

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO and affiliated
LOCAL 133

Case XXVII
No. 21328 ME-1409
Decision No. 15855

Involving Certain Employees of

CITY OF OAK CREEK

Appearances:

Mr. Erv Horak, Staff Representative, District Council 48, AFSCME,
AFL-CIO and its affiliated Local 133, appearing on behalf of
the Petitioner.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Mark L. Olson,
appearing on behalf of the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 133, hereinafter referred to as the Petitioner, having filed a petition with the Wisconsin Employment Relations Commission to clarify a certified collective bargaining unit consisting of certain clerical employees of the City of Oak Creek, hereinafter referred to as the Municipal Employer, to include the position of Clerk-Dispatcher therein; and a hearing on the matter having been conducted on April 6, 1977, at Milwaukee, Wisconsin, Dennis P. McGilligan, Examiner, having been present; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises makes and issues the following

ORDER

That the position of Clerk-Dispatcher assigned to the Fire Department of the City of Oak Creek is properly included in the certified collective bargaining unit consisting of all full-time office and clerical employees, civil engineers and engineering technicians in the employ of the City of Oak Creek, excluding all other employees, confidential employees, and supervisors.

Given under our hands and seal at the
City of Madison, Wisconsin this 3rd
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

No. 15855

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The Union, which is the certified bargaining representative for employees in a unit which includes clerical employees in the employ of the City, initiated the instant proceeding by the filing of a petition to clarify said unit by including the position of Clerk-Dispatcher, assigned to the Fire Department, in the unit represented by it.

Background

In September, 1976, following an earlier request by Fire Chief Manderle, the City created a Clerk-Dispatcher position to be employed in the Fire Department. The job description of said position described the duties and responsibilities thereof as follows:

"Under the supervision of the Fire Chief, to perform routine clerical work with a variety of duties; to file and operate office machines; to post data and keep standard office records; to type reports, statements, letters, charts and other material from copy and rough draft; to operate radio and telephone networks; to receive and transmit calls accurately; to have complete knowledge of the City's streets and boundaries; and to perform such other duties as may be assigned by the Fire Chief."

The position was filled by Veronica Lazarski in February, 1977. Prior to her employment there was no one individual employee performing clerical duties in the Department on a regular basis, and written material pertaining to employee reprimands, evaluations, and answers to employee grievances were prepared by the Chief in longhand, or were typed by the Chief's wife at home. Lazarski spends a majority of her time in typing duties, and a minimal amount of time in dispatching. Her duties include the typing of employee reprimands and evaluations, as well as the Chief's responses to grievances. She does have access to employee personnel files.

POSITION OF THE PARTIES:

The City claims that the position of Clerk-Dispatcher must be excluded from the aforementioned bargaining unit as confidential on the basis that the job duties and responsibilities of the position require that the Commission find her to be a confidential employee. It contends that Lazarski performs, or will perform, the following confidential duties: typing of employee evaluation forms; typing of employee reprimands; maintenance of personnel files; attendance at grievance meetings as well as typing of answers to employee grievances; typing of all correspondence of the Fire Chief regarding the collective bargaining process; gathering and typing of economic and costing data with respect to collective bargaining between the City and the Fire Fighters Association and attendance at meetings between the Fire Chief and the City's Fire and Police Commission, for purposes of keeping a record during which time various personnel matters, including management strategy with regard to collective bargaining, are discussed.

The Union basically maintains that the Clerk-Dispatcher performs duties and has responsibilities which require that she be included in the unit involved herein.

In this regard the Union rejects the Municipal Employer's contention that the Clerk-Dispatcher position is confidential and therefore should be excluded from said bargaining unit. To the contrary, the Union contends that Lazarski has at best a de minimus amount of confidential

duties and that such duties could be performed by other confidential clerical employees of the City. The Union further argues that, although Lazarski types grievance answers and reprimands, she is not actually privy to decisions of management with respect to labor relations. The Union also notes that although Lazarski types employee evaluation forms said reports are readily available to the Union. Finally, the Union maintains that Lazarski's relationship to the collective bargaining process is negligible and hypothetical.

DISCUSSION:

It should be noted, despite the fact that the job description of the position involved does not set forth the performance of any confidential duties, the City contends that Lazarski, in addition to the duties described above, maintains personnel files, types all correspondence of the Fire Chief with respect to collective bargaining, gathers economic and costing data to be used in collective bargaining between the City and Association with respect to the firefighters, and will attend meetings between the Fire Chief and the City's Fire and Police Commission for the purposes of maintaining a record of various personnel matters, with regard to strategy in collective bargaining.

In the past other confidential clerical employees have performed, or should be available for the performance of, the alleged duties relating to attendance at meetings between the Chief and Fire and Police Commission, as well as with respect to the strategy of the City in bargaining with the firefighters association. The City did not establish that any present confidential employee was unavailable for those purposes. Further, the typing of responses to grievances and evaluations does not convert Lazarski into a confidential employee since the Union, as a collective bargaining representative, as well as the employee involved, have a right to grievances responses as well as employee evaluations.

We are therefore satisfied that the position involved is not a confidential position. The fact that Lazarski has access to personnel files does not convert the position of a confidential position. 1/ Therefore, the position herein is appropriately included in the collective bargaining unit.

Dated at Madison, Wisconsin this 3rd day of October, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavner
Morris Slavner, Chairman
Herman Torosian
Herman Torosian, Commissioner
Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

1/ Milwaukee Co. (11382-B) 9/74; Juneau Co. (12814) 5/74.