

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

GREEN LAKE COUNTY

Involving Certain Employes of

GREEN LAKE COUNTY

Case 12
No. 55598
ME-908

Decision No. 16050-I

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 639 West Scott Street, Fond du Lac, Wisconsin, appearing on behalf of Green Lake County Courthouse Employees, Local 514C, AFSCME, AFL-CIO.

Attorney John B. Selsing, Corporation Counsel, 120 East Huron Street, Berlin, Wisconsin, appearing on behalf of Green Lake County.

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

On October 6, 1997, Green Lake County filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing bargaining unit by excluding the Lead Secretary, Human Services Department, as a confidential employee. Green Lake County Courthouse Employees, Local 514C, AFSCME, AFL-CIO, the exclusive bargaining representative for the affected unit, opposed the petition. The petition was misplaced for an extended period of time.

No. 16050-I

Hearing in the matter was ultimately held before Examiner Stuart Levitan, a member of the Commission's staff, in Green Lake, Wisconsin on February 1, 1999. A stenographic transcript was available to the parties by February 12, 1999. The County and Wisconsin Council 40 filed written arguments by February 26, 1999 and March 16, 1999, respectively.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Green Lake County, hereafter the County, is a municipal employer having its principal offices at 429 Hill Street, Green Lake, Wisconsin.

2. Green Lake County Courthouse Employees, Local 514C, AFSCME, AFL-CIO, hereafter the Union, is a labor organization with offices at 639 West Scott Street, Fond du Lac, Wisconsin.

3. At all times material hereto, the Union has been the exclusive representative of a bargaining unit of County employees described in the parties' 1998-2000 contract as:

“all regular full time, regular full-time part-time and regular part time Employees of Green Lake County excluding elected officials, supervisory and confidential Employees, professional Employees such as nurses, social workers, instructors, teachers and therapists, law enforcement Employees and the organized Highway Department Employees.”

4. Among its myriad responsibilities, the County maintains and operates a Human Services Department (HSD), the subunits of which include the Social Work Division, the Mental Health Division, the Nursing Department and the Commission on Aging. A Human Services Board (HSB), consisting of both elected and appointed officials, serves as the governing body for the HSD. The main office of the HSD is located in Green Lake, about one-half mile from the County Courthouse. The HSD also operates a sheltered workshop known as Fox River Industries located in Berlin, about 10 miles from Green Lake. The HSD consists of an administrative unit, public health unit, economic support unit, clinical services unit, and includes six secretarial positions included in the bargaining unit described in Finding of Fact 3. At the time of hearing, the HSD Director and Deputy Director were the only non-represented employees of the Department. The Lead Secretary in the HSD is the only Lead Secretary in the County workforce.

5. The County hired Karen Davis as a Secretary 2 in 1988 in the precursor to the HSD, the former Social Services Department. Davis and the County sought the Union's approval in 1993 to exclude the position as confidential; the Union declined. Effective January 1994, and through the time of hearing, Davis served as Lead Secretary in the HSD, with the following position description:

GREEN LAKE COUNTY HUMAN SERVICES DEPARTMENT

TITLE: LEAD SECRETARY

**APPROXIMATE NUMBER OF EMPLOYEES IN CLASSIFICATION
OR WITH SAME TITLE:** 1

REPORTS TO: Director/Deputy Director

PURPOSE OF POSITION: To oversee all secretarial operations of the agency. Coordinates clerical/secretarial positions in the Administrative Unit including work assignments and transcription of confidential information.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions:

About 30% of the time is spent recording minutes and transcribing (includes confidential information) for the Human Services Board and Advisory Committees and the Director/Deputy Director.

About 20% of the time is spent planning, organizing, and assigning staff to complete clerical functions. This includes supervision and input in evaluating of secretarial staff within the Administrative Unit.

10% of the time is responsible for maintenance and upgrading of computer software and software system.

(10%) responsible for instructing departmental personnel on use of computers and related equipment.

(5%) maintains inventory of equipment.

(5%) of the time oversees preparation of vouchers to Human Services Board.

(5%) maintains departmental personnel records.

(5%) assists management in budget preparation.

The remaining time is spent reproducing copies of materials requested by other agencies or answering questions for individuals regarding supplies as well as attending and participating in Administrative Unit meetings, and doing special projects.

B. Marginal or Non-Essential Functions: None.

PHYSICAL DEMANDS OF THE ESSENTIAL FUNCTIONS: Over 70% of the time is spent doing low, medium and high fingering, ie, typing, and/or writing, sitting, talking, hearing, and using near vision. About 15% of the time may be spent walking, reaching, and using low handling, ie. Picking up files, etc. Another 10% of the time may be spent standing, stooping, kneeling, crouching, bending or twisting, using low or medium lifting, low or medium carrying, low pushing and medium handling. In unusual or non-routing situations, it may be required to crawl, run, grapple, climb, feel, use far vision, use high lifting, high carrying, medium or high pushing or pulling, and high handling.

WORKING CONDITIONS WHILE PERFORMING ESSENTIAL FUNCTIONS: Nearly 100% of the work is done inside the Human Services Center building.

EQUIPMENT USED TO PERFORM ESSENTIAL FUNCTIONS: Typewriter, calculator, copying machine, computer terminal, fax machine, printing equipment, telephone, transcriber, and shredder.

QUALIFICATIONS NEEDED (EDUCATIONAL SKILLS): At minimum, a high school diploma is required for this position. Basic every day living skills, the ability to understand, follow and provide directions, reading, writing, adding and subtracting if necessary. Additionally, it is important to have necessary knowledge of office terminology, procedures and equipment as well as business, arithmetic and English. Some knowledge of bookkeeping, ability to type and transcribe dictation at a high rate of speed. Additional knowledge of using WordPerfect and other data processing programs would be helpful to perform the duties of this position. This includes computer programming to perform requests for budget preparation, forms, etc. Lastly, the person in this position will be required to handle confidential information in a professional manner.

This position description has been prepared to assist in defining job responsibilities, physical demands, working conditions, and needed skills. It is not intended as a complete list of job duties, responsibilities and/or essential functions. This description is not intended to limit or modify the rights of any supervisor to assign, direct and control the work of employees under supervision. The county retains and reserves any and all rights to change, modify, amend, add to or delete, from any section of this document as it deems, in its' judgement, to be proper.

6. Davis' duties include taking, preparing, distributing and storing under lock the minutes of the closed meetings of the Human Services Board and its Personnel Committee, which include discussions of personnel issues such as evaluations, discipline, grievances, probationary decisions and collective bargaining. Davis prepares and receives all correspondence from and to the HSD, including correspondence for HSD officials to send to the Corporation Counsel regarding collective bargaining. Davis types most of the personnel evaluations, and maintains a locked file of duplicate personnel records.

In June 1994, Davis typed a four page draft of issues which the HSD management wished to address in collective bargaining, including management rights, posting, bumping, discipline, and other matters, which document was submitted to the County Personnel Committee for its consideration in collective bargaining.

7. The lead County official is the County Clerk/Administrative Coordinator, who is assisted by one confidential Administrative Assistant. The only other confidential position at the time of hearing was an Administrative Assistant in the Sheriff's Department. The County does not employ a Human Resources or Personnel Director, but does employ a Corporation Counsel.

8. The County employs Florence Sue Lemke, a member of the bargaining unit described in Finding of Fact 3 and designated Deputy County Clerk. Two or three times a year, when the confidential Administrative Assistant is unavailable, Lemke takes minutes of the County's Personnel and Finance Committee, but is excused when the Committee goes into closed session. Lemke also takes the minutes of the Law Enforcement Committee in the absence of its regular confidential Administrative Assistant, and again, is excused if the Committee goes into closed session.

9. Davis has sufficient access to and knowledge of confidential matters relating to labor relations so as to be deemed a confidential employee.

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

CONCLUSION OF LAW

The Lead Secretary, Green Lake County Human Services Department, is a confidential employe within the meaning of Sec. 111.70(1)(i), Stats. and therefore is not a municipal employe 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 hereby makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Lead Secretary, Human Services Department, is hereby excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 24th day of May, 1999.

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

GREEN LAKE COUNTY

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

POSITIONS OF THE PARTIES

In support of its contention that the subject position is now a confidential employee, the County notes the number of closed meetings the incumbent attended and took minutes for, including meetings for closed session discussions regarding strategies for collective bargaining, employee evaluations and discipline. The incumbent has also prepared and had access to confidential correspondence between the County and outside legal counsel reflecting information relating to labor relations which is not shared with the Union. The County further notes that no other confidential secretary exists in the Human Services building to perform these tasks. The County concludes that all of the testimony, including that of the Union's witness, supports the conclusion that the incumbent's duties are consistent with a determination of confidential status, and that the position should therefore be removed from the bargaining unit.

In support of its contention that the subject position remains a municipal employee, the Union does not deny that the position of Lead Secretary would meet the established criteria concerning confidential status. What concerns the Union is the manner that this process has taken. During negotiations for the 1995-97 collective bargaining agreement, the County offered a pay raise for this position, indicating that the County then considered the position to be appropriately in the bargaining unit. There have been no significant changes to the position's duties since then. For whatever reason, the County thereafter allowed the Lead Secretary to take the minutes of closed meetings, yet the position has remained in the bargaining unit for the past three years. If the County felt the position was not confidential, the Union concludes, it should not have had the incumbent take the minutes of closed meetings. If the County saw the position as confidential as long ago as 1995, it should have taken action by filing a petition at that time to have the position removed from the bargaining unit.

DISCUSSION

It is well-settled that for an employee to be held confidential, such employee must have 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. DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).

While a *de minimis* exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87), 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. CESA AGENCY NO. 9, DEC. NO. 23863-A (WERC, 12/86). 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, TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85), and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as her or his 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. HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88).

Here, the indicia of confidential status are clear and unmistakable. Lead Secretary Davis takes and keeps the minutes of closed committee meetings relating to confidential personnel matters; she prepares and receives correspondence between HSD officials and the Corporation Counsel relating to collective bargaining and contract administration; and she has prepared draft documents showing management's initial intentions for negotiations. There are no other confidential clerical employees in the HSD, and only two confidential Administrative Assistants throughout County government.

Given the foregoing, we conclude Davis is a confidential employee who should be excluded from the bargaining unit. Contrary to the Union's argument, the timing of the County's decision to file a unit clarification petition is irrelevant to the issue of confidential status.

Dated at Madison, Wisconsin this 24th day of May, 1999.

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