

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**  
Involving Certain Employees of  
**CLARK COUNTY**

Case 9  
No. 46179  
ME-525

**Decision No. 16648-B**

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**Appearances:**

**Victoria L. Seltun**, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Clark County.

**Gerald Ugland**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 35, Plover, Wisconsin 54467-0035, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

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

On March 14, 2003, Wisconsin Council 40, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking to include the Administrative Assistant/Supervisor in a bargaining unit of Clark County employees represented for the purposes of collective bargaining by Local 546-A, Wisconsin Council 40.

The County asserts that the Administrative Assistant/Supervisor cannot be included in the bargaining unit because she is a supervisor and also a confidential and managerial employee.

Hearing was held in Neillsville, Wisconsin on July 9, 2003 before Commission Examiner Steve Morrison. Both parties filed initial post-hearing briefs and declined to file reply briefs by the September 27, 2003, deadline for receipt of same.

At the Commission's request, the record was supplemented on June 21, 2004.

Dec. No. 16648-B

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

### **FINDINGS OF FACT**

1. Clark County, herein the County, is a municipal employer having its principal offices at 517 Court Street, Neillsville, Wisconsin. The County has a collective bargaining relationship with seven different bargaining units.

2. Local 546-A, Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization that serves as the collective bargaining representative of the 17 para-professional employees of the County Department of Social Services.

The Department of Social Services employs 32 full-time and one part-time County employees including the Department Director, three supervisors, and the Administrative Assistant/Supervisor in dispute. There are two bargaining units (the para-professional employees and professional employees) of Department employees.

3. The Administrative Assistant/Supervisor position as presently configured was created in August 2002 to provide administrative and clerical support for the Director, to serve as the Department's office manager, to direct the work of the Department receptionist (and potentially other clerical employees), and to administer a County transportation program that provides services to elderly and disabled citizens through use of grant funds and volunteer drivers.

Sheila Kind has held the position since its creation. She is paid \$15.29 per hour. The receptionist whose work Kind directs has a pay range of \$10.61-\$11.26 per hour.

4. The Department Director has primary day-to-day responsibility for administering the two labor agreements that cover the wages, hours and conditions of employment of Department employees. When the County bargains successor labor agreements that cover Department employees, the Director is a member of the County bargaining team and provides significant input as to non-wage/fringe benefit proposals that affect the operation of the Department.

Kind will type all confidential labor relations documents and correspondence generated by the Director including drafts of grievance responses and disciplinary letters. Kind attends,

takes notes at and prepares drafts of the minutes of all County Social Services Board meetings, including minutes of the portion of closed Board meetings during which confidential labor relations matters are discussed. Kind participates in all administrative departmental meetings held by the Director and the three supervisors, during which confidential labor relations matters may be discussed. Kind will accompany the Director when he serves as a member of the County bargaining team.

Prior to Kind's assumption of the Administrative Assistant/Supervisor position in August 2002, confidential labor relations typing was done by the Director and by the non-bargaining unit incumbent in the prior incarnation of the Administrative Assistant/Supervisor position. This prior position was held by an employee who had fiscal, confidential clerical and supervisory responsibilities. As part of a reorganization, the County eliminated the fiscal responsibilities from the position but retained the confidential typing duties.

5. The County Department of Administration has the overall responsibility for the conduct of County labor relations. The Department of Administration has one confidential clerical employee. The Department of Administration is housed in the same building as the Director and the Administrative Assistant/Supervisor.

6. The Department's confidential labor relations work cannot be performed by the Department of Administration clerical employee without undue disruption of the County's operation.

7. The Administrative Assistant/Supervisor has sufficient access to, knowledge of and participation in confidential labor matters 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. The Administrative Assistant/Supervisor 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**

The Administrative Assistant/Supervisor shall continue to be excluded from the para-professional employee bargaining unit represented by Local 546-A, Wisconsin Council 40, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of June, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Clark County

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER**

The County, contrary to the Union, asserts that the Administrative Assistant/Supervisor (Kind) cannot be included in the para-professional Social Services unit because she is a confidential employee, a supervisor, and a managerial employee. We look first at the question of confidential status.

The following legal standard set forth by the Commission in MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), and affirmed by the Court of Appeals in MINERAL POINT SCHOOL DISTRICT V. WERC, 251 Wis.2D 325, 337-338 (2002) is used when determining whether an individual is a confidential employee:

We have held that for an employee to be held confidential, the 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. . . .

While a *de minimis* exposure to confidential materials is generally insufficient grounds for exclusion of an employee from a bargaining unit, . . . 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. . . . 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, . . . 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 to the employer's organization. . . . (Citations omitted)

Kind has or will have access to, knowledge of and participation in confidential labor relations matters through: (1) typing of the Director's confidential labor relations documents; (2) her presence at closed Social Services Board meetings; and (3) her presence at/participation in Department management meetings with the Director and three supervisory employees. We are satisfied that this combination is sufficient to establish confidential status.

In reaching this conclusion, we note that Kind types or will type drafts of the Director's grievance answers and disciplinary letters, which are confidential labor relations information because the Union does not have access to them and the documents ultimately provided to the employee/Union may or may not contain the same information/position set forth in the draft. LA CROSSE AREA JOINT SCHOOL DISTRICT NO. 5, DEC. NO. 15710-A (WERC, 5/79). Minutes of closed meetings where labor relations issues are discussed are also not available to the Union and per se contain confidential labor relations information. LACROSSE, SUPRA. Lastly, presence at and participation in management meetings where labor relations issues will be discussed also exposes Kind to confidential labor relations information. LACROSSE, SUPRA.

We reject the Union argument that Kind's confidential labor relations work could be reassigned to other confidential employees without undue disruption of the County's operations. Even assuming for the sake of argument that clerical typing of drafts and minutes could be performed by other employees without undue disruption, Kind's participation in management meetings is not a function that can be reassigned.

To the extent Kind had not yet performed some of confidential typing by the date of the hearing, we acknowledge that our conclusion is to some extent based on the County's assertions as to what will happen in the future. Thus, should those assertions prove not to be borne out in practice, the Union may ask us to reconsider this matter. However, based on this record, we have no reason to doubt the truthfulness of the County's assertions and note in this regard that at least some of the confidential typing was performed by Kind's non-unit predecessor.

Given our conclusion that Kind is a confidential employee, she remains excluded from the bargaining unit and we need not address the question of whether she is a supervisor or a managerial employee.

Dated at Madison, Wisconsin, this 30th day of June, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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