

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
DANE COUNTY JOINT COUNCIL :
OF UNIONS, AFSCME, AFL-CIO : Case XIII
Involving Certain Employees of : No. 14800 ME-673
DANE COUNTY : Decision No. 21397-A

Appearances:

Mr. Darold O. Lowe, Staff Representative, Wisconsin Council 40, WCCME, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin, appearing on behalf of Dane County Joint Council of Unions, AFSCME, AFL-CIO.
Ms. Judith H. Toole, Assistant Corporation Counsel, City-County Building, Madison, Wisconsin, appearing on behalf of Dane County.

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

Dane County Joint Council of Unions, AFSCME, AFL-CIO, having on February 24, 1984, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing bargaining unit consisting of all employees of Dane County excluding supervisory employees, law enforcement employees, non-clerical employees of the Highway, Exposition Center and Airport Departments, confidential employees, professional employees and craft employees to determine whether a position of Clerk Typist I-II should be included in said unit; and a hearing having been held on April 12, 1984, in Madison, Wisconsin, before Examiner Mary Jo Schiavoni, a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared and submitted to the Examiner on April 29, 1984; and the parties having submitted briefs on May 15 and 17, 1984; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Dane County, hereinafter referred to as the County, is a municipal employer maintaining its principal offices at City-County Building, 210 Monona Avenue, Madison, Wisconsin.
2. That Dane County Joint Council of Unions, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization maintaining its principal offices at 5 Odana Court, Madison, Wisconsin.
3. That the Union and the County have been parties to a series of collective bargaining agreements which contain the following provision and that the Union has been the exclusive bargaining agent for certain of the County employees described by this provision:

Article I
Recognition

The Employer recognizes the Union as the exclusive bargaining representative for all employees as hereinafter defined except the following: Supervisory employees; law enforcement employees of the Sheriff and Traffic Departments; non-clerical employees of the Highway, Exposition Center and Airport Departments; confidential employees; professional employees as defined by Wisconsin Statutes 111.70 and craft employees so certified by the Wisconsin Employment Relations Commission, for the purposes of conferences and negotiations with the Employer, or its authorized representative on question of wages, hours and other conditions of employment.

Employees defined as regular full-time and regular part-time (permanent) appointed according to the Civil Service procedure who shall have all of the rights, benefits and responsibilities of this Agreement. A regular full-time employee is one who is regularly scheduled to work forty (40) hours per week. A regular part-time employee is one who is regularly scheduled to work less than forty (40) hours per week.

Employees defined as Limited Term Employees (LTE) shall be covered by the terms of Article III and Appendix B. Any disagreement as to the application of Article III and Appendix B shall be resolved in accordance with Article V.

4. That, in passing the 1984 County budget, the County's Board of Supervisors created a half-time Clerk Typist I-II position (County Board Secretary) in the County Clerk-County Board Department; and that the County, contrary to the Union, contends said position is confidential in nature and should be excluded from the bargaining unit set forth in Finding of Fact 3 above.

5. That on December 28, 1983, the County, by Clerk of Courts Carol Little, developed a Position Justification Request for said position which, in material part, provides as follows:

Classification: Intermediate Clerk Typist/Confidential

Proposed Duties For Clerk Typist Serving County Board

Time
Allotted

21 hrs/wk	Assist Board Chair and Supervisors as requested
	- Type - Word Processing
	Correspondence
	Agendas
	Minutes
	Reports
	Resolutions
	- Take dictation via machine
	- Gather Information, search County Board records
3 hrs/wk	Available evening hours to receive requests from Supervisors
10 hrs/wk	Receptionist
1 hr/wk	Distribute Mail
1 hr/wk	Copy and disburse materials
1 hr/wk	Maintain Library and Supplies
2 hrs/wk	Coordinate Conference Room Reservations and make room reservations for other meetings
1 hr/wk	Office Maintenance
2 hrs/month	Prepare County Board Room for meetings
	Place Name Plates, Calendars and other material
40 hrs/year	Make conference and travel arrangements
5-10 hrs/yr	Assist supervisors in completion of travel expense vouchers

6. That since February of 1984, employee Beth Sorge has occupied said position; that Sorge works directly under County Board Chairman Rod Matthews and is also supervised by Little; that Sorge opens Matthews' mail which includes mail of a confidential labor relations nature, answers telephone calls, and types reports for any of the County Board Supervisors who request her assistance; that she attends committee meetings of the County Board including executive sessions of the Personnel Committee, that she has taken notes regarding personnel matters for Donovan Paul Osterlie, Chairman of the Personnel Committee, in closed executive sessions; that she has been, or will be in the future, present during briefings on personnel matters involving Matthews, Osterlie, Mark Wirig of the County's Personnel Department and/or John Coughlin, the County's Labor Negotiator; that she has photocopied documents of a confidential labor relations nature such as reports or proposals to be used in negotiations or to be utilized in the consideration of grievances by the County; that Sorge has a key to the County Board Chairman's desk and access to all written correspondence of either a confidential or a non-confidential nature which is received or generated by the County Board Chairman; that the time Sorge has spent and will be spending on matters involving the handling of confidential labor relations information is not de minimus but rather constitutes 10-25% of her time; and that the type of information to which she has access deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or similar matters pertaining to labor relations and that such information is not available to the Union or its agents.

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

CONCLUSION OF LAW

1. That the occupant of the position of Clerk-Typist I-II (County Board Secretary), as a result of having access to and having knowledge of, and of participating in confidential matters and information relating to collective bargaining and labor relations, is a confidential employee and therefore not a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

ORDER 1/

That the position of Clerk-Typist I-II (County Board Secretary) be, and the same hereby is, excluded from the bargaining unit represented by Dane County Joint Council of Unions, AFSCME, AFL-CIO.

Given under our hands and seal at the City of
Madison, Wisconsin this 11th day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

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- 1/ 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, (Footnote One continued on Page Four)

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 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.

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.

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

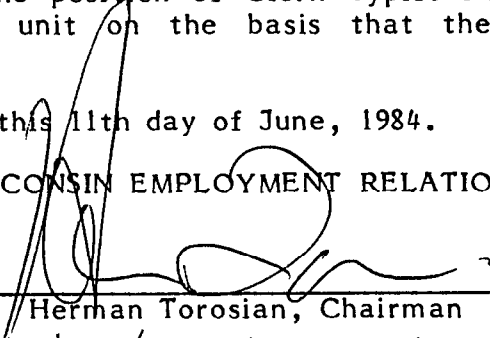
This proceeding was initiated by the Union's petition to clarify an existing certified bargaining unit with respect to the status of Beth Sorge, who occupies the recently created position of Clerk Typist I-II (County Board Secretary). The County contends that the position is confidential and therefore excluded from the bargaining unit. The Union argues that the confidential duties assigned to this position are de minimus and do not constitute a substantial portion of her work duties. Moreover, it asserts that the small amount of work spent in the performance of confidential duties could be reassigned to other confidential employees. The County, in response, argues that the amount of time spent on confidential duties is not de minimus and that no one else is available to perform the confidential duties which accompany the position.

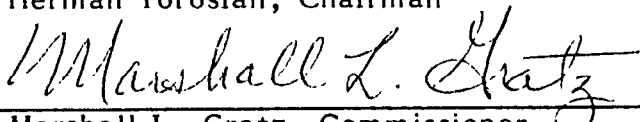
The Commission has consistently held that in order for an employee to be considered a confidential employee, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes it must be the type of information which 1) deals 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 2) is not information that is available to the bargaining representative or its agents. 2/ The record evidence as set forth in Finding of Fact 6, clearly supports the conclusion that Sorge participates in the County's labor relations and grievance handling processes, since she takes notes in closed sessions of the Personnel Committee where the County's labor strategy is discussed. Moreover her duties involve mail handling, photocopying and typing confidential documents relating to sensitive labor relations matters. The record reflects that time spent on confidential labor relations matters for Osterlie and the Personnel Committee, alone, will average between one and four hours per week depending upon the time of the year. Moreover, Sorge's duties are of a confidential nature, especially with respect to her job duties performed on behalf of the County Board Chairman. These duties, involving the handling of confidential labor relations information, would be difficult to sever from her remaining duties that are performed on his behalf. Accordingly, we have excluded the position of Clerk Typist I-II (County Board Secretary) from the bargaining unit on the basis that the occupant is a confidential employee.

Dated at Madison, Wisconsin this 11th day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

2/ City of Wausau, 14807 (7/76); Sheboygan County Handicapped Children's Education Board, 20217 (1/83); and City of Jefferson Water and Electric Department, 20511 (4/83);