

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
In the Matter of the Petition of :
:
WAUPUN CITY EMPLOYEES, LOCAL 1112, : Case 13
AFSCME, AFL-CIO : No. 47121 ME-559
: Decision No. 19321-A
:
Involving Certain Employes of :
:
WAUPUN SCHOOL DISTRICT :
:

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169.
Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Mark L. Olson, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-3101.

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

Waupun City Employees Union, Local 1112, AFSCME, AFL-CIO, having on February 21, 1992 filed a petition requesting the Wisconsin Employment Relations Commission to clarify the existing bargaining units by determining whether the position of Purchasing-Receiving Clerk should be excluded from the bargaining unit of clericals represented by Petitioner and included in the bargaining unit of custodians represented by Petitioner. Hearing was held in Waupun, Wisconsin on June 15, 1992. A stenographic transcript was made and received on June 26, 1992. The parties completed their briefing schedule on August 6, 1992. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The Waupun School District, herein the District, is a municipal employer and has its offices at 950 Wilcox Street, Waupun, Wisconsin.

2. Waupun City Employees, Local 1112, AFSCME, AFL-CIO, herein the Petitioner or Union, is a labor organization and has its offices at N7242 Winnebago Drive, Fond du Lac, Wisconsin.

3. The Petitioner has represented the District's custodial employes since 1968 in a separate bargaining unit. The recognition clause from the parties' most recent collective bargaining agreement is as follows:

The Board recognizes the Union as the exclusive bargaining agent for all regular custodial and maintenance employees of Joint School District No. 1, City of Waupun, excluding all other employees and supervisors of the Board as certified by the Wisconsin Employment Relations Commission on July 31, 1968, pursuant to an election conducted July 22, 1968.

4. In 1982, the District and the Union stipulated to a separate bargaining unit comprised of non-supervisory, non-confidential clerical and aide employes of the District. The position of Purchasing-Receiving Clerk, the disputed position in the instant case, was in existence at that time and by agreement of the parties was included in the clerical/aide bargaining unit and

not the custodial unit. The Purchasing-Receiving Clerk position has remained in the clerical/aide bargaining unit from 1982 to the present. The recognition clause in the parties' most recent agreement is as follows:

The Board hereby recognizes the Union as the exclusive bargaining representative for all regular full-time and regular part-time non-certified staff, including secretaries, teacher aides, library aides, AV technician, payroll clerk employees and purchasing/receiving clerk employees, as listed in Appendix "A", employed by the Joint School District No. 1, City of Waupun, but excluding custodial employees, the secretary to the District Administrator, the secretary to the Business Manager and all supervisory, managerial, confidential, executive, food service and student employees of the Board as certified by the Wisconsin Employment Relations Commission on February 23, 1982, pursuant to an election conducted February 11, 1982.

5. The job description for the Purchasing-Receiving Clerk position was established in October of 1981. It has not been altered or amended since that time by the District. The job description is as follows:

JOB DESCRIPTION

Title: Purchasing-Receiving Clerk

Qualifications: 1) High School graduation including courses in bookkeeping, accounting, mathematics and typing.
2) Two years of post-secondary training and/or job experience in purchasing and supply management.
3) A valid driver's license.
4) Ability to lift and transport items for delivery.
5) Such alternative to the above qualifications as the Board may find appropriate and acceptable.

Reports to: Business Manager

Job Goal: To assist in the administration of the district's business affairs by the prompt and accurate handling of all purchasing, stocking and delivering matters.

Responsibilities: 1) Initiates contacts with vendors relative to supply and equipment availability, invoices, purchase orders and contracts.
2) Purchases by competitive bidding, informal quotations and negotiation, items of supply

and equipment necessary for the operation of the school district.

- 3) Prepares all bidding documents, including notice to bidders, instruction to bidders, specifications and form of proposal.
- 4) Monitors all purchase requisitions to determine correctness of information, price extensions, code information, and so on.
- 5) Types and mails all purchase orders.
- 6) Unpacks items received and inspects for damage or defect.
- 7) Verifies accuracy of shipment by comparing items with information on invoice or packing slip and purchase order.
- 8) Stores items according to established procedures, maintaining a neat and orderly storeroom.
- 9) Delivers supplies and equipment to the requesting buildings.
- 10) Takes physical count periodically of stock on hand and maintains inventory records.
- 11) Serves as secondary typist to the business manager.
- 12) Cooperatively shares in the office work load as requested by the business manager.

Terms of Employment: Twelve month year.
Salary to be established by the Board.

Evaluation: Performance of this job will be evaluated annually in accordance with provisions of the Administrative Rules Regarding Clerical Employees.

6. Over the last ten years, the following additional duties and responsibilities have been performed by the Purchasing-Receiving Clerk:

- 1) Serve as Secretary to Building & Grounds Supervisor.
- 2) Responsible for Asbestos Record-keeping.
- 3) Maintain all Material Safety Data Sheets, keeping them up-

- dated. Must have knowledge of hazardous materials and notify custodians of such hazards. Chemicals must be labeled and inventoried.
- 4) Keep track of vehicle usage and signing out of school vehicles.
 - 5) In charge of Best Lock Key System and recordkeeping. Cut new keys when needed and issue keys when requested.
 - 6) Maintain inventory records on computer.
 - 7) Ordering of custodial supplies.
 - 8) Substitute transportation driver. (Transport students when driver is ill, etc.)
 - 9) Run errands as deemed necessary by Business Manager & Building & Grounds Supervisor.
 - 10) Assist in asbestos surveillance.
 - 11) Transport books, equipment for district. (It used to be that I'd only deliver supplies for the warehouse on a weekly basis. Now I transport items for just about anyone in the district.)
 - 12) Return unwanted or incorrect items for district.

The additional duties result in five to ten hours of tasks per week that are different from those duties set forth in the job description.

7. During the school year, the Purchasing-Receiving Clerk spends approximately half of her time at a desk in the Education Service Center along with other clericals performing duties of a clerical nature relating to purchasing and receiving. She spends the other half of her time engaged in warehousing and/or pick-up and delivery activities. She wears blue jeans and a T-shirt. During the summer recess, she is employed primarily in the warehouse for her entire work week engaging in inventory, purchase, supply, loading and unloading duties.

When she is at her desk, she maintains the inventory, ordering and purchasing records for the District. She types purchase orders, processes requisition forms from District personnel, and handles the solicitation of bids by the District. She also types occasional budget reports and rarely a letter on letterhead for the Business Manager.

With respect to her warehouse and delivery duties, she must physically unload deliveries made to the warehouse and check their accuracy. She must physically lift, carry, load, and unload goods and supplies and transport them from the warehouse to the individual schools. She operates a forklift in the warehouse. She operates a truck, a pick-up truck, Suburbans, and vans in her delivery function and drives these vehicles to pick up or return items directly

from suppliers. She may also move furniture, equipment, books, etc., between schools.

The Purchasing-Receiving Clerk is now responsible for asbestos surveillance, including crawling through tunnels to make inspections. She is responsible for maintaining safety records and for distributing and instructing custodial employees on the use of hazardous materials such as cleaners, soaps, waxes, etc. On occasion she substitutes as a bus route driver, running a preschool bus route on Mondays and Fridays. She is in charge of the District lock and key system, cutting keys for District personnel when necessary. She works at a desk in the warehouse part of the time. She comes into contact with the two maintenance employees who also work out of the warehouse. The Purchasing-Receiving Clerk used to repair the copiers and typewriters but now calls a repair person because of insufficient time. With respect to her supervision, she enjoys dual supervision from both the Business Manager and the Supervisor of Buildings and Grounds. She has only performed work for the Supervisor of Buildings and Grounds since September of 1991 and her work in coordination with him is no more than three hours per day.

8. The additional duties of the Purchasing-Receiving Clerk are not sufficient to establish that there are changed circumstances which materially affect the position's bargaining unit status.

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

CONCLUSION OF LAW

The position of Purchasing-Receiving Clerk remains appropriately included in the secretarial and aide bargaining unit.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Purchasing-Receiving Clerk be, and the same hereby is, included in the secretarial and aide bargaining unit described in Finding of Fact 4, represented by Waupun City Employees Local 112, AFSCME, AFL-CIO.

Given under our hands and seal at the City of
Madison, Wisconsin this 20th day of October,

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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,
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1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

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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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

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(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

WAUPUN SCHOOL DISTRICT

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

BACKGROUND:

Petitioner is the exclusive bargaining representative for two separate bargaining units of District employes. It has represented custodial and maintenance employes since 1968. In 1982, the Petitioner and District agreed to the establishment of a second separate unit consisting of clerical and aide employes. The disputed position of Purchasing-Receiving Clerk was included in the clerical/aide unit at the time of its inception.

POSITIONS OF THE PARTIES:

Union

The Union contends that the Purchasing-Receiving Clerk should be accreted to the custodial bargaining unit. It argues that the actual duties and job responsibilities for the position have been changed since October of 1981. The changes have been numerous, consisting of between five and ten hours of the 40 hour workweek, and significant. According to the Petitioner, these changes justify a transfer of the position from the clerical to the custodial bargaining unit.

The Petitioner maintains that the work performed by the Purchasing-Receiving Clerk is more similar to the "blue collar" custodial employes of the District than to the "white collar" clericals. No other clerical employe has to be physically able to lift, carry, deliver and drive. Similarity of the work, hours and conditions of employment of the disputed position corresponds more closely to the custodial/maintenance employes than to the clericals/aides, in the Petitioner's view. The totality of the job assignments performed by the Purchasing-Receiving Clerk in light of the evolution of the job responsibilities has resulted in the position evolving into principally a "blue collar" job. The Petitioner requests the Commission to order inclusion of the Purchasing-Receiving Clerk in the custodial bargaining unit.

District

The District emphasizes that the disputed position was stipulated by the parties to be a part of the clerical unit. At no time since the original inclusion has the Petitioner ever argued or alleged that the Purchasing-Receiving Clerk should be included within the custodial bargaining unit.

It stresses that the Purchasing-Receiving Clerk is supervised by the Business Manager, who does not supervise custodial employes. The District notes that almost none of the duties and responsibilities of the Purchasing-Receiving Clerk are performed by other custodial employes. The District contends that the primary work location of the Purchasing-Receiving Clerk is in the Education Service Center along side other clerical employes.

The District argues that the supplemental list of "changes and/or additions" to the Purchasing-Receiving Clerk's job description was not adjusted or recognized by the District and is little more than unsubstantiated conclusions on the part of the current occupant. Assuming arguendo that said

changes have in fact been made, almost none of the changes or additions, according to the District, represent work which has ever been performed by employees in the custodial/maintenance unit.

Stressing that there have been no differences in duties sufficient to constitute a changed circumstance which materially affects the unit status of the employe performing the duties, the District asks the Commission to reject the Union's request for accretion of the position into the custodial unit. It avers that the Petitioner has failed to present substantial evidence that a substantial difference between the job duties of the current versus the previously existing position exists. Pointing out that in the instant case there has been no change in position, title or job duties, it claims that the current position is virtually the same position to which the parties stipulated inclusion in the clerical unit in 1982 and officially has remained unchanged.

The District argues that the Purchasing-Receiving Clerk position has no "community of interest with the employes of the custodial/maintenance bargaining unit." In this regard, the District also distinguishes requisite educational requirements alleging that the job descriptions for custodians does not require as a job qualification, a high school diploma or two years of post-secondary training which are requisites for the Purchasing-Receiving Clerk.

With respect to supervision, the District avers that common supervision between the Purchasing-Receiving Clerk and custodial/maintenance employes is non-existent. Nor is there, it asserts, a common workplace. There is no similarity in wages, hours and working conditions since the salaries of the custodial/maintenance employes are set forth in one agreement and the wages of the Purchasing-Receiving Clerk are set forth in the collective bargaining agreement pertaining to clericals and aides.

Bargaining history, under the District's theory, also mitigates against severing the disputed position from the clerical/aide unit and accreting it to the custodial/maintenance unit.

In conclusion, the District submits that the petition for unit clarification must be dismissed as being without merit.

DISCUSSION:

Because the parties voluntarily agreed to include the Purchasing-Receiving Clerk in the secretarial and aide unit, the Commission will not alter the composition of a bargaining unit agreed upon by the parties by removing the position over the objection of the District unless:

1. The position(s) in dispute did not exist at the time of the agreement; or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential etc. or
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act. 2/

2/ Eau Claire School District, Dec. No. 17124-A (WERC, 4/90); Manitowoc

The Petitioner maintains that there has been a substantial change in duties and responsibilities resulting in changed circumstances which materially affect the position's bargaining unit status. In reviewing the duties and responsibilities, the Commission places greater weight on the actual duties and responsibilities of the position in question than on duties and responsibilities merely enumerated in the job description. 3/ The Commission accepts the un rebutted testimony of the current occupant of the position along with that of her two supervisors which establishes that five to ten hours of the 40 hour week have been changed with the addition of duties set forth in Finding of Fact 6.

It is evident from the record that the duties and responsibilities set forth in the October 29, 1981 job description comprise a mixture of both clerical and custodial/warehouse functions. At the inception of the clerical and aide unit in 1982, the parties voluntarily placed the position in the clerical and aide unit despite the custodial functions inherent in the position at that time and the existence of the custodial/maintenance unit. As the District notes, there were no previous attempts to transfer this position from the secretarial/aide to the custodial/maintenance units until recent events resulting in the filing of the instant petition.

The crux of the Petitioner's argument is that, with the additional responsibilities and duties, which are in its view substantial, the position or the totality of the job assignments have crossed a line or threshold such that the position has evolved into a "blue collar" job primarily custodial in nature.

There are two problems with this argument. The first involves the mix of newly-assigned responsibilities. A review of Finding of Fact 6 establishes that the new or additional duties are of virtually the same mix as those delineated in the original job description. Some are clerical in nature while others are more custodial/warehousing in nature. Because the additional duties in essence do not significantly deviate from those previously assigned, there is no reason to conclude that some "major" threshold has been crossed, as the Union argues.

The second difficulty involves the amount of change involved in the disputed position. The incumbent testified that she still performs all of the duties enumerated in her formal job description. At most, by her own and her supervisor's highest estimates, 25% of her job duties have changed and the replacement duties are still about half-clerical in nature.

Given the foregoing, we are unconvinced that there have been sufficient changed circumstances which have materially affected the unit status of the

County, Dec. No. 7116-C (WERC, 11/91); and City of Sheboygan, Dec. No. 7378-A (WERC, 5/89).

3/ Manitowoc County, Dec. No. 7116-A (WERC, 4/88); see also City of Cudahy, Dec. No. 26680, at p. 12 (WERC, 11/90).

position in dispute. 4/ Accordingly, we deny the Petitioner's request that the position of Purchasing-Receiving Clerk is placed in the custodial/maintenance unit and order said position to remain in the clerical and aide bargaining unit represented by Petitioner.

Dated at Madison, Wisconsin this 20th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

4/ See Eau Claire School District, supra. at p. 9.