

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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NORTHWEST UNITED EDUCATORS	:	Case XVI
	:	No. 28893 ME-2068
Involving Certain Employees of	:	Decision No. 19318-A
	:	
SCHOOL DISTRICT OF BRUCE	:	
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Appearances:

Mr. Alan D. Manson, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, WI 54868, appearing on behalf of the Union.  
Coe, Dalrymple, Heathman & Arnold, S.C., Attorneys at Law, by Mr. Edward J. Coe, P.O. Box 192, Rice Lake, WI 54868, and Mr. Eugene Johnson, District Administrator, School District of Bruce, Bruce, WI 54819, appearing on behalf of the District.

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

Northwest United Educators, having on June 28, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of employes of the School District of Bruce, by determining whether the positions of Transportation Supervisor and Central Office Secretary should be included in a unit consisting of all regular full-time and regular part-time non-professional employes, including secretaries, aides, hot lunch, custodial and maintenance employes, and bus drivers, employed by the School District of Bruce, but excluding supervisory, managerial, professional, confidential and all other employes; and a hearing on said petition having been conducted in Bruce, Wisconsin on September 10, 1982 by Examiner Coleen A. Burns, a member of the Commission's staff; and post-hearing briefs having been filed by December 15, 1982; and the Commission having considered all of the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law, and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Northwest United Educators, hereinafter Union, is a labor organization and has its offices at 16 West John Street, Rice Lake, Wisconsin 54868.
2. That the School District of Bruce, hereinafter District, is a municipal employer and has its offices at Bruce, Wisconsin 54819.
3. That the Union is the certified bargaining representative of all regular full-time and regular part-time non-professional employes, including secretaries, aides, hot lunch, custodial and maintenance employes, and bus drivers, employed by the School District of Bruce, but excluding supervisory, managerial, professional, confidential and all other employes. 1/
4. That the instant proceeding was initiated on June 28, 1982 by a petition filed by the Union, wherein it contended, contrary to the District, that the position of Transportation Supervisor is not supervisory and that only one of the two secretaries in the central office is confidential; and that, therefore, the Transportation Supervisor and the non-confidential secretary should be included in the bargaining unit.

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1/ School District of Bruce, (19318) 2/82.

5. That, at hearing, the Union and District agreed that Roger Taylor, ex-Transportation Supervisor and currently a bus mechanic, is properly included in the unit; that the position of Transportation Supervisor is vacant; that there has been no decision to fill the position of Transportation Supervisor, and that, therefore, the Union withdrew its request to include the position of Transportation Supervisor in the unit reserving, however, the right to seek inclusion of the position in the event the position is filled in the future.

6. That, at hearing, the District and Union agreed that Bonnie Copeland, the District Administrator's secretary, one of the two central office secretaries referred to in the Union's petition, is a confidential employe and, therefore, is properly excluded from the bargaining unit.

7. That Valerie Coder, Confidential Bookkeeper, is one of the two central office secretaries referred to in the Union's petition and is a full-time employe of the District; that the regular duties of Coder's position involve general secretarial and bookkeeping functions as follows: processing accounts payable; opening District mail, except mail addressed to a Principal or marked personal or confidential; typing; filing; maintaining records for the Special Education Program; assisting the District Administrator in the preparation of the District budget; and preparing financial reports for the Department of Public Instruction.

8. That the work areas of Bonnie Copeland and Valerie Coder are contiguous and are located in the office of the District Administrator; that except for information contained in teacher personnel files, all confidential labor relations material is filed in the District's central files; that both Coder and Copeland have access to the District's central files; that the regular duties of Copeland, a full-time employe of the District, involve preparing payroll, typing, filing, and opening mail; that the majority of work pertaining to labor relations, i.e., typing bargaining proposals, typing correspondence and memos regarding grievances, contract negotiations and litigation, and typing School Board minutes is performed by Copeland; and that Coder performs such work when Copeland is on vacation, sick leave, or otherwise occupied.

9. That the District Administrator determines the amounts to be recommended to the School Board for the budget; that, prior to said determination, the District Administrator and Coder occasionally discuss adjustments to the recommended budget; that Coder, pursuant to the direction of the Administrator, costs alternative budget proposals prior to the determination of the recommended budget; that Copeland and Coder both perform calculations necessary to the preparation of the salary and fringe benefit portion of the budget; that once the Administrator decides the amounts to be appropriated in the budget, Coder, pursuant to the District's accounting system's formulas, calculates the amounts to be allocated to specific categories in the budget; that the budget is generally prepared prior to the time that the District's labor contracts are settled; that the recommended budget is presented to the School Board in open session; and that the budget adopted by the School Board is a public record.

10. That Coder does not attend executive sessions of the School Board, administrative meetings, or negotiation strategy sessions; that Coder is not a member of the bargaining team which prepares the District's collective bargaining proposals; that during contract negotiations, Coder's costing duties primarily involve calculating past expenditures; that, during contract negotiations, both Coder and Copeland have projected the costs of wages and fringe benefits based upon percentages and other information supplied by the District Administrator; that the District Administrator also costs out District collective bargaining proposals; and that Coder has not participated in the formulation of the District's bargaining strategy and is not privy to the District's plans with respect to the use of the alternative cost projections.

11. That in the twelve months prior to hearing, only the primary proposals for the non-certified and teaching personnel have been typed and no proposals have been costed; that the vast majority of the District's typewritten material regarding grievances and contract negotiations contained in the District's file is available to the Union; that Coder and Copeland each devote less than five percent of their time to typing and handling grievance material; that of the approximately two months Coder devotes to budget preparation, the salary and fringe benefit portion of the budget occupies several days; that at least seventy percent of Coder's work time involves accounting and preparing financial reports and approximately twenty percent involves the maintenance of Special Education

records, although the percentages fluctuate during the school year; and that in July, 1982, Coder broke her elbow and, as of the date of hearing, was unable to type.

12. That Coder performs a de minimis amount of work involving confidential labor relations matters between the District and its employees; and that Copeland, a non-represented employee, is available to perform such duties.

#### CONCLUSIONS OF LAW

1. That the position of Confidential Bookkeeper, currently occupied by Valerie Coder, is not a confidential position, and, therefore, the occupant of that position is a municipal employe within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the position of Confidential Secretary, currently occupied by Bonnie Copeland, is a confidential position and, therefore, the occupant of that position is not a municipal employe within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the undersigned makes and issues the following

#### ORDER CLARIFYING BARGAINING UNIT 2/

1. That the petition, as it seeks to include the position of Transportation Supervisor in the bargaining unit described in Finding of Fact No. 3, is hereby dismissed.

2. That the position of Confidential Bookkeeper, currently occupied by Valerie Coder, is hereby included in the bargaining unit described in Finding of Fact No. 3.

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2/ 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

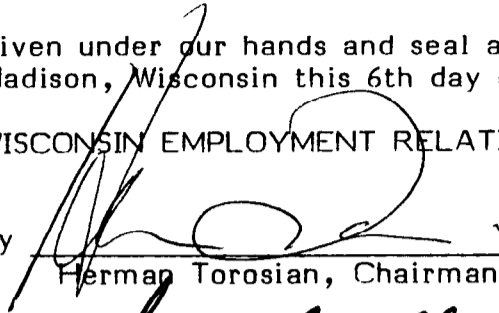
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3. That the position of Confidential Secretary, currently occupied by Bonnie Copeland, shall remain excluded from the bargaining unit described in Finding of Fact No. 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 6th day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Herman Torosian, Chairman



Gary L. Covelli, Commissioner



Marshall L. Gratz, Commissioner

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2/ (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.

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

The Union, in its petition, sought the inclusion in the bargaining unit of the position of Transportation Supervisor and one of the two central office secretaries. At hearing, the Union withdrew its request to include the position of Transportation Supervisor and, furthermore, the parties stipulated to the fact that Bonnie Copeland, the central office secretary occupying the position of Confidential Secretary, is a confidential employe and appropriately excluded from the unit. The remaining issue in dispute, therefore, is whether Valerie Coder, the central office secretary occupying the position of Confidential Bookkeeper, is a confidential employe within the meaning of MERA.

As asserted by the District, Coder does have access to sensitive labor relations material as a result of her typing, filing and mail opening duties. Such duties, however, occupy a de minimus amount of Coder's time and, Copeland, an excluded confidential employe, is available to perform these duties. Since mail containing sensitive labor relations material can easily be marked "Confidential" or "Personal" which, as the record establishes will not be opened by Coder, it will not be necessary for the District to reassign Coder's mail opening duties to Copeland. Inasmuch as the record establishes that the vast majority of material contained in the District files is available to the Union, the record does not support the District's contention that "total restructuring and reorganization" of District files would be necessary to prevent Coder from having access to sensitive labor relations material. Documents which the District Administrator deems to be sensitive can be placed in a confidential file, as are the District's teacher personnel records.

The District maintains that Coder's costing of the salary and fringe benefits to be included in the District's preliminary budget and collective bargaining proposals necessarily imparts to Coder knowledge of the District's collective bargaining strategy. According to the District, the published budget contains only broad categories of expenditures, an examination of which will not reveal the amount of money available for salary and fringe benefit increases. The District further argues that Coder, by virtue of her budget preparation duties, is aware of the exact amount of money available for salary and fringe benefit increases and, therefore, knows the "bottom line" of the Employer, which the District contends is sensitive labor relations information. The Commission is persuaded, however, that the specific allocations within the adopted budget are a matter of public record <sup>3/</sup> and, therefore, can be obtained by the Union. Furthermore, contrary to the argument of the District, budgetary appropriations for salary and fringe benefits do not necessarily determine the District's bottom line in negotiations

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3/ Sec. 65.90, Municipal Budgets, Wis. Stats:

(1) In this section, "municipality" means each county other than counties having a population of 500,000 or more, each city excepting cities of the 1st class, village, town, school district, vocational, technical and adult education district and all other public bodies that have the power to levy or certify a general property tax or budget. Every municipality shall annually, prior to the determination of the sum to be financed in whole or in part by a general property tax, funds on hand or estimated revenues from any source, formulate a budget and hold public hearings thereon.

(2) Such budget shall list all existing indebtedness and all anticipated revenue from all sources during the ensuing year and shall likewise list all proposed appropriations for each department, activity and reserve account during the said ensuing year. Such budget shall also show actual revenues and expenditures for the preceding year, actual revenues and expenditures for not less than the first 6 months of the current year and estimated revenues and expenditures for the balance of the current year. Such budget shall also show for informational purposes by fund all anticipated unexpended or unappropriated balances, and surpluses.

(Continued on Page Seven)

since such amounts are subject to collective bargaining. Furthermore, a specific appropriation may be readjusted after the budget has been adopted. Although Coder may know the amount of money that the District has allocated for salaries and fringe benefits the Commission is not persuaded that Coder's budget preparation duties give her access to sensitive labor relations material since, as set forth in Findings of Fact No. 9 and 10, she is not privy to the District's strategy in how such money will be spent.

To be sure, knowledge of the alternative bargaining positions under serious enough consideration to warrant costing out by the employer is sensitive labor relations information. In the instant case, however, Coder presently devotes only a de minimis amount of time to such proposal costing activities, and Copeland, the District Administrator's secretary who is involved in payroll activities and who is excluded from the unit as confidential has performed such costings and could be assigned to perform the insubstantial amount of such work involved.

In order for an employe to be considered a confidential employe and thereby excluded from the bargaining unit, the Commission has consistently held that such an employe must participate in the employer's labor relations function and have access to sensitive labor relations information which would not be available to

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3/ (Continued)

(3) A summary of the budget required under sub. (1) and notice of the place where the budget in detail is available for public inspection and notice of the time and place for holding the public hearing thereon shall be published as a class 1 notice, under ch. 985, in the municipality at least 15 days prior to the time of the public hearing except that:

(a) In towns a summary of the budget required under sub. (1) and notice of the time and place of the public hearing thereon shall be posted in 3 public places at least 15 days prior to the time of the public hearing.

(b) Any school district reproducing and providing general distribution within the district of an annual report incorporating a budget summary at least 15 days prior to the annual meeting is exempt from the notice requirements of this subsection.

(c) A common school district, as defined under s. 115.01(3), shall publish a class 1 notice, under ch. 985, as required under this subsection, at least 10 days prior to the time of the public hearing thereon.

(4) Not less than 15 days or, in the case of common school districts as defined under s. 115.01(3), not less than 10 days, after the publication of the proposed budget and the notice of hearing thereon a public hearing shall be held at the time and place stipulated at which any resident or taxpayer of the governmental unit shall have an opportunity to be heard on the proposed budget. The budget hearing may be adjourned from time to time. In school districts holding an annual meeting the time and place of the budget hearing shall be the time and place of the annual meeting.

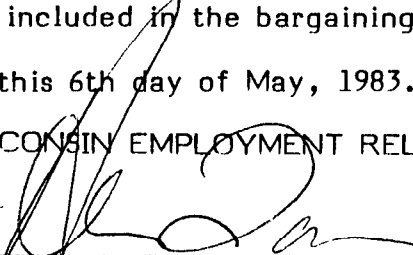
(5)(a) Except as provided in par. (b) and except for alterations made pursuant to a hearing under sub. (4), the amount of tax to be levied or certified, the amounts of the various appropriations and the purposes for such appropriations stated in a budget, required under sub. (1) may not be changed unless authorized by a vote of two-thirds of the entire membership of the governing body of the municipality, except that in the case of a city board of education transfers may be authorized by a two-thirds vote of the board for funds under the board's control. Any municipality, except a town, which makes changes under this paragraph shall publish a class 1 notice thereof, under ch. 985, within 10 days after any change is made. Failure to give such notice shall preclude any changes in the proposed budget and alterations thereto made under sub. (4). (Emphasis added).

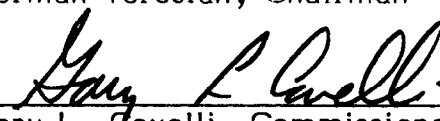
the Union. 4/ Where, as here, Coder has a de minimis exposure to confidential labor relations material, and there is another confidential employe available to do the work, there is insufficient grounds for excluding Coder from the bargaining unit. 5/ Accordingly the position of Confidential Bookkeeper, currently occupied by Valerie Coder, is appropriately included in the bargaining unit.

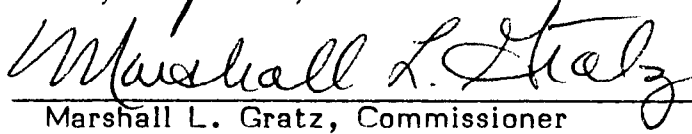
Dated at Madison, Wisconsin this 6th day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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4/ Waukesha Jt. School District No. 1, (10823-A) 3/81; and Kenosha County (Assistant Attorney's Association), (15371) 3/77.

5/ City of Greenfield, (18304-C) 3/82, CESA #4, (14177-A) 7/80.