

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
WISCONSIN FEDERATION OF TEACHERS	:	
Involving Certain Employes of	:	Case XI
WISCONSIN HEIGHTS SCHOOL DISTRICT	:	No. 24041 ME-1627
	:	Decision No. 17182
	:	

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Appearances:

Mr. Larry E. Allwardt, Legislative Coordinator, Wisconsin Federation of Teachers, appearing on behalf of the Petitioner.  
Kramer, Nelson, Kussmaul & Hawley, Attorneys at Law, by Mr. John N. Kramer, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Federation of Teachers, AFT, AFL-CIO having filed a petition on January 19, 1979 with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act among certain employes of Wisconsin Heights School District; and a hearing having been set for February 16, 1979, which hearing was re-scheduled and conducted on March 6, 1979, at Mazomanie, Wisconsin, before William C. Houlihan, Examiner. Following the distribution of a transcript and the submission of the Petitioner's brief on April 24, 1979, and the Municipal Employer's brief on April 25, 1979, the Commission having considered the evidence, and being satisfied that questions concerning the appropriate bargaining unit(s), employe status, and representation have arisen involving certain employes of the above-named Municipal Employer, makes and issues the following

FINDINGS OF FACT

1. That the Wisconsin Federation of Teachers, AFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization, as defined by Sec. 111.70(1)(j), Wis. Stats., and has its office at 120 East Wilson Street, Madison, Wisconsin.
2. That the Wisconsin Heights School District, hereinafter referred to as the Employer, is a municipal employer, as defined by Sec. 111.70(1)(a), Wis. Stats., and has its administrative office at Route #2, Mazomanie, Wisconsin.
3. That in its petition initiating the instant proceeding the Union seeks an election among employes employed by the Employer in the following alleged appropriate unit;

Professional Support Staff including secretaries, custodians, teacher aides, and other non-professional support staff. 1/

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1/ It should be noted that despite the use of the term "Professional" to describe the claimed appropriate bargaining unit in the Union's petition for election, what is actually being petitioned for is a bargaining unit consisting of all regular full and regular part time non-professional employes of the Municipal Employer. (See Tr. at 3)

4. That the Municipal Employer, during the course of the hearing, has taken the position that in its issuance of a Direction of Election the Commission should find that there exists four separate units appropriate for election and bargaining purposes; that those four bargaining units consist of 1. school aides of which there are currently fourteen (14) positions; 2. Lunch staff of which there are currently ten (10) positions including four (4) full time; 3. Custodial of which there are currently eight (8) positions; and finally 4. Secretarial, which currently includes four (4) secretaries and one (1) bookkeeper.

5. That, during the course of the hearing, the Municipal Employer has requested the Commission to find that the four secretaries currently employed by the Employer, noted above in paragraph (4) are confidential employes as set forth by Section 111.70(1)(b), Wis. Stats., and should therefore be excluded from any unit found to be appropriate by the Commission; that the employes who currently occupy the positions in dispute, are Barbara Olson, Secretary to the High School Principal, Joan Haugen, Secretary to the assistant High School Principal, Judy Howard and Beatrice Kind, Secretaries to the two Elementary School Principals.

6. That, during the course of the hearing, the Municipal Employer has requested the Commission to find that the Secretary to the High School Principal, who is currently Barbara Olson, is a supervisor, as that term is used in Sections 111.70(1)(b) and 111.70(1)(a), Wis. Stats., and that she should be excluded on this basis, from any unit found to be appropriate by the Commission.

7. That, during the course of the hearing, the Municipal Employer has taken the position that employes who work less than one-half time should be excluded from any unit found to be appropriate on the grounds that these positions currently occupied by Esther Hannam, Mary Parrell, Viva McDonald and Kathryn Skinner, are casual in nature.

8. That during the hearing the parties stipulated to the exclusion of three positions from any unit found to be appropriate; that the Head of Maintenance and Janitor Services position currently occupied by LaVern Schuman was excluded as supervisory; that the Head Cook position currently occupies by Kay Brabender, was excluded as supervisory; that the Secretary to the Superintendent of Schools position, currently occupied by Lee Gruen, was excluded as confidential.

9. That neither the Secretary to the High School Principal, nor the Secretary to the Assistant High School Principal, nor either of the Secretaries to the two Elementary School Principals are exposed to more than a de minimus amount of confidential information regarding labor relations matters.

10. That the Secretary to the High School Principal neither possesses nor exercises supervisory authority in sufficient combination or degree to be deemed a supervisor.

11. That the four part-time positions currently occupied by Esther Hannan, Mary Prrell, Viva McDonald and Kathryn Skinner are regularly scheduled part-time food service positions which are expected to continue into the foreseeable future; that the individuals occupying the regular part-time food service positions have a reasonable expectation of continued employment with the Municipal Employer.

12. That creation of four separate bargaining units with a total membership of thirty-seven (37) employes would result in unnecessary fragmentation of the parties' collective bargaining relationship.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the appropriate unit for the purpose of collective bargaining is:

All regular full and regular part-time non-professional employes of the Municipal Employer including secretaries, maintenance and janitorial, aides, lunch workers, cooks, and the bookkeeper, but excluding the Head Cook, the Head of Maintenance and Janitor Services, and the Secretary to the Superintendent of Schools.

2. That since the Secretary to the High School Principal, Secretary to the Assistant High School Principal, and Secretary to each of the two Elementary School Principals lack confidential status, they are "municipal employes" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act and, therefore, the individuals occupying said positions are appropriately included in the bargaining unit described above.

3. That since the Secretary to the High School Principal is not a supervisor within the meaning of Section 111.70(1)(b)(1) of the Municipal Employment Relations Act, she is a "municipal employe" within the meaning of Section 111.70(1)(b) of said Act and, therefore, is appropriately included in the bargaining unit described above.

4. That since the employes who occupy the part-time food service positions work less than one-half time but are regularly scheduled employes with a reasonable expectation of continued employment they are "municipal employes" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and, therefore, the individuals occupying said positions are appropriately included in the bargaining unit described above.

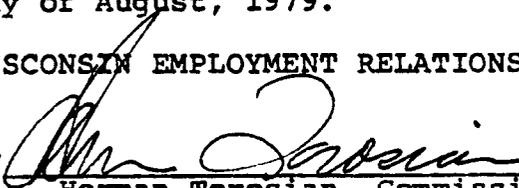
Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes and files the following

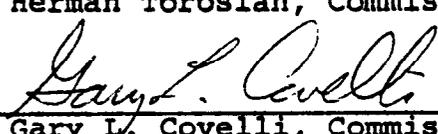
DIRECTION OF ELECTION

That a secret ballot election shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive among all employes employed in the bargaining unit described above on the date of this directive, except employes who quit or are discharged for cause prior to the conduct of the election.

Given under our hands and seal at the City of Madison, Wisconsin this 7<sup>th</sup> day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On January 19, 1979 the Wisconsin Employment Relations Commission received a petition from the Wisconsin Federation of Teachers in which the Petitioner requested the Commission to conduct a representation election in a bargaining unit described as

Professional Support staff including secretaries, custodians, teacher aides, and other non-professional staff.

At the outset of the hearing 1/ the Petitioner clarified its requested unit to include all regular full and regular part-time non-professional employes of the employer excluding the Head Cook, the Head of Maintenance and Janitor Services, and the Secretary to the Superintendent of Schools. 2/

During the hearing, held on March 6, 1979 the Municipal Employer raised objections 3/ to the propriety of the petition for bargaining unit and to the eligibility of certain employes to vote in any representation election. It is the position of the employer that there are four separate bargaining units which are appropriate for any election directed on behalf of the non-professional employes of the employer. The four units alleged to be appropriate included 1. the aides; 2. the lunch staff; 3. the custodial and maintenance; and 4. the clerical. The Employer also takes the position that any unit(s) found by the Commission to be appropriate should exclude employes who work less than one-half time, which is less than three and one-half hours per day, as casual and/or temporary employes. It is the further position of the Municipal Employer that the Secretary to the High School Principal, the Secretary to the Assistant High School Principal, and the Secretaries to each of two Elementary School Principals should be excluded from any bargaining unit on the grounds that all four of these employes occupy confidential positions. Finally, the Employer takes the position that the Secretary to the High School Principal is not only a confidential employe but also performs supervisory functions and should be excluded from any bargaining unit on supervisory grounds. 4/

UNITS APPROPRIATE FOR COLLECTIVE BARGAINING:

In determining whether employes constitute an appropriate unit, the Commission must consider Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, which provides as follows:

The Commission shall determine the appropriate unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total

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1/ Tr. 3.

2/ The exclusions are pursuant to a stipulation by the parties that the Head Cook and Head of Maintenance and Janitor Services are supervisory and that the Secretary to the Superintendent of Schools is a confidential employe. Tr. 3.

3/ Tr. 3.

4/ Tr. 20.

municipal work force. In making such determination, the Commission may decide whether, in a particular case, the employees in same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above-statutory criteria and establishing appropriate bargaining units, the Commission has considered the following factors: 5/

1. Whether the employees in the unit share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with duties and skills of the other employees.
3. The similarity of wages, hours and working conditions of the employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common work place with the employees in said desired unit or whether they share the work place with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

Annually, the employer's negotiating team 6/ sits down with non-instructional personnel, including servers, cooks, janitors, secretaries and aides to discuss wages, hours and terms and conditions of employment. Typically there is but a single meeting at which various employees and employee groups express their concerns and desires for the upcoming year. 7/

If the Employer sought bargaining units were held to be appropriate there would result a fragmentation of the work force into unnecessarily small bargaining units. The Employer sought units would consist of a fourteen (14) person unit of school aides, a ten (10) person unit of lunch staff, an eight (8) person custodial unit and a five (5) person clerical unit.

The Wisconsin Heights School District operates four buildings. The District High School is located approximately midway between the

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5/ See Kenosha Unified School District No. 1, No. 13431 (3/75); Hartford Union High School, No. 15745 (8/77); Madison Joint School District No. 8, No. 14814-A (12/76); Lodi Joint School District No. 1, No. 16667 (11/78).

6/ Composed of the same school board members and the superintendent of schools who do the more formal teacher bargaining.

7/ Tr. 104-105.

two elementary schools. The Mazomanie Elementary school is approximately two miles to the west of the High School and the Black Earth Elementary school is approximately two miles to the east of the High School. An administration building is situated approximately fifty yards from the High School.

The Administrative building houses the Superintendent of Schools, his confidential secretary, the District bookkeeper (a bargaining unit member), the Head of Maintenance, and one custodian (a bargaining unit member). The High School is the work site of a Principal, an Assistant Principal, two secretaries, three aide positions, the Head Cook, four bargaining unit cooks and one hot lunch worker, and three janitors. Black Earth Elementary School is the work site for a Principal, one secretary, four aides, three lunch workers, and two janitors. Mazomanie Elementary School is the work site for a Principal, a secretary, seven aides, three lunch workers and two janitors. 8/

Secretarial employes of the Employer are supervised by the individual Principals for whom they work. 9/ Maintenance and custodial employes are directly accountable to both the Head of Maintenance and to the Principal of the building to which they are assigned. 10/ Food service personnel are supervised by the Head Cook and to some extent the Superintendent of Schools. 11/

The District maintains the same benefit plan for all of the non-professional employes of the Employer. 12/

The statutory provision noted above primarily imposes an obligation on the Commission to "whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force". 13/ The Commission has in the past found that all non-certified employes of a school district constitute an appropriate bargaining unit. 14/ That seems particularly appropriate in the instant case where the alternative is a series of very small units further subdivided by the four physical plants operated by the Employer, despite the various occupations involved.

#### STATUS OF PART-TIME EMPLOYES:

The Employer urges the Commission to exclude employes who work less than one-half time as casual and/or temporary employes. The employes affected are the four food servers noted in the Findings of

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8/ Union Exhibit No. 1.

9/ Tr. 103.

10/ Tr. 102-103.

11/ Tr. 103-104.

12/ Tr. 106.

13/ Milwaukee County, Dane Co. Cir. Ct. 6/76 (aff. Commission decision No. 14571, 3/74).

14/ Gibraltar Board of Education, No. 11339, 10/72.

Fact. The four food servers come in at 11:00 a.m. and work until 1:00 p.m. daily. 15/ Their work consists mainly of serving the lunches which are provided to the students. As of the date of the hearing they had been employed by the District for periods of 1/2 year, 1 year, 2 years and 9 years. 16/ While the turnover rate in these positions is relatively high 17/ in at least one instance this part-time work has led to a full time job. 18/ The Employer expects to continue the jobs on the part-time basis they now function at and the individuals have a reasonable expectation of continued employment. 19/

In deciding whether an employe is casual or not the determinative factor is the regularity of employment, rather than the number of hours worked. 20/ Under this standard the part-time food service personnel cannot be considered either casual or temporary since they regularly work two hours per day.

#### SUPERVISORY STATUS OF THE SECRETARY TO THE HIGH SCHOOL PRINCIPAL

The Employer argues that the Secretary to the High School Principal, a position currently occupied by Barbara Olson, is a supervisor because of her role in the hiring process. The High School Principal testified that he frequently solicits and receives feedback from Ms. Olson on her perception of candidates for various positions. 21/ This is done because of the principal's respect for Ms. Olson's "deep perception of individual character".

Record testimony indicates that Stephen Udvari, the High School Principal, conducts the evaluation and investigation process preceding hiring of employes completely independently of his secretary. His recommendations are forwarded to the Superintendent of Schools for review. The Superintendent, and possibly the Principal, would then approach the School Board with a recommendation. 22/ It is the School Board that does the actual hiring.

The role of the secretary in the hiring process is "de minimus" and is more an outgrowth of her working relationship with the Principal than a function of her job. The position cannot be regarded as supervisory.

#### CONFIDENTIAL STATUS OF FOUR SECRETARIES

As noted in the Findings of Fact, the parties stipulated that the Secretary to the Superintendent of Schools is a confidential position.

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15/ Tr. 89.

16/ Union Exhibit 1.

17/ Tr. 92.

18/ Tr. 93.

19/ Tr. 92.

20/ Tomah Area School District, (8209-D), 5/9/78.

21/ Tr. 10, 33.

22/ Tr. 25-26.

In addition to this one position the Municipal Employer takes the position, contrary to that of the Petitioner, that the remaining four secretarial positions in the School District are all confidential.

Secretary to the High School Principal

In support of its argument that this position is of a confidential nature, the Municipal Employer relies upon the following factors; the secretary types teacher evaluations which are subsequently turned over to the teacher, the secretary types employes reprimands which are subsequently turned over to the individual, the secretary handles the credentials of job applicants, and types answers to first step grievances which are given to the grieving employe. Additionally the secretary has the Principal's permission to file materials in teachers' personnel files, located in the Principal's office. In the event the High School Principal, who does not take part in negotiations, has suggestions for additions to or deletions from the collective bargaining agreement in some instances these suggestions would be reduced to writing and typed by the secretary. Finally, because the secretary's work station is so close to the Principal's office she could well be exposed to conversation of a confidential nature.

The Commission has consistently held that in order for an employe to be considered a confidential employe, and thereby excluded from the bargaining unit, such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 23/ In order for information to be confidential for such purpose it must be the type of information that deals with (1) the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer and (2) is not available to the bargaining representative or its agents.

The fact that an employe has access to, and in fact types, evaluations of teachers, particularly where those evaluations are provided to the teacher as typed, is not an indicia of confidential status in the sense contemplated by the Municipal Employment Relations Act. 24/

Similarly, simply typing the employer's answer to first step grievances cannot be considered confidential work. The secretary has access to no more than does the grievant, and obviously the Petitioner.

The fact that the secretary types reprimands, which are handed to the affected teacher, does not contribute to a finding of confidentiality. 25/ The secretary has access to nothing that the individual in question does not see.

The Employer's arguments relative to the secretary's access to credentials of job applicants, access to teacher files, 26/ and the

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23/ Green County (Sheriff's Dept.) (16270) 3/28/78.

24/ Hartford Union High School (15745) 8/12/77; School District of Drummond (16614) 10/17/78.

25/ Brown County (15054) 11/19/76; City of Menasha (14523) 4/8/76.

26/ City of Menasha (14523) 4/8/76; Brown County (15054) 11/19/76; Green County (16270) 3/28/78. Additionally, record testimony (Tr. 19) indicates that personnel files are maintained in the Principal's office and it is the Principal who does the actual filing.

proximity of the secretary's work station to that of the High School Principal 27/ simply do not provide a basis for confidential exclusion of the position from the bargaining unit.

What remains is the secretary's function of typing the Principal's recommendations for collective bargaining. While this would certainly be an indicia of confidential status the record strongly suggests that the secretary performs, at most, a de minimus amount of this type of work. 28/

Taking all of the above-noted criteria together, even if all are considered to contribute to a finding of confidentiality, no more than a de minimus exposure to confidential materials is present in the secretary's job. 29/ A de minimus exposure to confidential materials is insufficient grounds for excluding an employe from the bargaining unit, 30/ particularly where there is another confidential employe available to do the work. 31/

Secretary to the Assistant Principal, Secretary to each of the Two Elementary School Principals

In arguing that these three positions should be excluded as confidential the Employer makes essentially the same arguments made on behalf of the position of Secretary to the High School Principal. For the reasons discussed above the factors relied upon are not sufficient to support a finding of confidentiality.

It is clear that an employer cannot be allowed to exclude an inordinately large number of employes by spreading the work of a confi-

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27/ Eau Claire Library (10789) 2/72; Onalaska Jt. School District (15339) 3/9/77.

28/ Tr. 17, 24.

29/ Testimony indicated that the secretary would type approximately 32 two page evaluations in an academic year (Tr. 15). Few, if any, written memoranda regarding suggestions for collective bargaining have been typed by the Secretary (Tr. 17, 24). The record indicates that an average of about two (2) typewritten reprimands are issued through the High School Principal per year (Tr. 21). There has never been a grievance processed by the High School Principal (Tr. 23).

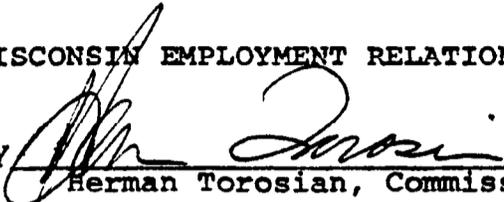
30/ Eau Claire Public Library (10789) 2/72; Sheboygan Board of Education (10488) 8/71.

31/ Cudahy Board of Education (12087) 8/73.

dential nature among such employes or giving them occasional tasks of a confidential nature. To do so would be to allow the employer to deprive employes of their status as "employes" under the law. 32/

Dated at Madison, Wisconsin this 7th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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32/ Menomonee Falls Jt. School District No. 1 (11669) 3/73; Cudahy Board of Education (12087) 8/73; Marshfield Joint School District No. 1 (14575-A) 7/28/76.