

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter
of the Petition

of

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

Involving Certain Employees of

GIBRALTAR AREA SCHOOL DISTRICT

Case 39
No. 55447
ME-904

Decision No. 17092-E

Appearances:

Mr. Gerald D. Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54221-0370, appearing on behalf of the Union.

Mr. Stephen Seyfer, Superintendent, Gibraltar Area School District, 3924 Highway 42, Fish Creek, Wisconsin 54212, appearing on behalf of the District.

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

Wisconsin Council 40, AFSCME, AFL-CIO, which is referred to below as the Union, filed a petition on August 11, 1997, requesting that the Wisconsin Employment Relations Commission clarify a bargaining unit of certain employees of the Gibraltar Area School District, which is referred to below as the District, by including a part-time position known as Assistant Bookkeeper. The District contends the Assistant Bookkeeper, presently Suzanne Walls Bell, is a confidential employe.

Hearing in the matter was held on January 14, 1998, in Fish Creek, Wisconsin, before Examiner Richard B. McLaughlin, a member of the Commission's staff. A transcript of the hearing was supplied to the Commission on February 5, 1998. The record was kept open to permit the post-hearing submission of certain exhibits. The Union supplied one of those exhibits

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to the Commission on February 20, 1998, and requested that the District supply another. The Union filed its brief on March 11, 1998. In a letter to the parties dated March 27, 1998, the Examiner requested clarification on the status of the exhibit requested by the Union and on the status of the District's brief. The Union responded to the Examiner's letter on April 3, 1998. The District did not respond to the Examiner's letter. In a letter to the parties dated April 7, 1998, the Examiner stated:

I think the table of organization referred to in Mr. Ugland's letter . . . could be useful to the Commission. If such a document exists, I would ask Mr. Seyfer to supply it.

Beyond this, I will take the opportunity to clarify what must otherwise be inferred: the position of Bookkeeper and Administrative Assistant are not included in a bargaining unit.

If I do not hear from either of you by April 24, 1998, then I will conclude that the table of organization does not exist and that the unit status of the two positions noted above is accurate. Unless I hear from you prior to that date, the record will be closed effective April 24, 1998.

Neither party responded to this letter, and the record was closed effective April 24, 1998.

The Commission, having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization which has its offices located in care of P.O. Box 370, Manitowoc, Wisconsin 54221-0370.

2. Gibraltar Area School District, herein the District, is a municipal employer which has its offices located at 3924 Highway 42, Fish Creek, Wisconsin 54212.

3. On July 19, 1979, in Dec. No. 17092-B, the Commission certified the Union as the exclusive collective bargaining representative for certain District employees. The unit is described in the parties' 1995-97 labor agreement thus:

(A)ll regular full-time and regular part-time custodial and maintenance employees, bus drivers, aides, cooks, kitchen servers and kitchen aides, and clerical employees and excluding Superintendent, supervisors, confidential employees, managerial employees, and other employees of the School District.

4. The District bargains with one bargaining unit other than that noted in Finding of Fact 3. That unit includes the District's teachers, and is not represented by the Union. Stephen Seyfer is the District's Superintendent of Schools. Adjacent to Seyfer's office is the office of his Administrative Assistant. Adjacent to the office of the Administrative Assistant is an office shared by the District's Bookkeeper, Patricia Hickey, and its Assistant Bookkeeper, Suzanne Walls Bell. No other employees occupy the administrative area composed of these three offices. The District does not employ a Business Manager. The Administrative Assistant and the Bookkeeper are not included in a bargaining unit. The Administrative Assistant and Bookkeeper report to Seyfer. The work area used by Hickey and Bell consists of two desks placed at right angles to each other. Their office is roughly twelve feet by fourteen feet. Hickey and Bell each use a work station connected to the same computer server. No other District employees are connected to this server. At present, Bell uses Hickey's password to gain access to the server.

5. Hickey plays a role in all the financial functions required of the District. She handles payroll, accounts payable, cash on hand and all budgeted expenditures. She does not play any role in personnel functions unless those functions have a fiscal impact. For example, the server she uses includes employee data relevant to any financial transactions such as the generation of employee pay checks or W-2 forms. The server does not include employee data, such as evaluations, which do not have a fiscal impact. Employee personnel files are maintained as "hard copy" in files in the office of the Administrative Assistant. Hickey assists Seyfer during collective bargaining involving the teachers and the support staff. She does not appear at the table during bargaining sessions. However, she assists Seyfer in identifying potential areas to be addressed through bargaining, and prepares any costing necessary to make a District proposal or to evaluate any proposal made by an employee bargaining representative. She uses more than one financial software program and more than one computer to perform this costing function. Data necessary to perform this costing has, in the past, been retained on the server shared by Hickey and Bell.

6. Because Hickey could not keep up with the financial transactions demanded of her, the District decided to create and to fill a part-time bookkeeper position. In August of 1996, the District hired Bell to become Hickey's assistant. Bell performs duties and works hours as assigned by Hickey. Typically, Bell works two days per week for a total of sixteen hours. Early in Bell's tenure, Hickey instructed her that the duties she would perform should not be discussed outside of the Administrative Offices. Bell does not play any role in personnel functions unless those functions have an immediate fiscal impact. She does not handle employee fiscal data which is not supplied by or disclosed to the employee. She has not been asked to do any work involving the personnel files maintained in the office of the Administrative Assistant.

Bell has not played any direct role in the handling of employment litigation or employe grievances. She does not attend administrative meetings. She has not played any direct role in the creation or implementation of District strategy in collective bargaining. Hickey has, however, asked Bell to assist her in proofreading spread sheets prepared for use during the collective bargaining process with the District's two bargaining units. When this is necessary, Hickey will read data from the spread sheet to Bell, who verifies its accuracy or notes any inaccuracy. When this function has been required, Bell has not been specifically instructed on what the document is, what use it will be given or what happens to it after her proofreading function is completed. Bell, for example, has not been informed whether a given spread sheet reflects a tentative agreement between the parties or a proposal which may or may not be made at the bargaining table.

7. Bell does not participate in confidential matters relating to labor relations, nor does she have access to or knowledge of such matters to a degree sufficient to be a confidential employe.

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

CONCLUSION OF LAW

1. Bell is not a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and is 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 makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The position of Assistant Bookkeeper is hereby included in the bargaining unit noted in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of May, 1998.

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

GIBRALTAR SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Union argues that a review of the record establishes that the Assistant Bookkeeper is a clerical position, with no significant involvement in duties Commission case law identifies as confidential. What involvement Bell has had with bargaining documents involves the proofing of spread sheets which Hickey developed. Bell had no independent knowledge of the significance of the data she was proofing and did not know how the data was used in bargaining.

Beyond this, the Union contends that the District has other confidential employees available to perform the minimal confidential tasks assigned to Bell. Hickey and the Administrative Assistant are each available on a full-time basis to assume such duties. The Union asserts that even if these two positions were unavailable, Bell's involvement with bargaining information is too minimal to meet the Commission's case law standards defining confidential status.

Nor can Bell's access to personnel files establish the confidential status of her position. Commission case law requires something beyond access to employee personnel files to justify an exclusion from a bargaining unit. Bell has access to such files only through the District's computer system. Such access can, however, be limited either through password protection or through the procedures used by Hickey to handle such files. That Hickey and Bell work in close quarters cannot obscure that their office is physically separated from the Superintendent's and his Administrative Assistant.

A review of the record establishes, according to the Union, that Bell does not perform in a confidential capacity and that the District would have "an inordinate number of confidential exclusions" if its position is accepted by the Commission. The Union puts the point thus:

The District is not entitled to remove employees from the bargaining unit simply by assigning a small amount of confidential work to them. This would unduly deny the employees the opportunity of representation . . . To remove Bell's position from the bargaining unit because she proofs bargaining proposal costing with the full-time Bookkeeper would be in direct (contradiction) to the pattern of previous decision by the WERC.

It follows, the Union concludes, that Bell must be found to be a municipal employe.

The District did not file a written brief. In an opening statement at the hearing, the District argued that the Assistant Bookkeeper works with confidential material during collective bargaining involving both the teachers and the support staff. Beyond this, the District contends that the Bookkeeper, Assistant Bookkeeper, Administrative Assistant and the Superintendent work in a collaborative fashion in building and developing bargaining proposals.

DISCUSSION

The Commission has consistently held that for an employe to be considered a confidential employe, the employe must participate in, have access to, or have knowledge of confidential matters relating to labor relations. For information to be confidential, it must:

- 1) 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
- 2) be information which is not available to the bargaining representative or its agents. WINTER SCHOOL DISTRICT, DEC. NO. 28464-B (WERC, 6/96)

Hickey and Bell work closely together, including sharing the same server. The strength of the District's position is that the work shared by these employes cannot be physically or functionally separated, and thus that Bell is inevitably aware of anything Hickey is aware of.

The strength of the District's case is not, however, sufficient to meet the established standard for confidential status. Initially, it should be stressed that the only confidential work Bell arguably performs is the assistance she affords Hickey in proofing spread sheets during bargaining. The "arguably" reflects that the spread sheets do not uniformly reflect confidential material. Bell may have assisted in proofing what was a tentative agreement. In any event, Bell's exposure to such confidential material is minimal, and minimal exposure to confidential material does not warrant exclusion from a bargaining unit. See BOULDER JUNCTION SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87). She has never been informed of the labor relations significance of the material she is proofing, and plays no role in developing District bargaining strategy. She does not attend administrative meetings, and plays no role in employment based litigation, including the processing of grievances.

More specifically, even the strength of the District's position lacks a firm basis in Commission case law. While the Commission seeks to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management, see CESA AGENCY NO. 9, DEC. NO. 23863-A (WERC, 12/86), it is apparent that Hickey is available to and does perform what confidential fiscal work is required by Seyfer. Cf. TOWN OF GRAND CHUTE,

DEC. NO. 22934 (WERC, 9/85). Hickey did so alone before Bell was hired. It would work no apparent administrative hardship on the District to continue this arrangement.

Beyond this, it is apparent that Bell is not the only non-unit employe available to perform this work. See SCHOOL DISTRICT OF BRUCE, DEC. NO. 19318-A (WERC, 5/83). The Administrative Assistant is available and has a separate office in which the work could be done. It can be acknowledged that Bell and Hickey work in close proximity. Standing alone, however, this will not warrant excluding Bell from the unit. See MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76); and WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89). Nor will Bell's access to data on Hickey's computer, standing alone, warrant such a conclusion. Cf. ELCHO SCHOOL DISTRICT, DEC. NO. 27640-C (WERC, 4/97). Hickey does not restrict her costing work to a single program or even a single computer. There is no apparent reason why her occasional work with confidential material could not be shielded either by software or hardware from Bell.

Accepting the District's contention in this case would allow it to exclude an inordinately large number of employes from the unit by spreading the work of a confidential nature among the three available administrative support personnel. Accordingly, Bell's position has been determined to be appropriately included in the bargaining unit represented by the Union.

Dated at Madison, Wisconsin, this 11th day of May, 1998.

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