

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MINERAL POINT EDUCATIONAL SUPPORT PERSONNEL

Involving Certain Employees of
MINERAL POINT SCHOOL DISTRICT

Case 25
No. 56836
ME-960

Decision No. 22284-A

Appearances:

Mr. Marvin Shipley, Executive Director, South West Education Association, 960 North Washington Street, Platteville, Wisconsin 53816-0722, appearing on behalf of the Mineral Point Educational Support Personnel.

Kramer, Brownlee & Infield, L. L. C., by **Attorney Eileen A. Brownlee**, 1038 Lincoln Avenue, P.O. Box 87, Fennimore, Wisconsin 53809, appearing on behalf of the Mineral Point School District.

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

Mineral Point Educational Support Personnel initiated this action on September 9, 1998, by filing a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employees of the Mineral Point School District by including a position of Labs Technician. Karen J. Mawhinney, a member of the Commission's staff conducted a hearing on the matter on January 15, 1999, in Mineral Point, Wisconsin. The parties submitted briefs by January 30, 1999.

The District contends the Labs Technician is a confidential position, and the Union contends that the position is not confidential and should be included in the bargaining unit described above. The parties stipulated that in the event the position is not held to be confidential, it will be deemed a newly accreted position in the bargaining unit.

No. 22284-A

The Commission, being advised in the premises, and having considered the evidence and the arguments of the parties, hereby makes the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The Mineral Point School District, herein the District, is a municipal employer with offices at 705 Ross Street, Mineral Point, Wisconsin 53565.

2. Mineral Point Educational Support Personnel, herein the Union, is a labor organization with its offices located at 960 North Washington Street, Platteville, Wisconsin 53816.

3. The Union and the District are parties to a 1996-98 collective bargaining agreement which contains the following recognition clause:

The Board of Education of the Mineral Point Unified School District hereinafter referred to as the "Board" hereby recognizes the Mineral Point Educational Support Personnel, affiliated with the South West Education Association, hereinafter referred to as the "Association", as the legally recognized sole and exclusive negotiating agent for all regular full-time and regular part-time educational support staff employees of the Mineral Point School District, excluding administrative, supervisory, managerial, confidential, professional employees, casual employees, substitutes and seasonal employees. The excluded positions are the secretary to the Superintendent and the district Bookkeeper. This is pursuant to the provisions of Sec. 111.70 of the Municipal Employment Relations Act. If the position of district Bookkeeper is eliminated or changed while the incumbent is still employed, said employee shall have the right to bump back into this bargaining unit based upon years of seniority earned while a bargaining unit member.

The District has two confidential employees – the Bookkeeper and the Administrative Secretary. There are two bargaining units in the District – the teachers and the above described bargaining unit.

4. In early 1998, the District created a position entitled Labs Technician, which would be responsible for setup, maintenance, overseeing and training for the District's computer systems. In August of 1998, Cindy Schaaf was hired to fill this position. Her contract indicates that she is not subject to the collective bargaining agreement.

5. The Labs Technician's duties include setting up, maintaining and supporting the District's computer systems and audio-visual equipment, training and assisting District staff in the use of computer and A-V equipment, and maintaining the District news channel. Schaaf is the only employee in the District, including the Superintendent, who has access to all computer

files. She has never participated in preparing collective bargaining proposals, done any costing of collective bargaining proposals for the District, nor sat in on management meetings or closed meetings of the Board of Education where confidential labor relations matters were discussed. She has never looked at any files dealing with collective bargaining, employee discipline or any other labor relations matters. She has not participated on behalf of the District in the grievance procedure nor participated in preparing cases for arbitration or for other labor relations matters. While she has access to computer files involving confidential labor relations matters her duties do not require her to review the content of the files.

6. The incumbent in the Labs Technician position does not have sufficient access to, knowledge of or participation in confidential matters relating to labor relations to be deemed a confidential employee.

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

CONCLUSION OF LAW

The Labs Technician is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Labs Technician shall be included in the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of March, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MINERAL POINT SCHOOL DISTRICT

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

BACKGROUND

In April 1998, the Mineral Point School District posted the position of Labs Technician. The person occupying this position would be responsible for setup, maintenance, training of staff and overseeing on the District's computer systems. In August 1998, Cindy Schaaf was hired by the District to fill this position. The Union is seeking to have the Labs Technician position added to the bargaining unit, but the District maintains that the position is a confidential position and, therefore should be excluded from the unit.

POSITIONS OF THE PARTIES

The District

The District contends that the Labs Technician is a confidential employee under Sec. 111.70(1)(i), Stats. It cites LINCOLN COUNTY (SHERIFF'S DEPARTMENT), DEC. NO. 20687-F (WERC, 7/94) for the proposition that employees are confidential if they "...have access to, have knowledge of, or participate in confidential matters pertaining to labor relations," and bases its position as to confidential status on the access this employee has to sensitive information within the District's computer database. The Labs Technician has access to virtually any information contained on the database and, in fact, is the only employee in the District with such unlimited access. Thus, the Labs Technician would have access to any computer records concerning the District's labor negotiating strategy and financial position or relating to the compensation or discipline of other employees. The District maintains, therefore, that it is entitled to the security of knowing that this employee will not be put into a position of divided loyalty whereby she might access and use that information in a manner detrimental to the interests of the District.

The District further points to the uniqueness of the Labs Technician's status, in that only one person fills this position and no one else in the District has the same ability to access all computer information. This, the District argues, makes her the only employee with the capacity to perform certain legitimate confidential work and should exclude her from the unit under EAU CLAIRE SCHOOL DISTRICT, DEC. NO. 17124-B (WERC, 6/95).

The Union

The Union contends that the Labs Technician should be a bargaining unit position. In support of its position, the Union points out that nothing in the contract or job description for the Labs Technician indicates that this employee is called upon to do confidential work. Further, the testimony of the incumbent, Cindy Schaaf, was to the effect that she has never been called upon

to do confidential work for the District, and has never been privy to meetings or information concerning the District's labor relations strategy or confidential information regarding compensation or discipline of other employees. The Union notes that while Schaaf has access to all confidential files, she has never opened a file that could be considered as confidential.

The Union cites OREGON SCHOOL DISTRICT, DEC. NO. 28110-C (WERC 4/96) for the proposition that mere *de minimis* exposure to confidential material does not rise to the level necessary to exclude a position from the bargaining unit. The Union maintains, therefore, that since the Labs Technician's contact with confidential information is, at best, *de minimis*, this does not qualify her as a confidential employee.

DISCUSSION

We have said that for an employee to be held confidential, such employee must have 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. DANE COUNTY, DEC. NO. 22796-C (WERC), 9/88).

While a *de minimis* exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87) 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. CESA AGENCY NO. 9, DEC. NO. 23863 (WERC, 12/86). 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, TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85) 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. HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC 9/88).

In this case, the incumbent Labs Technician is responsible for the computer labs and audio-visual work area and is supervised by the High School Principal. The duties of the position encompass installing and maintaining the computer systems for the District, training staff in the use of computers and overseeing usage of the system, working with faculty and staff to develop a computer education program and determine the appropriate use of technology for instruction, and maintaining the TV system, A-V equipment, photocopiers and fax machines for the District. The Labs Technician is the only employee in the District who has complete access to all the computer files in the District's database.

Nothing in the job description for the position indicates that the Labs Technician performs confidential labor relations duties and the incumbent testified that she had not been asked to perform any such confidential tasks, nor had she ever accessed confidential files or attended meetings where labor relations matters were discussed. The question of whether the position is to be considered confidential, therefore, arises solely from the unique access this employee has to all the District's computer files and, thus, the inherent possibility that confidential information detrimental to the District's interest could become available to the Union.

Access, however, is not synonymous with authorization. The record does not reveal that the District has ever authorized the Labs Technician to explore the confidential files to which her expertise could give her access. Neither does the record reveal that the duties of the Labs Technician require her to explore the confidential data.

We have held that the potential for an employee to abuse their computer access is not a sufficient basis for finding that employee to be confidential. WAUKESHA COUNTY, DEC. NO. 26020-A (WERC, 9/89). Should confidential employees require the Technician's aid in accessing or downloading confidential material, we see no reason why the Technician could not provide such assistance without reading and absorbing the data herself. Indeed, providing such assistance appears to be consistent with the Technician's function of training staff in the use of computer equipment and operation of the network.

For the reasons set forth above, we find that the position of Labs Technician is not held by a confidential employee and, therefore, is to be added to the bargaining unit.

Dated at Madison, Wisconsin this 11th day of March, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James A. Meier /s/

James A. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner