

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

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LOCAL 1752-E, LOCAL 40, AFSCME : Case 4

: No. 46391 ME-537

Involving Certain Employes of : Decision No. 16902-D

:

BEECHER-DUNBAR-PEMBINE SCHOOL DISTRICT :

:

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, on behalf of the Union.
Mr. Robert W. Burns, Godfrey & Kahn, S.C., Attorneys at Law, 333 Main Street

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT

On October 10, 1991, Local 1752-E, Local 40, AFSCME, AFL-CIO, hereafter the Union, filed a petition with the Wisconsin Employment Relations Commission by which it sought clarification of an existing bargaining unit of employes of the Beecher-Dunbar-Pembine School District, hereafter the District, namely the inclusion of the positions of Administrative Assistant to the Fiscal Manager and Secretary to the District Administrator. Hearing in the matter was held in Pembine, Wisconsin, on April 9, 1992, before Raleigh Jones, a member of the Commission's staff, at which time the Union relinquished its claim to the secretarial position. A stenographic transcript of the hearing was prepared and submitted to the parties by May 8, 1992. The Union and District filed written arguments on April 14 and June 12, 1992, respectively. The Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Local 1752-E, Local 40, AFSCME, AFL-CIO, hereafter the Union, is a labor organization with offices at Box 676, Rhinelander, Wisconsin.
2. The Beecher-Dunbar-Pembine School District, hereafter the District, is a municipal employer with offices at Box 247, Sauld Street, Pembine, Wisconsin. The District's management team consists of a Superintendent (who also serves in several additional capacities), a Fiscal Manager (who does likewise) and a supervisor of buildings and grounds. There are no assistant superintendents or separate building principals.

3. At all times material, the Union has been the exclusive representative of a bargaining unit "consisting of all regular full time and regular part time custodial and maintenance employees, cooks, clerical employees and bus drivers," and excluding all confidential, supervisory, and administrative personnel. The unit, with approximately 14 members, has a collective bargaining agreement which expires in 1993. The only other represented group of employees are teachers, represented by an affiliate local of the Wisconsin Education Association Council, with a contract that expires in 1994.

4. On July 16, 1991, the District posted an announcement of a vacancy in a newly created part-time position, Administrative Assistant to Fiscal Manager, with the following description of duties:

JOB DESCRIPTION

TITLE OF POSITION: ADMINISTRATIVE ASSISTANT TO FISCAL MANAGER

SUPERVISOR: Fiscal Manager/Administrator

QUALIFICATIONS: Proficiency in over all fiscal office procedures and operation, fiscal office equipment, payroll procedures, cash disbursements.

Good oral and written communication skills.

Ability to work well with the district employees and general public.

Ability to complete assigned tasks on time, with minimum supervision.

DESCRIPTION OF DUTIES: Complete school payroll.

Complete school district cash disbursements.

Complete student activity reports.

Receive and record cash receipts.

Receive payment for, and disburse, hot lunch tickets.

Reconcile bank statements.

Costing of proposals with support staff.

Costing of proposals during negotiations with teaching staff.

Budget preparation.

Other duties, as the Fiscal Manager may direct.

WAGES: \$7.00 per hour

Not to exceed 20 hours per week.

5. Cornelis Vander Zeyden has, for the past five years, served as Superintendent of the District. He also serves as High School Principal, Junior High Principal, Elementary Principal, Curriculum Coordinator, and supervisor of the support staff. In collective bargaining, he is present

during negotiations to advise and perform research for the District; the bargaining team itself consists of members of the Board of Education and outside legal counsel, Robert Burns. Vander Zeyden's office is a named step in the grievance process for both bargaining units. Vander Zeyden's direct clerical support consists of an Administrative Secretary, a salaried, non-represented position. Neither Vander Zeyden nor his secretary have the ability to perform financial costings.

6. Ken Seidel has, since May, 1989, served as the District's Fiscal Manager. He has also served as the Athletic Director (since July, 1990) and the Transportation Director (since August, 1991). The great majority of his time is spent on fiscal matters, although transportation and athletic issues may dominate at any particular time. Seidel's role in collective bargaining is primarily as a research/resource person, costing out proposals that have been/might be made. Seidel does not attend bargaining sessions, except, infrequently, to report to the bargaining team. There was an interest arbitration proceeding involving the support staff in August, 1990, and negotiations involving each unit during 1991; Seidel was solely responsible for the costing of Board proposals, and other resource/research tasks. During negotiations, Seidel has been required, at times, to provide answers to various Board requests and questions in an expedited manner. There has never been a time when Seidel could not personally provide the Board with the information it requested in a timely manner. During negotiations, Seidel may spend a significant portion of his time doing costing and otherwise providing information for the Superintendent and the Board. Seidel has oral and written communications with attorney Burns' office related to collective bargaining; such communications can range from basic financial summaries and projections to discussions about wage and benefit packages. Seidel has been involved in discussions concerning two grievances, in which his role was to assess the District's potential financial obligations regarding wage differentials, but not to plan strategy or make decisions. The annual budget, upon adoption in October, is a public document. However, the unions are not privy to District documents used during budget preparation. Money appropriated for negotiations may be hidden in several different accounts. During Seidel's tenure, there had been no layoffs or reductions in hours of any represented employees; at the time of the hearing, there was one proposed layoff of a represented employee. Seidel does not take or keep minutes of bargaining sessions or closed Board meetings.

7. Susan Grandaw has served, since August, 1991, as the Administrative Assistant to the Fiscal Manager. Her duties are as noted in Finding of Fact 4, except that, as of the hearing, she had not worked on budget preparation or the costing of bargaining proposals. Grandaw is, or will be, aware of the proposed budget during its preparation as well as the budget lines the District employs to fund payroll costs. On average, she spends about twenty percent of her time on payroll; the same on cash disbursements; about 5 percent on student activities; ten percent on cash deposits; the same on the hot lunch tickets; a bit less on reconciling bank statements, and about the same on budgets. Between November, 1990 and her hire, she performed similar duties, mainly on payroll and cash disbursements, as an independent contractor. Prior to Grandaw's hire, these duties, except for receipt-payment forms and hot lunch tickets, were also performed by Seidel. Grandaw and Seidel work at adjoining desks in a small office. Given their extremely close quarters, each is privy to the oral and written communications engaged in by the other, as well as essentially all other information and data. Grandaw has access to all financial data on the District's computer system. When Seidel is unavailable for whatever reason, Grandaw acts in his stead. Grandaw does not have access to personnel files, which are kept in Vander Zeyden's office. Grandaw may be present during disciplinary meetings between Seidel and employees under his supervision, and may type disciplinary communications. Negotiations involving both units were completed (or advanced to arbitration) before Grandaw's hire.

There have been no negotiations with represented employes during Grandaw's employment. From her pre-employment interview and other discussions, Grandaw understands that, during future negotiations, she will have responsibility for costing various proposals. Grandaw opens mail addressed to Seidel, except that marked, "personal." Grandaw has access to all data on the District's computer system.

8. Susan Grandaw, the incumbent Administrative Assistant to the Fiscal Manager, has sufficient access to and involvement in confidential matters relating to labor relations to be deemed a confidential employe.

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

CONCLUSION OF LAW

Susan Grandaw, the incumbent Administrative Assistant to the Fiscal Manager, is a confidential employe and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER 1/

The position of Administrative Assistant is excluded from the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 12th day of November, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(Footnote 1/ is continued on the next page.)

(Footnote 1/ continues)

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

BEECHER-DUNBAR-PEMBINE SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

In support of its position that the Administrative Assistant to the Fiscal Manager is a municipal employe, the Union asserts as follows:

The position at issue does not have access to, knowledge of or participate in the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters. The mere fact that the incumbent works in close quarters with the fiscal manager, and may overhear his conversations and intercept his mail, does not, of itself, confer confidential status.

While the fiscal manager may answer questions and do research, there is nothing in the record to indicate he is in any way part of the decision-making process in collective bargaining, or that the payroll records in his office and computer constitute confidential records.

Private rooms are available if the fiscal manager needs to conduct confidential discussions. And, given that negotiations are scheduled by mutual agreement, the employer is exaggerating the urgency and frequency of any need for the incumbent position to perform costing. Costing will still be performed by the fiscal manager. The employer will not be unduly disrupted by a determination that the position at issue is within the bargaining unit.

Commission precedent is cited for the proposition that preliminary computations on the cost of various salary proposals are not confidential work. The costing done by the incumbent, if it is ever needed, will be routing and non-confidential.

Commission precedent is also cited to rebut the employer's argument that filling in for the department head confers supervisory or confidential status.

Looking beyond the job description to reality, the Commission will clearly see that the administrative assistant has not and will not be taken into the employer's confidence regarding its collective bargaining strategies or in other labor relations matters.

Nor is access to budget data a determining factor. While the employer may feel compromised because the administrative assistant knows how much and where money is hidden which can be used to fund contract settlements, the budget is a public document and access to budgetary information during the budget's formative stages is not a confidential matter relating to labor

relations.

The administrative assistant has performed no confidential duties to date; any duties she may perform in the future will be de minimis. Accretion of the position into the bargaining unit will not be unduly disruptive. The Commission should find the position to be a municipal employe, and direct its accretion.

In support of its position that the Administrative Assistant to the Fiscal Manager is a confidential position, and should not be included in the bargaining unit, the District asserts as follows:

The administrative structure of the district requires the position at issue to be confidential. Given the multiple duties of the fiscal manager, the absence of any intermediate administrators, the physical layout, and the inability of the administrative secretary to perform relevant tasks, there is a premium on flexibility and versatility, and a requirement that the assistant be well-versed in all ongoing matters. Construction of an artificial barrier between the fiscal manager and the assistant would be a futile theoretical exercise not grounded in the realities of the daily operations of the district.

Moreover, the position itself has significant confidential duties. Notwithstanding the newness of the position, it is obvious that the position will have important collective bargaining demands made of it over time. The data which the incumbent will deal with will be used in bargaining under circumstances where that information would not be shared with the union. While not directly involved in setting strategy, the incumbent will be privileged to that strategy, thus acquiring confidential status.

Given the unique circumstances of the fiscal manager, and the need for immediate response to district requests for information, the assistant may be required to respond immediately; it is therefore crucial to the district to have the assistant have the necessary constant access to information in order to be able to adequately respond. This need for access can bestow confidential status, even when the actual amount of confidential work performed is not significant.

Further, the incumbent has access to communications between the district and district outside legal counsel; is privy to written and oral communications involving the fiscal manager; is privy to discussions related to discipline, and would be involved in grievance preparation or resolution.

Based on the prevailing need for access, coupled with the actual responsibilities to be performed, the position is confidential and should be excluded from the unit.

DISCUSSION

It is well-settled that, for an employe to be held confidential, such employe 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. 2/

The District management team consists of three individuals: (1) the Superintendent of Schools (also serves as the High School Principal, Junior High Principal and Elementary School Principal, the Curriculum Coordinator and the supervisor of the support staff); (2) the Fiscal Manager (also serves as the Athletic Director and Transportation Director); and (3) a supervisor of buildings and grounds. The Superintendent has a secretary who is excluded from the unit. There is no overlap in responsibilities between these positions. Further the incumbents are not cross trained to perform the duties of the other management team positions.

The Administrative Assistant to the Fiscal Manager position is part-time (approximately 20 hours per week) and was created because the Fiscal Manager's multiple responsibilities made it difficult for him to perform all his financial duties. The Administrative Assistant has or will perform the duties listed in Finding of Fact 4 and functions in the role of Fiscal Manager when he is away from the District or unable to perform financial responsibilities because of other demands on his time. The Administrative Assistant works closely with the Fiscal Manager and is aware of all elements of his job.

The Administrative Assistant and Fiscal Manager share the same office space. They can overhear each other's conversations. They can observe the documents and material with which each is working. In order to have a private conversation with another staff member, either the Fiscal Manager or the Administrative Assistant would need to leave the room. Because of the Administrative Assistant's backup role, knowledge of the Fiscal Manager's conversations and work activities is necessary. The Administrative Assistant has access to the computer system and is aware of all passwords. The Administrative Assistant has access to all of the documents with which the Financial Manager works. These include the budget costing models for collective bargaining, grievance matters, benefit material, payroll information and all other financial documents.

During the budget development process, money is "hidden" in many various accounts so that funds budgeted for negotiations are not readily identifiable. This is done by the Fiscal Manager with the full knowledge of and participation by the Administrative Assistant. The unions are not privy to budget development information.

2/ Dane County, Dec. No. 22796-C (WERC, 9/88).

The Administrative Assistant will provide costing support to the District's bargaining team which was previously provided by the Financial Manager. 3/ This will include costing various possible proposals and counter-proposals for the District and costing union proposals. By costing economic proposal alternatives, the District's collective bargaining strategy will become known to the Administrative Assistant as it did to the Fiscal Manager. The Administrative Assistant is also aware of potential grievance resolutions, as well as other information which is not shared with the unions, through conversations with the District's labor counsel.

We find the Administrative Assistant position to be confidential because we are convinced she has or will have costing and budget responsibilities related to bargaining with the District's two units. If these responsibilities do not materialize, then the position's exclusion from the unit would not be warranted because the other confidential duties argued are too speculative, more related to Grandaw overhearing potential confidential discussions than performing confidential work, and de minimis at best.

Dated at Madison, Wisconsin this 12th day of November, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

3/ Since the incumbent had only been in the job for eight months prior to the hearing and bargaining had not occurred, the Administrative Assistant has not had the actual opportunity to perform these functions. The contract costing duties could not be performed by the Superintendent's confidential secretary. The Superintendent's secretary does not have the background or training to perform the costing functions. Further, she already is full-time and works a reasonable amount of overtime.