

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GREEN BAY SCHOOL DISTRICT

Involving Certain Employes of
GREEN BAY SCHOOL DISTRICT

Case 40
No. 57924
ME-989

Decision No. 17706-B

Appearances:

Mr. Robert Baxter, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2065 East Baraboo Circle, DePere, Wisconsin 54115, appearing on behalf of Green Bay Board of Education Employees (Clerical) Union, Local 3055B, AFSCME, AFL-CIO

Mr. William G. Bracken, Coordinator, Collective Bargaining Services, Godfrey & Kahn, S.C., 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of the Green Bay School District.

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

On August 19, 1999, Green Bay School District filed a petition with the Wisconsin Employment Relations Commission seeking the clarification of a bargaining unit comprised of certain District employes represented by Green Bay Board of Education Employees (Clerical) Union, Local 3055B, AFSCME, AFL-CIO, by excluding two allegedly confidential employes who hold the position of Executive Secretary to the Assistant Superintendent – Curriculum and Instruction. Local 3055B opposes the petition because it believes the two individuals are not confidential employes.

No. 17706-B

Hearing was held in Green Bay, Wisconsin, on November 15, 1999, before Examiner Dennis P. McGilligan, a member of the Commission's staff. The parties made oral argument at the close of the hearing. A transcript was received on November 29, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Green Bay Board of Education Employees (Clerical) Union, Local 3055B, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization which has its offices located at 2065 East Baraboo Circle, DePere, Wisconsin 54115.

2. Green Bay School District, hereinafter the District, is a municipal employer which has its offices at 200 South Broadway, P.O. Box 23387, Green Bay, Wisconsin 54303.

3. Pursuant to GREEN BAY SCHOOL DISTRICT, DEC. NO. 17706 (WERC, 4/80), and after an election conducted by the Commission, the Union was certified as the exclusive bargaining representative of the following bargaining unit:

All full-time and regular part-time non-professional employees excluding all custodial and maintenance employees, noon hour supervisors, cooks, aides, monitors, professional, craft, supervisory and confidential employees.

4. The District is one of the largest school districts in the State. It employs about 3,000 people. There are approximately 170 clerical employees employed by the District in the bargaining unit described in Finding of Fact 3. The District employs five clerical employees who are presently excluded from any bargaining unit as confidential employees.

5. The District Administrator/Superintendent is the chief administrative position in the District. Tom Joynt is the current District Administrator/Superintendent. There are three assistant superintendents in the areas of curriculum, human resources and business. Dan Nerad serves as Assistant Superintendent – Curriculum and Instruction. His two Executive Secretaries (Sandy Heller and Linda Blohowiak) are currently included in the Union represented bargaining unit, and occupy the positions which are the subject of this proceeding. Heller and Blohowiak perform essentially the same duties except that Heller's job duties are concentrated at the secondary level while Blohowiak's concentration is at the elementary level.

6. Both Heller and Blohowiak are involved in the development of the District's positions and strategy relative to collective bargaining with the union that represents the

District's teachers. They investigate background information on bargaining issues such as "assignable time" and class size. They are involved in District meetings where program ideas are identified that have impact on the teacher union/District contract. They analyze problems that need to be addressed in bargaining by the District such as teacher retention and make recommendations on how to solve the problem. They also analyze proposals by the teachers' union and provide input into the District's response.

7. Both Heller and Blohowiak are involved in the District's administration of the teacher bargaining agreement. There is also some involvement by Blohowiak with the administration of the contract for the District's paraprofessionals.

Their role in contract administration includes: development of the District's position on grievances; implementation of the teacher contract relative to staffing issues including assignment, layoff, transfer, scheduling and reassignment; ensuring that the assignments of teachers do not exceed standards identified in the contract; and identification of the initial salary offer to be made to teachers to be hired by the District.

They also field questions from District administrators regarding interpretation of various teacher contract provisions.

8. Both Heller and Blohowiak are involved in labor relations litigation matters. In this regard, they compile information regarding actual or potential grievances, participate in discussions regarding District grievance strategy and position, and develop work product supportive of the District's grievance position. They also field questions on the impact of possible tentative agreements to resolve grievances.

They open the mail for Nerad which may include confidential labor relations material related to litigation as well as contract administration and negotiations. They type administrative evaluations and are privy to disciplinary actions taken against employees.

9. Sandy Heller and Linda Blohowiak have sufficient access to, knowledge of and participation in confidential labor relations matters so as to render them confidential employees.

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

CONCLUSION OF LAW

Sandy Heller and Linda Blohowiak, occupants of the position of Executive Secretary to the Assistant Superintendent – Curriculum and Instruction, are confidential employees within the meaning of Sec. 111.70(1)(i), Stats., and therefore are not municipal employees 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 CLARIFYING BARGAINING UNIT

The two occupants of the position of Executive Secretary to the Assistant Superintendent – Curriculum and Instruction shall be excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of January, 2000.

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

GREEN BAY SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The District claims that the position of Executive Secretary to the Assistant Superintendent - Curriculum and Instruction should be excluded from the clerical bargaining unit represented by the Union based on the confidential labor relations duties performed by the two occupants of said position. The Union takes the opposite position.

DISCUSSION

The Commission has established that a confidential employee must participate in matters involving the consideration of confidential information relating to labor relations, or must have access to or knowledge of confidential information 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 unavailable to the bargaining representative. CRAWFORD COUNTY, DEC. NO. 16931-B (WERC, 9/89); NICOLET AREA TECHNICAL COLLEGE, DEC. NO. 23366-C (WERC, 3/93). A de minimis exposure to confidential materials is generally insufficient grounds for excluding an employee from a bargaining unit. BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87).

As set forth in Findings of Fact 6 – 8, the record is clear that the two occupants of the position of Executive Secretary to the Assistant Superintendent – Curriculum and Instruction perform sufficient confidential duties to warrant their exclusion from the bargaining unit as confidential employees.

In reaching this conclusion, we reject the Union argument that a large amount of the two employees' work "is actually released to the Union" and thus is not confidential. It is true some of the final work product of Heller and Blohowiak is provided to the teacher union or affected employee. However, even as to such work products, the work performed on initial drafts and revisions is confidential labor relations work. More importantly, it is the employees' direct involvement in the District's decision making as it bargains and administers collective bargaining agreements which constitutes the lions share of their confidential work.

The Union argues, however, that exclusion from the Union represented unit is nonetheless not warranted because the confidential work performed “is not related to any work or any bargaining agreements handled or any contract administration with AFSCME bargaining unit.” It is true that the confidential duties performed by the aforesaid employees presently relate almost exclusively to the teacher bargaining unit. However, we have found:

The Union has accurately emphasized that the labor relations work which Kovalaske and Mitchell engage (sic) relates to the teachers and not the support staff. But since the essence of confidentiality is measured by the relationship of the contested position to the employer rather than by the relationship to various collective bargaining units, such emphasis is misplaced.

MADISON AREA VTAE DISTRICT NO. 4, DEC. NO. 16456-E, p. 12 (WERC, 11/87)

Therefore, we reject this argument of the Union.

The Union also argues that the District may be able to reassign the confidential work in question to other employees. However, the record indicates that the District is one of the largest school district in the State of Wisconsin and employs about 3,000 people. The District currently has only five confidential employees. Given the small number of existing confidential employees and the large amount of confidential work these two individuals perform, the record clearly establishes that the confidential duties performed by Sandy Heller and Linda Blohowiak cannot be reassigned to other employees.

Given the foregoing, we conclude that Heller and Blohowiak are confidential employees who therefore must be excluded from the Union represented clerical bargaining unit described in Finding of Fact 3.

Dated at Madison, Wisconsin, this 11th day of January, 2000.

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