

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	
	:	
RHINELANDER SCHOOL DISTRICT	:	
	:	
and	:	Case 4
	:	No. 36732 ME-65
RHINELANDER SUPPORT STAFF	:	Decision No. 17021-A
ASSOCIATION, LOCAL 3985,	:	
WFT, AFT, AFL-CIO	:	
	:	
Involving Certain Employes of	:	
	:	
RHINELANDER SCHOOL DISTRICT	:	
	:	

Appearances:

Mr. Steve Kowalsky, Staff Representative, Wisconsin Federation of Teachers, 2021 Atwood Avenue, Madison, Wisconsin 53704, appearing for the Federation.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Ronald J. Rutlin, P. O. Box 1004, Wausau, Wisconsin 54401-1004, appearing for the District.

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

Rhineland Support Staff Association, Local 3985, WFT, AFT, AFL-CIO, having, on January 9, 1986, filed a petition requesting that the Wisconsin Employment Relations Commission clarify an existing certified bargaining unit of all regularly employed personnel who are not supervisory and are not included in the recognized instructional unit, including all maintenance, custodial, clerical and secretarial personnel, teacher aides, Title I aides, library aides, playground/supervisory aides and cooks, excluding confidential positions (bookkeeper, payroll clerk, secretaries to Superintendent, Business Administrator and Director of Elementary Education), supervisory and managerial employes by determining whether the positions of Secretary to Director of Personnel, Secretary to Business Administrator, Payroll Clerk, Bookkeeper and Supervisor of Plant Operations should be included in said unit; and School District of Rhineland having, on February 19, 1986, filed a petition requesting that the Commission clarify said unit by determining whether the positions of Junior High School Head Custodian and High School Head Cook should be excluded from said unit; and hearing on the petitions having been held in Rhineland, Wisconsin on April 24, 1986, before Examiner Jane B. Buffett, a member of the Commission's staff; and the parties having reached agreement regarding all disputed positions except the Secretary to the Business Administrator; and a transcript of the hearing having been received on May 6, 1986; and the District having filed a brief on June 30, 1986, and, on October 14, 1986, the Federation having telephonically confirmed that it was waiving its right to file a brief; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in

the Commission certified the Union as the exclusive bargaining representative of District employes in the following unit:

all regularly employed personnel who are not supervisory and are not included in the recognized instructional unit, including all maintenance, custodial, clerical and secretarial personnel, teacher aides, Title I aides, library aides, playground/supervisory aides and cooks, excluding confidential positions (bookkeeper, payroll clerk, secretaries to Superintendent, Business Administrator and Director of Elementary Education), supervisory and managerial employes.

4. That on January 9, 1986, the Federation petitioned the Commission to clarify the unit described above by including the positions of Secretary to Director of Personnel, Secretary to Business Administrator, Payroll Clerk, Bookkeeper and Supervisor of Plant Operations.

5. That on February 19, 1986, the District petitioned the Commission to clarify the unit described above by excluding the Junior High School Head Custodian and High School Head Cook positions.

6. That at the April 24, 1986 hearing, the parties agreed the Payroll Clerk, Bookkeeper and Supervisor of Plant Operations positions should be included in the unit.

7. That at said hearing the parties agreed the High School Head Cook position should be excluded from the unit.

8. That at said hearing, the parties agreed the position of Junior High School Head Custodian should remain in the bargaining unit as long as the current incumbent, Len Bessa, holds the position, after which time the position shall be excluded from the unit and shall not be posted.

9. That the Federation withdrew its petition as to the Secretary to the Director of Personnel.

10. That Business Administrator John Coyle is on the District Negotiations Committee, but he does not attend many bargaining sessions, and labor negotiations are conducted by Director of Personnel Joe Obey; that Coyle and Obey confer in developing proposals for said bargaining; that Coyle and Obey each have their respective secretaries prepare their own materials regarding negotiations; that Obey's secretary prepares the base costing calculations that are shared with the Federation at the beginning of bargaining; that Coyle is responsible for developing the District's budget; that the Secretary to the Director of Personnel and the Secretary to the District Administrator are excluded from the bargaining unit as confidential employes; that the aforementioned secretaries as well as Coyle and Obey and the Secretary to the Business Administrator all have offices on the same corridor, in close proximity to each other; and that the District has 400 employes.

11. That Nancy Hall currently occupies the position of Secretary to the Business Administrator; that Hall handles all correspondence for Business Administrator John Coyle, for the Building and Grounds Supervisor and for the Food Service Supervisor; that she takes minutes of School Board meetings, including the closed sessions, on the six or seven occasions a year when the District Administrator's secretary is unavailable; that in preparation for negotiations Hall prepares costing sheets on various alternate proposals developed by the Business Administrator not all of which proposals are presented to the Union's bargaining representative; that in preparation for negotiations, Hall gathers information such as rates of pay and dates of hire of bargaining unit employes; that Hall has access to some working papers containing underlying budget data not evident in the published budget and thereby has knowledge of undisclosed fiscal allocations available for bargaining with the employes; that in the last 2 years, Hall has typed roughly 10 memos pertaining to possible discipline of bargaining unit employes, some of which remained undisclosed to the affected employes; and that Hall computed labor costs, gathered labor cost information from other districts and projected savings from a potential staff reduction in the Food Service Department, prior to the District's decision to implement a reduction in staff hours.

12. That the occupant of the position of Secretary to the Business Administrator has significant access to labor relations matters which are not available to the collective bargaining representative.

CONCLUSION OF LAW

That the occupant of the position of Secretary to the Business Administrator is a confidential employe and therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

ORDER CLARIFYING BARGAINING UNIT 1/

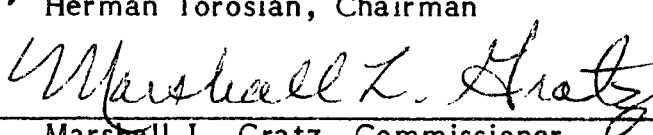
That the position of Secretary to the Business Administrator shall be, and hereby is, excluded from the bargaining unit described in Finding of Fact 3.

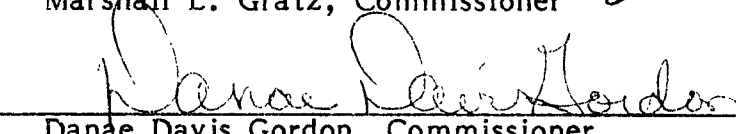
Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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

(Footnote One continued on Page 4)

1/ (Continued)

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. 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. 227.20 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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

Rhineland School District

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

BACKGROUND AND POSITION OF THE PARTIES

The Federation filed the instant petition for unit clarification alleging the position of Secretary to the Business Administrator, which was earlier excluded as confidential, is no longer confidential. The Federation does not specify the ways in which the confidential nature of the position has changed, but rather, alleges the time spent on confidential duties is too insignificant to justify exclusion, and further alleges other confidential employees are available to perform those confidential duties that do exist.

The District asserts the incumbent has access to confidential labor relations information through her preparation of pre-negotiation bargaining proposals, knowledge of issues relevant to grievances, typing of internal performance evaluation memoranda, participation in developing options for negotiations, and preparation of preliminary documents for the budget. The District asserts the incumbent's confidential duties are not de minimus. It argues no one else is available to perform these duties and the District is entitled to have a clerical worker excluded from the bargaining unit so that the Business Administrator is not forced to perform his own typing and computer work in order to maintain the confidentiality of its labor relations strategy.

DISCUSSION

The Commission's interpretation of the statutory exclusion of confidential employees is well established. For an employee to be considered a confidential employee, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes, it must be the type of information which:

- 1) deals 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
- 2) is not information which is available to the bargaining representative or its agents. 2/

The incumbent of the position of Secretary to the Business Administrator, Nancy Hall, performs several duties which give her access to confidential labor relations information which is not available to the bargaining representative. She types the internal memos relating to the development of those bargaining proposals that come from Business Administrator John Coyle for the consideration of the District's negotiating committee. She types and prepares preliminary budget worksheets, thereby gaining information which would enable her to analyze the published budget to determine if some budget items contained additional moneys that could be used for salaries. She has gathered information for the District's consideration of a possible reduction in staff in the Food Service Department. Finally, she types internal memos on performance which are not always disclosed to

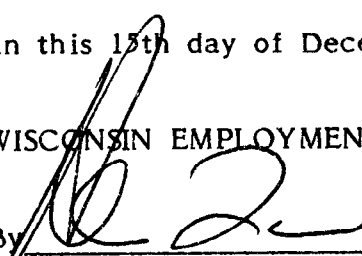
proximate to the Business Administrator, we are satisfied that the Business Administrator cannot reasonably be expected to assign them the secretarial work associated with the budget and related collective bargaining proposals inasmuch as they comprise a significant portion of his functions. Moreover, it should be noted that while the continued exclusion of this disputed secretary results in a total of three employees excluded as confidential, that number is not unreasonable for a district which employs 400 employees.

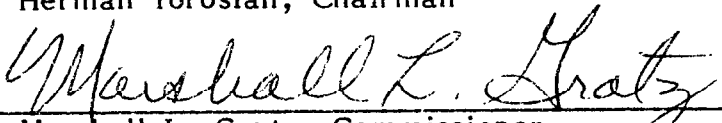
Consequently, since the Secretary to the Business Administrator has significant access to confidential labor relations material, the position is appropriately excluded from this unit as a confidential employee.

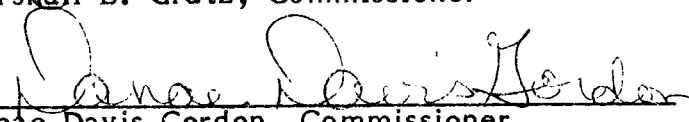
Dated at Madison, Wisconsin this 15th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner