

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

CITY OF KAUKAUNA (UTILITY COMMISSION) :

Involving Certain Employees of :

CITY OF KAUKAUNA (UTILITY COMMISSION) :

Case XVIII

No. 24787 ME-1693

Decision No. 17149-A

Appearances:

Mr. Charles E. Carlson, Consultant, on behalf of the Employer.

Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by

Mr. Scott D. Seldon, on behalf of the Union.

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

On June 20, 1979 the City of Kaukauna (Utility Commission), herein the Employer, filed the instant unit clarification petition with the Wisconsin Employment Relations Commission, herein Commission, wherein it requested the Commission to determine whether the position of Administrative Assistant should be included or excluded from a collective bargaining unit consisting of certain employees which are represented by Local 2150, International Brotherhood of Electrical Workers, AFL-CIO, herein the Union. Thereafter, on July 24, 1979, the Commission, pursuant to Section 227.09(2), Wis. Stats., appointed Examiner Amedeo Greco, a member of the Commission's staff, to conduct hearing on said matter and to issue a proposed decision. Hearing on said matter was held at Kaukauna, Wisconsin, on September 5, 1979. Both parties filed briefs. Based upon the entire record in this matter, the Examiner issues the following proposed Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

PROPOSED FINDINGS OF FACT

1. The Employer, which operates a water utility in Kaukauna, Wisconsin, is a municipal employer. Ernest Mullen is the Employer's General Manager. Mullen has direct responsibility for negotiating and administering several collective bargaining agreements.

2. The Union represents certain of the Employer's electrical and water department employees, along with clerical employees. Approximately thirty-seven employees are in the bargaining unit.

3. Up until early 1979, Shiela Wentzel performed certain clerical duties as a stenographer, a bargaining unit position. After Wentzel left her employment, the Employer eliminated her former stenographer classification and created the new position of Administrative Assistant. The job description for said position in part provides for the occupant to assist the:

"General Manager in preparation and processing of confidential employment relations material including material for collective bargaining."

No. 17149-A

4. Thereafter, the Employer hired Karen Brooks for the position of Administrative Assistant, at which time she was placed in the bargaining unit. Brooks occupies a reception office immediately adjoining Mullen's private office. The reception area, which is directly adjacent to a larger clerical area, contains Mullen's files, which she maintains. As of the date of the instant hearing, Brooks has not been assigned to perform any of the confidential matters in her job description, pending resolution of her unit placement. During the negotiations for a successor contract, the parties agreed on May 7, 1979 that the Employer would petition the Commission to determine the question of Brooks' unit placement.

5. Brooks, who works directly under Mullen's supervision, will spend the vast bulk of her time performing clerical tasks which are akin to those performed by other unit members. Mullen anticipates that Brooks will spend about five (5) or ten (10) percent of her time performing duties which are directly related to confidential labor relations matters. Said duties include typing drafts of proposed grievance settlements, typing drafts of proposed bargaining language, typing negotiation reports to the Utility Commission, typing confidential correspondence from Mullen to Charles Carlson, the Employer's labor relations consultant, typing disciplinary reports on bargaining unit personnel, opening Mullen's mail, and maintaining Mullen's collective bargaining files. In addition, Brooks may attend closed meetings of the Utility Commission for the purpose of transcribing notes pertaining to the Employer's bargaining strategy.

6. With the exception of the position of Administrative Assistant, the Employer does not have any other confidential employees who handle labor relations matters.

Based upon the above and foregoing proposed Findings of Fact, the Examiner makes the following

PROPOSED CONCLUSION OF LAW

That the position of Administrative Assistant is confidential in nature and therefore excluded from the appropriate bargaining unit.

Based upon the above and foregoing Proposed Findings of Fact and Conclusion of Law, the Examiner makes the following

PROPOSED ORDER CLARIFYING BARGAINING UNIT

The Administrative Assistant employed by the Employer shall be, and hereby is, excluded from the appropriate bargaining unit.

Dated at Madison, Wisconsin this 28th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

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

The issue herein turns on whether the position of Administrative Assistant should be excluded from the unit because said position is supposedly confidential in nature, with the Employer contending, and the Union denying, that such should be the case. 1/

In resolving the question of confidential status, the Commission in Kenosha V.T.A.E. District No. 6, (14993) 76, held that:

In order for an employe to be considered a confidential employe, and thereby excluded from the bargaining unit, the Commission has held that such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations.

Applying that test here, the Union rightfully notes that typing letters to the Wisconsin Public Power, Inc., and to other utilities regarding the possible purchase of land is not a confidential duty.

The Union goes on to cite numerous Commission cases 2/ for the proposition that Brooks' proposed confidential duties will be de minimus in nature, thereby warranting her inclusion in the unit. A review of those cases indeed shows that the Commission has included employes in collective bargaining units, even though said employes may perform minor confidential duties.

The instant case, however, is distinguishable from the above-noted cases in that the Employer at present has no other confidential employe. As a result, it has been necessary at times for Mullen and his wife to type confidential correspondence which pertains to labor relations. In addition, Mullen at times has had to handwrite correspondence to the Employer's labor relations consultant. Moreover, Mullen stated that the lack of a confidential secretary has at times seriously impaired his ability to help conduct the Employer's labor relations program. Going on, Mullen testified that labor relations with various unions which represent the Employer's employes have become more strained over the last few years and that one union has recently discussed the possibility of a job action.

In light of these latter factors, the Examiner concludes that although Brooks will spend only a portion of her time on confidential duties, she nonetheless should be excluded from the bargaining unit since she is the only person in the Employer's employ who can perform the confidential duties noted in Proposed Finding of Fact No. 5. This finding is consistent with the Commission's decision in Drummond, supra, where the Commission found that a bookkeeper should be excluded from the

1/ The parties stipulated that the Commission should resolve this matter based upon Brooks' anticipated duties, as said duties have not yet been assigned.

2/ Kenosha V.T.A.E. District No. 6, supra; Cudahy Board of Education (12087) 8/73; City of Menasha (14523) 4/76; Crawford County (16931) 3/79; Drummond School District (16614) 10/78; and Menomonee Falls Joint School District (11669) 3/73.

unit in part because "there is no other confidential employe in the District". Said holding was in record with Village of Brown 3/ wherein the Commission held:

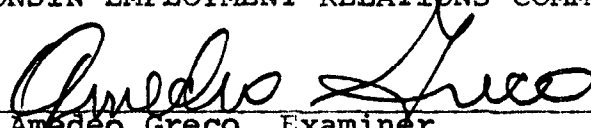
An employe who is privy to confidential matters relating to collective bargaining need not spend a majority of her time in performing duties relating to matters in her confidence. Where a single clerical employe is the only employe assigned to such duties, the performance of such duties excludes her from the eligibles.

Here, since the Administrative Assistant is also the only clerical employe assigned to confidential duties, said position is confidential in nature and therefore should be excluded from the unit.

Dated at Madison, Wisconsin this 28th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

3/ Decision No. 8915, 2/69.