

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ONALASKA EDUCATION ASSOCIATION, a/w
NATIONAL EDUCATION ASSOCIATION,
WISCONSIN EDUCATION ASSOCIATION COUNCIL
COULEE REGION UNITED EDUCATORS

Case II
No. 20814 ME-1363
Decision No. 15339

Involving Certain Employees of
THE SCHOOL DISTRICT OF ONALASKA

Appearances:

Mr. Thomas Bina, Executive Director, Coulee Region United Educators,
for the Petitioner.

Mr. Ray A. Sundet, Onalaska City Attorney, for the School District.

DIRECTION OF ELECTION

Onalaska Education Association, a/w National Education Association, Wisconsin Education Association Council, Coulee Region United Educators, hereinafter referred to as the Petitioner, having, on September 14, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the School District of Onalaska, to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing 1/ on such petition having been held at Onalaska, Wisconsin, on November 9, 1976, Stephen Schoenfeld, Hearing Examiner, being present; and both parties having filed briefs; and the Commission having considered the evidence and being fully advised in the premises, and being satisfied that a question has arisen concerning representation of certain employees of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 30 days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time teachers aides, food service employees and office personnel, but excluding supervisory, managerial and confidential employees, who were employed by the School District of Onalaska on March 9, 1977, except such employees as may prior to the election quit their employment or be discharged for cause, for

1/ The parties waived, in writing, the preparation of a transcript of the proceeding and the provisions of Section 227.09(4) of the Wisconsin Statutes.

the purpose of determining whether such employees desire to be represented by Onalaska Education Association, a/w National Education Association, Wisconsin Education Association Council, Coulee Region United Educators, for the purposes of collective bargaining with the School District of Onalaska.

Given under our hands and seal at the
City of Madison, Wisconsin this 9th
day of March, 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 DIRECTION OF ELECTION

Pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, Onalaska Education Association, a/w National Education Association, Wisconsin Education Association Council, Coulee Region United Educators, petitioned the Wisconsin Employment Relations Commission to conduct a representation election in an alleged appropriate unit consisting of "all teacher aides, food service employees and office personnel exclusive of supervisory personnel." During the course of the hearing, the parties stipulated and agreed that the unit consisting of teachers aides, food service employees and office personnel was appropriate. The parties also agreed that Ms. Sue Morgan, the Food Services Manager, should be excluded from the unit on the basis that she is a supervisory employee. Furthermore, the parties agreed that Ms. Helen Bolterman, the District Administrator's Executive Secretary, should be excluded from the unit on the basis of her confidential duties.

The District maintains, contrary to the Petitioner, that the bookkeeper position, presently occupied by Ms. Donna Gaul, and the business office secretarial position, presently occupied by Ms. Nancy O'Connell, are confidential employee positions and, consequently, they should be excluded from the collective bargaining unit.

Ms. O'Connell's primary duties include the preparation of purchase orders, sorting mail, filing materials, typing letters, stamping mail, answering the phone, and receiving people who come to the business office. Ms. O'Connell has access to the District's budget information during the negotiations and types the minutes of the negotiation sessions which are disseminated to both the school board members and the members of the association's bargaining team. She is not present when management discusses its negotiation strategy. She compiles information concerning teachers' salaries in other school districts; however, she is not apprised of the resulting positions taken by the District with respect to such information. Furthermore, said information is also available to the association. Ms. O'Connell has access to personnel files, however, the employees can examine their personnel file upon request. A portion of Ms. Helen Bolterman's work is done by Ms. O'Connell, yet, the record indicates that, on the average, no more than ten per cent of Ms. O'Connell's time is spent on, what the District characterizes as, confidential labor relations matters.

Ms. Donna Gaul is the bookkeeper for the District. Her basic duties include the running of vouchers through the computer, acting as payroll clerk, and computing the costs of both the Association's and District's bargaining proposals. She has been asked to compile data concerning the utilization of personal and emergency days by the District's employees, and said information is used by the District in formulating its bargaining strategy. While the District characterized this information as "sensitive", the evidence indicates that the District would "reluctantly" provide this data to the Association if so asked. Ms. Gaul does not attend negotiation meetings, and although she can infer what the District's position may be based on the information she compiles, she usually is not apprised of the District's specific bargaining posture and she has no input into the formulation of bargaining strategy. Ms. Gaul is cognizant of the amount the District has budgeted for salaries and does have access to all personnel files, which information, as indicated earlier, is also available to the respective employees. Ms. Gaul spends no more than ten per cent of her time on confidential labor relations matters.

It has previously been held by the Commission that an employee spending a de minimis amount of time on confidential labor relations matters, need not be excluded from the collective bargaining unit. 2/ Messrs. Roland Peterson, the Business Manager of the District, and Claude Deck, the District Administrator, testified that both Ms. Gaul and Ms. O'Connell spend no more than ten per cent of their time on "confidential labor relations matters." The substantial part of Gaul's and O'Connell's duties clearly are not of a confidential nature, and the occasional assignment of confidential duties, 3/ and access to personnel and payroll records 4/ are not grounds for concluding that said employees should be excluded from the collective bargaining unit as having a confidential status. 5/

Although it is true that Ms. O'Connell's and Ms. Gaul's work stations are in close proximity to that of Ms. Bolterman and the managerial staff, the Commission has previously held that "the physical proximity of confidential and non-confidential employees, or the effect of a finding or confidential status or non-confidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employees are confidential employees." 6/

The District avers that there is no way to prohibit access to the confidential files relating to bargaining data and information from the employees in question. Bolterman, however has the key to these files, and inasmuch as these files are physically located in her office, she can adequately restrict Gaul's and O'Connell's access to same.

The nature and frequency of the duties performed by Ms. Gaul and Ms. O'Connell convinces the Commission that said individuals are not confidential employees, are properly included in the unit and are eligible to vote.

Dated at Madison, Wisconsin this 9th day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

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- 2/ Sheboygan Board of Education (10488) 8/71; Eau Claire Public Library (10789) 2/72. Adams Friendship Jt. School Dist. No. 1, (13478) 3/75.
- 3/ Marshfield Joint School District No. 1 (14575) 4/76.
- 4/ Juneau County (Pleasant Acres Infirmary) (12814) 5/74; Menomonee Falls Joint School District No. 1 (11669) 3/73; City of Menasha (14523) 4/76.
- 5/ The District can, of course, subsequently petition the Commission for a unit clarification if either O'Connell's or Gaul's duties and responsibilities substantially change.
- 6/ Marshfield Joint School District No. 1 (14575-A) 7/76.