

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**MOSINEE EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION**

Involving Certain Employees of  
**MOSINEE SCHOOL DISTRICT**

Case 9  
No. 51821  
ME(u/c)-738

**Decision No. 20479-F**

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Appearances:

**Attorney James Conlon**, Executive Director, Central Wisconsin UniServ Councils – Unit 5, P.O. Box 158, Mosinee, Wisconsin 54455-0158, appearing on behalf of the Mosinee Educational Support Personnel Association.

Ruder, Ware & Michler. S.C., by **Attorney Dean Dietrich** and **Attorney S. Bryan Kleinmaier**, 500 Third Street, Suite 700, Wausau, Wisconsin 54402-8050, appearing on behalf of the Mosinee School District.

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

On August 9, 2001, the Mosinee Educational Support Personnel Association filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing Association bargaining unit of Mosinee School District employees by including the position of Payroll Accounting/Human Resources Specialist. The District asserts the Specialist is a confidential employee who should continue to be excluded from the unit.

Efforts by the parties to settle the dispute were unsuccessful and a hearing in the matter was conducted in Mosinee, Wisconsin, on October 1, 2001, before Examiner Steve Morrison, a member of the Commission's staff. The parties completed their briefing schedule on January 29, 2002.

Dec. No. 20479-F

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The Mosinee Educational Support Personnel Association, herein the Association, is a labor organization with its offices at P.O. Box 158, Mosinee, Wisconsin 54455-0158.

2. The Mosinee School District, herein the District, is a municipal employer with offices at 591 West Highway 153, Mosinee, Wisconsin 54455. The District has approximately 250 employees and has a collective bargaining relationship with two bargaining units of District employees.

3. At all times material herein, the Association has been the exclusive bargaining representative for a unit described in the parties' 1999 - 2001 collective bargaining agreement as:

. . . all regular full-time and regular part-time Maintenance, Custodial, Secretarial, Bookkeeping, and Lunch Program Employees of the School District of Mosinee excluding all summer, casual, supervisory, managerial, and confidential employees.

4. During 2000, the District began to consider reorganizing its human resources, payroll and accounting functions. When consideration of reorganization began, the District's Business Office consisted of the Business Manager Brent Zimmerman; the Business Manager's Secretary Tracey Quast; the Head Bookkeeper Darlene Unertl; the Bookkeeper-Payroll Sandy Hoppa; and the Bookkeeper-Payables Sharon Kautzman. Zimmerman and Unertl were not in the Association unit while Quast, Hoppa and Kautzman were included in the unit.

In January, 2001, the following reorganization proposal went before the District's Board of Education:

*January 2001*

Proposal to Restructure Human Resources/Accounting/Payroll Function

Net Change in Number of Positions: None

What is Proposed?

- A. Create Director and Assistant Director of HR/Accounting/Payroll
- B. Establish compensation at competitive range, determine placement
- C. Remove Assistant Director from MESPA

Rationale

1. Board recommended adding an HR specialist one year ago; administration did not feel adding a full time district office administrator was prudent. Responsibilities have increased. Moreover, need to free Business Manager to concentrate on resource development issues.
2. Confidentiality/Access to Confidential Information
  - Personal Files of Employees
  - Employee garnishments
  - Divorce/child custody payments
  - Letters of reprimand for wage deductions
  - Access to nonrepresented employee contracts, wages, and benefits
  - Terminations
  - Time off for absences
  - Long and short term disability claims and access to medical records
  - Employee background checks
  - Flex Plan deductions
  - TSA and 403(b)(7) plans
  - Retirement questions and benefits
  - Worker's comp
  - W-2 and tax information for all employees
3. Increasing Complexity
  - Filing Government reports accurately on line
  - Operating computer systems and complex accounting, payroll, and personnel software
  - Creating employee data bases
  - Knowing laws and following rules
4. Increasing Supervisory Responsibility
  - Need authority to act in areas such as filing government reports; making decisions for almost 300 employees, deciding eligibility

for programs, taking confidential actions, approving purchases within guidelines, interpreting and acting on government regulations

- Need to standardize hiring procedures and adherence to laws and rules for unionized and nonunionized employees
- Need to create system of data collection and reporting for internal management of HR function, accessible to administrators
- Need to assist in the preparation of reports and data necessary for negotiations with all employee groups
- Need to improve financial methodology for group management

### Summary

These positions would not require additional personnel, but would familiarize responsibilities that have been evolving in the business office as the operation of the district becomes more complex. The change would improve efficiency, allow the district to compensate potential employees who have the skills the positions require, and train existing employees to carry out necessary functions the district needs to efficiently operate.

Director:

Salary Proposed \$47,233

Key Benefit

Tuition reimbursement up to 9 credits per year, if approved by the Business Manager are related to performance of duties Allowance for home internet access

Assistant Director

Salary Proposed \$36,000

Following its consideration of this proposal, the District reorganized the human resources/accounting/payroll function effective July 1, 2001. As part of the reorganization, some of the Business Manager's responsibilities as to personnel transactions and benefit administration were transferred to Head Bookkeeper Unertl whose position was recreated as Accounting/Human Resources Supervisor. As part of the reorganization, Unertl's responsibilities as to extracurricular contracts, insurance benefits and gathering wage and benefit information for the Business Manager's use in bargaining were transferred to Bookkeeper-Payroll Hoppa whose position was recreated as Payroll Accounting/Human Resources Specialist position and removed from the Association bargaining unit.

Hoppa's new job description states in pertinent part:

. . .

*Minimum qualifications:*

1. Has a two year degree in accounting or equivalent work experience.
2. Must be familiar with computerized financial record keeping.
3. Must be able to perform and understand accounting procedures.
4. Must be able to utilize spreadsheets and databases.
5. Must be able to type at least 40 words per minute.
6. Must be able to maintain the confidentiality of personnel and financial records.

*Reports to:*

1. Accounting/Human Resources Supervisor, Business Manager.

*Job responsibilities/examples of work performed:*

1. Responsible for all employee payrolls which entails processing time cards, running reports and writing payroll checks.
2. Responsible for preparing and issuing federal, state and social security tax payments and quarterly reports.
3. Maintains accurate payroll deduction records on the computer.
4. Maintains employee extra curricular contracts.
5. Maintains employee personal files and extracts information from employee files to make salary payments, leave determinations and benefits.
6. At year end reconciles wages, taxes, social security and retirement information and prepares the required year end forms and reports such as W-2 forms and W-3 reports.

7. Assists the business manager with budgeting employee wages and calculating wage increases and rates for negotiations with employee unions.
  8. Maintains all District records regarding employee leave time and advises business manager of potential problems with employee use of leave time.
  9. Monitors employee hours of work and advises the business manager of potential problems with employees exceeding their normal scheduled hours.
  10. Assists with getting proper information to unions.
  11. Prepares materials for District financial audits and for negotiations with District unions.
  12. Acts as the replacement for the accounting/human resources supervisor when accounting/human resources supervisor is absent.
  13. Works with attorneys, courts and WISCTF regarding child support and garnishments.
  14. Completes employee credit and employee verification reports.
  15. Shall set up and monitor employee Flexible Benefits Program.
  16. Shall know rules and laws pertaining to TSA's, flexible benefits, wage reporting and retirement.
  17. Shall support the District's Strategic Plan, and contribute to its implementation in his/her area of responsibility.
  18. Performs other duties as assigned by the business manager or accounting/human resources supervisor.
5. Hoppa has been employed by the District since 1998 and reports to Zimmerman and Unertl.

Hoppa has access to the District's accounting system, "Skyward," and retrieves wage and benefit information from that system for Zimmerman in preparation for labor negotiations with the two District employee bargaining units. Zimmerman plays a significant role as a District representative during bargaining. Hoppa discusses the content of the wage and benefit data with Zimmerman to be sure that he understands it. Zimmerman then uses the data provided by Hoppa to cost proposals for bargaining. Zimmerman has Hoppa proof his

work and she may interject commentary if she has questions or sees mathematical deficiencies. As a result of her conversations with Zimmerman, Hoppa is sometimes privy to knowledge of potential proposals the District may make during labor contract negotiations.

Zimmerman will also direct Hoppa to assemble payroll information for the District's use when determining how and whether to fill a position.

Hoppa monitors employee work schedules and time cards and makes determinations as to whether the employees are working within their regular schedules. She reports problems to Zimmerman who then investigates the matter further. As part of Zimmerman's investigation, he may ask for additional work record information from Hoppa.

Hoppa maintains employee leave records and reviews them to ensure that leave time is used in a manner consistent with District policies and bargaining agreements. She consults with Zimmerman on the formulation of policies/interpretation of bargaining agreement relating to leave issues.

Hoppa maintains personnel records and works with personnel files on a daily basis. She is responsible for implementing child support payments and garnishments.

Hoppa administers the extracurricular activity contracts for the District. Using the Skyward system, she provides wage and benefit information to Unertl who then uses that information to prepare the extracurricular portion of the budget. If the bargaining agreement which determines extracurricular wage costs has not been settled when the budget is formulated, the District advises Hoppa what wage level to utilize when she compiles information.

Hoppa is expected to fill in for Unertl in her absence and to that end is receiving some cross training in Unertl's position.

Hoppa does not have sufficient access to, knowledge of, or participation in confidential labor relations matters to be a confidential employee.

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

#### **CONCLUSION OF LAW**

The incumbent in the position of Payroll Accounting/Human Resources Specialist is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT**

The Payroll Accounting/Human Resources Specialist is included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 16<sup>th</sup> day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

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Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner



MOSINEE SCHOOL DISTRICT

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

**POSITIONS OF THE PARTIES**

**The District**

The District asserts that Payroll Accounting/Human Resources Specialist Hoppa should continue to be excluded from the bargaining unit because she is a confidential employee.

According to the District, the July 1, 2001 Business Office reorganization resulted in a transfer of some of the Business Manager's day-to-day duties to Accounting/Human Resources Supervisor Unertl, who, in turn, transferred some of her daily duties to the Payroll Accounting/Human Resource Specialist Hoppa. These duties, argues the District, are confidential because the incumbent has access to and knowledge of the District's collective bargaining materials and proposals and because not all of the information to which she has access is shared with the Association. The District asserts that Hoppa's job description confirms these confidential duties where it states: "Assists the business manager with budgeting employee wages and calculating wage increases and rates for negotiations with employee unions" and also points to Business Manager Zimmerman's testimony that she "puts together all the total wage and benefit information, prepares the information, and basically makes sure I understand what she is giving me so that when we go - when we are doing the negotiations that I understand everything . . ."

The District argues that Hoppa does more than just gather data to be used in the collective bargaining process, however. It points out that she discusses the collective bargaining materials to the extent that she "will proof my (Zimmerman) stuff and, you know, interject commentary if she has got a question about something" or sees "some mathematical deficiencies in my spreadsheets."

The District contends that Hoppa's duties require her to discuss "the amount of money that must be budgeted to cover settlements in labor negotiations" with Zimmerman and that "Hoppa's costing of wage and benefit proposals for labor negotiations and her subsequent discussions with Mr. Zimmerman regarding that information, as well as her work with the budget . . ." lead to the conclusion that she is a confidential employee. The District also notes Hoppa's participation in/provision of information for District staffing decisions.

The District further asserts that because Hoppa monitors employee work schedules and leave time usage, her job duties provide the "potential for involvement in a disciplinary investigation" which, according to the District, is indicative of her confidential status.

The District contends that it is not feasible to transfer Hoppa's confidential duties to another employee.

### The Association

The Association argues the Payroll Accounting/Human Resources Specialist should not be excluded from the bargaining unit because any exposure the incumbent has to confidential information is *de minimis*. It contends that Hoppa may go for a year or more without attending to any confidential business and that any such duties required of the position could be performed by another employee without creating any undue hardship on the District. The Association points out that the District, in addition to Zimmerman and Unertl, has another confidential central office non-bargaining unit position available (the secretary to the District Administrator) who could easily be trained to assume whatever confidential duties are currently being provided by Hoppa.

The Association argues that Hoppa does not do the costing for the District but merely provides numerical data from various pay categories to Zimmerman so he can do the costing and that the mere gathering of such information is not confidential labor relations work.

The Association asserts that the information contained on the District's accounting system, "Skyward," is ultimately available to the Association upon request and as such is not confidential. Regarding Hoppa's access to wage and overtime payment information, the Association points out that this information, too, is available to the Association and is thus not confidential.

Regarding Hoppa's duties relating to employee leave use, the Association contends that she is nothing more than a record keeper and is not involved in any discipline or investigation regarding leave usage nor does she exercise any discretion in the granting of leave or in its usage.

The Association alleges that Hoppa's duties relating to her maintenance of the extracurricular contracts does not expose her to confidential information since the pay rates for these contracts are specifically listed in the collective bargaining agreement. It argues that she does not determine what pay rate a certain extracurricular position will receive but is informed of this by the District. Thus, the Association argues, no aspect of this job duty is confidential in nature.

The Association contends that Hoppa's work with personnel files is not confidential because she does nothing other than check to be sure required employment documents are contained therein and is not involved in any disciplinary action regarding the files. While the information in the files is private, Hoppa's access does not constitute access to confidential labor relations information.

In response to the District's assertion that Hoppa is being trained to fill in for Unertl in her absence, the Association posits that: (1) it is unlikely Hoppa would perform any of Unertl's major job functions in her (Unertl's) absence; (2) Unertl's position was eliminated from the bargaining unit because it was supervisory in nature, not confidential; and (3) it would be unreasonable to find an employee to be confidential based on the occasional performance of another employee's duties.

### DISCUSSION

Section 111.70(1)(i), Stats., defines a municipal employee in pertinent part as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or **confidential**, managerial or executive employee. (Emphasis added.)

The statutory term "confidential . . . employee" is not statutorily defined. With judicial approval (See MINERAL POINT UNIFIED SCHOOL DISTRICT V. WERC, CASE 00-CV-126, (CT. APP. 1/2002) RECOMMENDED FOR PUBLICATION), we have defined a confidential employee as having sufficient access to, knowledge of, or participation in confidential matters 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 information which is not available to the bargaining representative or its agents. 1/

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1/ DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).

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While a *de minimis* exposure to confidential labor relations matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 2/ we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. 3/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 4/ and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption of the employer's organization. 5/

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2/ *BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87)*

3/ *CESA AGENCY NO. 9, DEC. NO. 23863 (WERC, 12/86)*

4/ *TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85)*

5/ *HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88)*

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Here, the Association correctly notes that most if not all of the raw wage and benefit data that Hoppa accesses when assisting Zimmerman would be available to the Association upon request and thus in and of itself is not confidential labor relations information. However, as the District correctly points out, it is Hoppa's knowledge of how the District is using or may use the wage and benefit information and the timing of that knowledge which exposes Hoppa to confidential labor relations information-the District's strategy in bargaining or administering a collective bargaining agreement.

From our review of the record, we are persuaded that, for the most part, Hoppa's knowledge of District strategy comes not from providing data itself or assuring that Zimmerman understands the data but from those instances where Business Manager Zimmerman chooses to use Hoppa as a sounding board as to District choices or policies. While these conversations are no doubt useful to Zimmerman as he assesses the District's options, we have historically found that a municipal employer's decision to use a clerical/administrative employee as a "sounding board" is not sufficient to justify excluding an individual from a bargaining unit as a confidential employee. *BROWN COUNTY, DEC. NO. 22379-A (WERC, 8/88)*; *CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84)*. Hoppa's "sounding board" knowledge distinguishes her from the employees cited by the District in *SUN PRAIRIE SCHOOLS, DEC. NO. 14392-A (WERC, 11/76)*; *WINTER SCHOOL DISTRICT, DEC. NO. 28464-B (WERC, 6/96)*; and *MENOMONIE SCHOOL DISTRICT, DEC. NO. 14738-C (WERC, 10/01)* for whom costing potential proposals was an integral part of their job.

Nor does Hoppa's role monitoring timecards and leave usage warrant her exclusion as a confidential employee. While Hoppa's monitoring may trigger a District investigation by Zimmerman and/or the employee's supervisor, this limited role in a process that may ultimately produce discipline is not sufficient to warrant exclusion of an individual as a confidential employee. *MANITOWOC SCHOOLS, DEC. NO. 29771-C (WERC, 7/2001)*. Hoppa's monitoring role is much more limited than that of the employee found confidential in *PIERCE COUNTY, DEC. NO. 9616-G (WERC, 10/92)*.

As to the potential confidential budgetary knowledge that Hoppa may acquire through her responsibilities administering extracurricular activity contracts, that knowledge is limited to being told an assumption to use as to the level of compensation where the labor agreement which will ultimately establish that rate is not yet settled. This information is of such limited potential strategic value that it does not warrant Hoppa's exclusion as a confidential employee.

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*6/ To the extent Hoppa is aware of the District's "bottom-line" in bargaining, that awareness comes from her "sounding board" role – not because such knowledge is an integral part of her duties. Thus, the instant position is distinguishable from the confidential Administrative Specialist position cited by the District in CITY OF WAUSAU, DEC. NO. 20916-F (WERC, 5/98).*

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Lastly, there is the question of whether Hoppa's role filling in for Unertl during Unertl's absences provides a persuasive basis for a confidential exclusion. We conclude it does not. The potential that Hoppa might thereby be exposed to critical confidential strategic information is too speculative to justify Hoppa's exclusion from the unit as a confidential employee.

### Summary

Given all of the foregoing, we are persuaded that the combination of Hoppa's various duties is not sufficient to warrant her exclusion from the bargaining unit as a confidential employee. The new duties she received as part of the District's reorganization approach but do not cross the threshold of exposure to confidential labor relations knowledge necessary for exclusion. Critical to our result is the fact that it is Business Manager Zimmerman who actually "costs" the bargaining proposals and that we have historically been reluctant to have confidential knowledge acquired through incidental "sounding board" duties be the basis for a confidential exclusion. To the extent our decision requires the reassignment of these incidental duties, we are satisfied that Unertl can perform same without undue disruption to the District's organization because of the very limited time such duties take to perform.

Given the foregoing, we have concluded that the Payroll Accounting/Human Resources Specialist is not a confidential employee and therefore should be included in the Mosinee Educational Support Personnel Association bargaining unit.

Dated at Madison, Wisconsin, this 16<sup>th</sup> day of May, 2002.

### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

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Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner