feasibility of various proposals.

The Payroll Coordinator also participates in or is aware of management discussions regarding how the existing contract should be administered as to matters such as employee layoffs.

The Coordinator's confidential labor relations duties cannot be performed by other non-bargaining unit District employees.

7. Bridget Schroeder has sufficient access to, knowledge of, and participation in confidential matters relating to labor relations to be a confidential employee.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. Bridget Schroeder is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is not a municipal employee within the meaning of Sec. 111. 70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Payroll Coordinator shall continue to be excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of October, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MENOMONIE SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Union

The only significant difference between the duties of the Payroll Coordinator and the former Payroll Clerk is the “preparation of salary negotiation reports” function referenced at point 28 of the job description. The Payroll Clerk had identical access and responsibilities regarding payroll records and personnel files.

The Payroll Coordinator is not involved with confidential matters relating to labor relations to a significant degree. In essence, less than 6% of her time is spent dealing with labor negotiations. Furthermore, all three of the District’s bargaining units engage in consensus bargaining in their contract negotiations. In this process, the parties do not caucus separately and all information is available to all participants, including the bargaining representative. Therefore, strictly speaking, there is no “confidential” information and the Payroll Coordinator cannot be a confidential employee.

It is also the case that the labor related duties of the Payroll Coordinator were previously performed by the Business Manager. Further, the Accounting Coordinator, another confidential position as also capable of performing these tasks, eliminating the need for an additional confidential employee. For all the foregoing reasons, the Payroll Coordinator should be included in the bargaining unit.

The District

The Payroll Coordinator position is confidential and should be excluded from the bargaining unit. The employee aids in developing bargaining strategy, provides costing data for negotiations and has access to confidential information contained in personnel files. The Commission has consistently held that employees with job functions similar to, or less confidential than, those of the Payroll Coordinator are confidential employees and are not be included in a bargaining unit. Commission precedent dictates, therefore, that the Payroll Coordinator should be excluded as well.

Further, the Payroll Coordinator’s confidential duties are not *de minimus* in nature and could not readily be handled by another employee. Costing is a function that was previously done by the Executive Assistant in the Human Resources Department and was later passed to

the Business Manager, Accounting Coordinator and Network Coordinator – all non-bargaining unit employees. Due to restructuring and increased workloads, none of these employees is capable of handling the Payroll Coordinator's confidential duties, as well. The Payroll Coordinator is the only employee who can perform these functions and, therefore, the position should be excluded from the bargaining unit.

DISCUSSION

For an employee to be held confidential, such employee must have sufficient access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must: (a) deal 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 (b) be information which is not available to the bargaining representative or its agents. 1/

1/ *DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88)*

While a *de minimus* exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 2/ we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. 3/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work 4/ and similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption of the employer's organization. 5/

2/ *BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87)*

3/ *CESA AGENCY NO. 9, DEC. NO. 23863 (WERC, 12/86)*

4/ *TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85)*

5/ *HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88)*

The history of this position and its antecedents with respect to inclusion in the bargaining unit is not uniform. The position of Payroll Clerk was originally included in the bargaining unit. In 1992, however, the position was, by mutual consent, classified as

confidential and removed from the bargaining unit (Union Ex. #1). The reason for this move is unclear, but it may have been tied to the inclusion of other positions in the bargaining unit (Tr. 66-67). In 1994, the position was offered to Dianna Hatli on an interim basis, at which time it was still a non-bargaining unit position (Tr. 43-44, Jt. Ex. #3). In February, 1995, the position was returned to the bargaining unit and was eventually filled by Hatli on a permanent basis (Tr. 45-46). At the time the position was placed back in the bargaining unit, the job description was amended to remove “provide salary negotiations support through software reports” as a job duty, but remained identical in all other material respects (Jt. Ex. #3, Jt. Ex. #5). Hatli testified that while serving as Payroll Clerk, she occasionally found it difficult to reconcile her union loyalties with maintaining confidentiality regarding management labor relations information to which she was privy. By way of example, Hatli cited information regarding prospective position cuts and knowledge regarding management decisions that affected groups of employees differently (Tr. 49-51). The position remained in the bargaining unit until it was redesigned in May 2000 and retitled Payroll Coordinator. At that time the job description was again amended to include the following duties:

28. Prepare salary negotiations reports through computer software programs.
29. Maintain District costing sheets.
30. Act as systems administrator for electronic timekeeping system. Coordinate with technical staff to maintain, update, and trouble shoot payroll software.

Essentially, therefore, the previous salary negotiation support function was returned to the position, and the costing and timekeeping oversight functions were added.

The Union argues that the Coordinator is not confidential employee on a number of grounds. It first contends that the Coordinator spends a *de minimus* first amount of time on labor relations matters. In support of this argument, the Union postulates that less than 6% of the Payroll Coordinator’s time is spent on labor matters.

The Coordinator’s costing duties make her a critical part of the District’s management team both when contract are negotiated and when an existing contract is administered. While these duties do not take up a significant amount of the Coordinator’s time, their importance makes them much more than a *de minimus* part of her job. Thus, we reject the Union argument.

The Union next argues that the labor relations information to which the Coordinator is privy is not confidential inasmuch as the parties engage in consensus bargaining wherein the parties freely exchange all relevant information in their negotiation process.

While the sharing of relevant information is an essential component of consensus bargaining, the fact that the District engages in this form of collective bargaining does not divest its negotiators of the confidential status they would otherwise possess in a traditional collective bargaining. As reflected in this record, prior to the commencement of the consensus

process, the District management team meets separately to discuss the issues it may wish to raise and the ramifications that differing resolutions of those issues may have for the District. The Coordinator is privy to those discussions and provides the financial information that is considered by the management team during those discussions. The Union is not privy to information/issues that management considered but elected not to raise as a result of these confidential discussions. Further, once a contract is bargained, the Coordinator is involved in or privy to management discussions regarding how the contract should be administered. The Union is not aware of this confidential labor relations information. As reflected in Hatli's testimony, knowledge of this type is not compatible with inclusion in the bargaining unit.

The Union lastly contends that the duties of the Payroll Coordinator, to the extent they are confidential, could be handled by either the Business Manager or the Accounting Coordinator. The Business Manager, Jeffrey Hoegger, testified that he is not trained to use the software on which the projections and payroll information are developed by the Payroll Coordinator. The Accounting Coordinator has the skills to perform the confidential functions as the Payroll Coordinator but does not have time to perform these confidential duties on more than an emergency basis. Thus, we reject this Union argument.

For all the foregoing reasons, we conclude that the Payroll Coordinator is a confidential employee and should appropriately continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin this 23rd day of October, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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