

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of | : | |
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| WISCONSIN EDUCATION | : | |
| ASSOCIATION COUNCIL | : | Case 5 |
| | : | No. 33850 ME-2388 |
| Involving Certain Employes of | : | Decision No. 22208-A |
| | : | |
| CRIVITZ SCHOOL DISTRICT | : | |
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Appearances:

Ms. Joan Haag, WEAC, ESP Staff, 550 East Shady Lane, Neenah, Wisconsin 54956, appearing on behalf of the Union.

Mr. James A. Morrison, Morrison, Coggins & Potack, S.C., Attorneys at Law, 2042 Maple Avenue, P. O. Box 406, Marinette, Wisconsin 54143-0406, appearing on behalf of the District.

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

Wisconsin Education Association Council having, on February 14, 1985, petitioned the Wisconsin Employment Relations Commission to clarify a bargaining unit consisting of secretaries, custodians, aides, cooks and bus drivers to determine whether the positions of head bookkeeper and assistant bookkeeper should be included in said unit; and hearing having been held on April 15, 1985, in Crivitz, Wisconsin, before Examiner Daniel L. Bernstone, a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared and submitted to the Examiner on May 1, 1985, and the Union and the District having filed briefs by June 27, 1985; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises hereby makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Education Association Council, hereinafter referred to as the Union, is a labor organization, and has its principal offices at 550 East Shady Lane, Neenah, Wisconsin 54956.
2. That Crivitz School District, hereinafter referred to as the District, is a municipal employer which has its principal offices at P. O. Box 130, Crivitz, Wisconsin 54114.
3. That in School District of Crivitz, Dec. No. 22208 (WERC, 2/85), the Union was certified as the exclusive collective bargaining representative of the following employes: all regular full-time and regular part-time non-professional employes of the School District of Crivitz, excluding confidential, professional, supervisory and managerial employes.
4. That on February 14, 1985, the Union filed a petition requesting the Commission to clarify whether the excluded positions of head bookkeeper and assistant bookkeeper should now be included in the bargaining unit described in Finding of Fact 3 above.
5. That Marge Poque is the District Administrator's secretary, whom the parties agreed to exclude from the bargaining unit since she has been involved in performing duties of a confidential nature relating to labor relations; that Linda Tarmann has been employed by the District for six years in the capacity of head bookkeeper; that as head bookkeeper, she is responsible for all financial records of the District and is responsible for all financial reports to the State of Wisconsin; that she is involved in handling personnel records; that she assists with respect to any other duties in the District's offices which are of a clerical

nature, including everything from answering telephones to greeting people who come into the District Administrator's office; that since September of 1984 she has had occasion to meet with the Board of Education and has met with the District's Board Certificated Personnel Committee for the purpose of providing input regarding costing of proposals involved in the District's collective bargaining negotiations; that in about March 1984, Tarmann was present at a Board meeting and strategy planning session at which the Board discussed items to be included in its offer, the Board's limit on a dollar package and "what if" possible packages; that Linda Tarmann is a qualified computer operator and has been engaged in operating the computer for the District; that she has attended school to learn how to operate the computer; that she has received instruction from the Burroughs Corporation regarding the operation of the computer and she has attended various meetings and seminars in that connection; that the District decided in early 1985 that it needed professional representation at the bargaining table for costing out contract proposals in increasingly complex negotiations; that the District, therefore, retained an attorney to represent it at the bargaining table; that it was at the suggestion of the attorney that Linda Tarmann joined the bargaining team in early 1985; that she has occasion to meet with the Board and in planning sessions; that she has had discussions with the Superintendent of Schools regarding salaries; that according to a resolution passed by the Board on September 19, 1984, Linda Tarmann, in addition to her regular bookkeeping duties, will be involved in costing out bargaining proposals and will be typing contract proposals; that she will be present during the Board's development of strategy concerning negotiations and will be present at all of the planning sessions of the Board's negotiation committee and at least at some of the bargaining sessions; that Linda Tarmann was present in the past when the District's proposals concerning teacher negotiations were formulated, and the District intends to utilize Tarmann with respect to the costing out of bargaining proposals concerning the District's upcoming negotiations with its support staff; that Tarmann will be involved in assisting in budget preparations; that her involvement in labor relations matters, such as in costing out contract proposals, and in attending board planning sessions regarding the District's strategy and policy with regard to contract negotiations, relates to matters to which the Union does not have access; that the Board's planning sessions are closed sessions; and that Tarmann has access to, knowledge of, and she participates in confidential labor relations matters such that she is a confidential employee.

6. That Patricia Weidemeier is the District's assistant bookkeeper; that as assistant bookkeeper she is responsible for paying and coding all the bills of the District; that she makes out all of the necessary checks and does other bookkeeping work with the computer; that she was trained in Chicago for a week with respect to the use of the computer and then had training from people from the Burroughs Corporation; that she takes care of the People Activity Fund; that she works with specific accounts of the District, gives the Superintendent a report about every three months, makes all of the bank deposits and participates in preparing a financial statement at the end of each month which is submitted to the Board; that she has been with the District for about three and one-half years and has never attended any board meetings nor has she ever been asked to attend any board meetings; that she has filled in for Linda Tarmann on two or three occasions when the latter was absent from work, and she does a little typing; that she also takes care of health and dental records, answers the telephone and greets visitors, as do the other clerical employees in the District office; and that Weidemeier has no more than de minimus access to, knowledge of, or participation in confidential matters related to labor relations.

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

CONCLUSIONS OF LAW

1. That the individual occupying the position of head bookkeeper is a confidential employee, and therefore, is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and shall remain excluded from the bargaining unit set forth in Finding of Fact 3.

2. That the individual occupying the position of assistant bookkeeper is a municipal employee within the meaning of Sec. 111.70(1)(i), and is included in the bargaining unit set forth in Finding of Fact 3.

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

ORDER CLARIFYING BARGAINING UNIT 1/

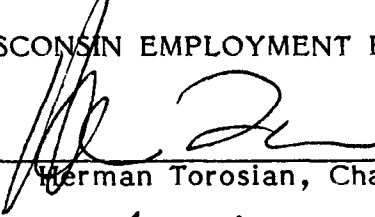
1. That the position of head bookkeeper shall remain excluded from the collective bargaining unit described herein.


2. That the position of assistant bookkeeper shall be, and hereby is, included in the collective bargaining unit described herein.


Given under our hands and seal at the City of
Madison, Wisconsin this 6th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, 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, 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

(Continued)

1/ (Continued)

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.

(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. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(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.

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

POSITIONS OF THE PARTIES:

In support of its petition the Association argues that neither the position of head bookkeeper nor the position of assistant bookkeeper is confidential and that both positions should be included in the bargaining unit. With respect to Linda Tarmann, the Association claims that duties of a confidential nature are de minimus and are already being performed by the District Administrator's secretary. It therefore asserts that a confidential position, that of secretary to the District Administrator, already exists in the District. With respect to Patricia Weidemeier, the District's assistant bookkeeper, the Association contends she has no duties of a confidential nature which justify her exclusion from the bargaining unit as a confidential employee.

The District argues that the position of bookkeeper, occupied by Linda Tarmann, and the position of assistant bookkeeper, occupied by Patricia Wiedemeier are confidential positions and should therefore be excluded from the bargaining unit. With respect to Tarmann, the District maintains that her duties include the costing out of bargaining proposals and require her presence at planning sessions at which the District's strategies for collective bargaining are discussed. Additionally, it points out that Tarmann has access to virtually all confidential information in the District's offices. With respect to Weidemeier, the District concedes the question of her confidential status is a closer one. However, it contends that her access to confidential personnel files and to virtually all other confidential information in the District's offices warrants her exclusion from the bargaining unit as a confidential employee.

DISCUSSION:

Head Bookkeeper:

The Commission has 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 which is available to the bargaining representative or its agents. 2/

Linda Tarmann, the District's head bookkeeper, is responsible for maintaining all financial records of the District. She has had occasion to discuss salaries with the Superintendent of Schools. In early 1985, she joined the District's bargaining team. While she may not be present at all of the bargaining sessions, she has in the past and will be present at some of them in the future. According to the Board's recently passed resolution, she will be involved in costing out bargaining proposals and in typing contract proposals. She will be present at all of the planning sessions of the Board's negotiation committee and will provide input such as costing of proposals during the District's development of strategy

2/ City of Cudahy, Dec. No. 21887 (WERC, 8/84); City of Jefferson Water and Electric Department, Dec. No. 20511 (WERC, 4/83); Sheboygan County Handicapped Children's Education Board, Dec. No. 20217 (WERC, 1/83); City of Wausau, Dec. No. 14807 (WERC, 7/76).

and policy regarding contract negotiations. Some of the information shared and discussed at such sessions will not be available to the Union. Moreover, Tarmann was present when the District's proposals concerning teacher negotiations were formulated and her services will be utilized in the future in connection with the costing out of bargaining proposals concerning the District's negotiations with its support staff. The fact that the District Administrator's secretary also performs confidential duties does not render Tarmann any less a confidential employee. For, it appears, from the record, that Tarmann's confidential duties most often directly relate to her expertise on the computer; an expertise the other confidential employee does not have. Given the foregoing, we do not agree with the Association's contention that the amount of confidential work performed by Tarmann is de minimus. On the contrary, we are satisfied that Linda Tarmann has access to, knowledge of and she participates in confidential labor relations matters. We therefore conclude that Tarmann is a confidential employee and should be excluded from the bargaining unit.

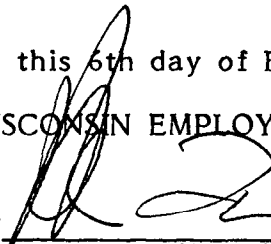
Assistant Bookkeeper:

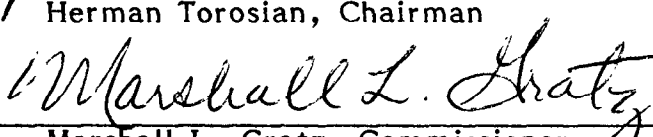
The record concerning the duties of Patricia Wiedemeier does not warrant a conclusion that she is a confidential employee. She has never attended any board meetings nor has she been asked to attend any such meetings. There is no evidence that she has been involved in matters pertaining to labor relations. She is the District's assistant bookkeeper. As such, she is responsible for paying and coding all the bills of the District. She prepares all necessary checks and works with the computer in performing bookkeeping duties. She takes care of the People Activity Fund, works with specific accounts of the District and gives the Superintendent of Schools a report about every three months. She makes all of the bank deposits and participates in preparing a financial statement at the end of each month which is to go to the Board. She also does some typing, takes care of health and dental records, answers the telephone and greets visitors. None of these responsibilities involve Weidemeier in confidential labor relations matters. We therefore conclude she is a municipal employee within the meaning of the Municipal Employment Relations Act, and she shall be included in the bargaining unit.

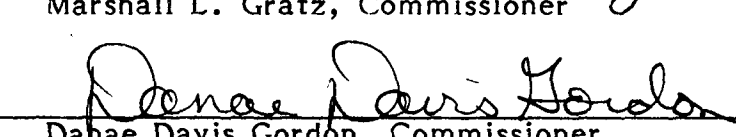
Dated at Madison, Wisconsin this 6th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Dahae Davis Gordon, Commissioner