

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of :
APPLETON AREA SCHOOL DISTRICT :
and : Case 49
APPLETON AREA SCHOOL DISTRICT : No. 37555 ME-118
SECRETARY/CLERICAL : Decision No. 22338-B
ASSOCIATION ESP :
Involving Certain Employes of the :
APPLETON AREA SCHOOL DISTRICT :

Appearances:

- Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, WI 53708, appearing on behalf of the Association.
Mr. Kenneth Johnston, Assistant Superintendent/Personnel, Appleton Area School District, 120 East Harris Street, P. O. Box 2019, Appleton, WI 54913, appearing on behalf of the District.

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

Appleton Area School District having, on September 5, 1986, and Appleton Area School District Secretarial/Clerical Association ESP having, on November 26, 1986, filed petitions requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employes of Appleton Area School District by determining whether certain positions should be excluded from, or included in, said bargaining unit; and a hearing in the matter having been conducted on February 5, 1987, in Appleton, Wisconsin before Examiner David E. Shaw, a member of the Commission's staff; and a stenographic transcript of the hearing having been received on May 27, 1987; and the Commission, having reviewed the evidence and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Appleton Area School District, herein the District, is a municipal employer and has its offices at 120 East Harris Street, Appleton, WI 53708.
2. That Appleton Area School District Secretarial/Clerical Association ESP, herein the Association, is a labor organization and has its offices at 550 East Shady Lane, Neenah, WI 54956.
3. That in Appleton Area School District, Dec. No. 22338 (WERC, 3/85), after an election conducted by the Commission, the Association was certified as the exclusive bargaining representative of the following bargaining unit:

all regular full-time and regular part-time secretarial and clerical employes employed by the Appleton Area School District, excluding confidential, supervisory and managerial employes.
4. That the District, on September 5, 1986, filed a unit clarification petition with the Commission wherein it sought the exclusion of the positions of Head Payroll Clerk, Secretary to Assistant Superintendent/Academic Services, Employee Benefits Secretary, and Secretary to Assistant Superintendent/Operations as confidential employes; that on November 26, 1986, the Association filed a unit clarification petition wherein it sought the inclusion of the positions of

Personnel Records Secretary and Secretary to the Superintendent on the basis that the positions were not confidential; and, that on December 2, 1986 the District amended its petition to also exclude the position of Bookkeeper as a confidential employe.

5. That the District operates numerous schools for a K-12 system; that the Superintendent has four Assistant Superintendents; that said five individuals are referred to as the Cabinet and meet at a minimum on a weekly basis, and more frequently if necessary; that the Cabinet is kept informed of the status of contract negotiations and is involved in formulating the District's strategy relating to the four bargaining units of District employes; that the Cabinet members exchange correspondence concerning confidential labor relations matters both in written form and by computer; and that each cabinet member has a personal secretary, who also uses the computer system.

6. That Betty Von Haden occupies the position of Secretary to the Superintendent; that Von Haden has access to, prepares, makes copies of and files correspondence between the Board, the Superintendent and the Cabinet members, including Kenneth Johnston, the Assistant Superintendent/Personnel who handles labor relations matters for the District; that Von Haden takes minutes of Board meetings, although she typically does not take minutes during the executive, or closed, portions of those meetings; that Von Haden is involved in the preparation and distribution of written materials relating to matters discussed during executive sessions of the Board, including bargaining strategies, changes in staffing levels, and other labor relations matters; that Von Haden spends approximately five percent of her time on work involving confidential labor relations matters; and that Von Haden has access to a significant amount of confidential labor relations matters.

7. That Lois Mattern occupies the position of Secretary to the Assistant Superintendent/Operations; that the Assistant Superintendent/Operations is Jerome Boettcher who supervises both the principals of the District's twenty-one schools and six supervisors in the areas of special education, guidance, health service, attendance, transportation, and ESL and Chapter I programs; that Mattern handles correspondence and documents relating to potential discipline of both represented and unrepresented employes and to employe participation in the employe assistance program for drug and/or alcohol abuse; that such correspondence and documents involve investigatory materials and possible actions to be taken which are shared with Johnston as well as any subsequent correspondence to the affected employes; that Mattern also has access to materials involving allegations of sexual abuse and the investigation of those allegations, of which there were three situations in the past year; that Mattern is privy to information concerning the administration's recommendations to the Board for staffing patterns and levels for the next school year, prior to such information being made public; that the staffing recommendations can involve the elimination, addition or transfer of employes and positions that Mattern prepares correspondence concerning negotiations for Boettcher; and that Mattern has access to a significant amount of confidential labor relations matters.

8. That Judy Kraft occupies the position of Secretary to the Assistant Superintendent/Academic Services who is Jim Westphal; that Kraft directs and assigns the work of the three secretaries in the Academic Services pool; that in the fall of 1986 Kraft was a member of a four person group who interviewed four applicants and hired one of the applicants for a secretarial position which is shared by the Academic Services office and the Business Office; that in December 1986 Kraft prepared a written performance evaluation of the part-time secretary and discussed the evaluation with her, after which the evaluation was placed in the secretary's personnel file; that Kraft has on one recent occasion taken minutes of a negotiating session when the Personnel Administrative Assistant was unable to do so; that Westphal is a member of the Cabinet; that Kraft has access to and prepares correspondence and other written materials relating to the progress of negotiations, the District's strategy and alternative positions for negotiations, Westphal's analysis for Johnston of the impact caused by certain proposals in negotiations, items for Cabinet consideration, and investigations of sexual abuse allegations; that Kraft has been privy to conversations between Westphal and Johnston relating to confidential labor relations matters; that Westphal has solicited Kraft's input into performance evaluations of Westphal's subordinates, some of whom are bargaining unit employes; and that Kraft has access to a significant amount of confidential labor relations matters.

9. That Mary Jo LeMoyné occupies the position of Employee Benefits Secretary; that LeMoyné's primary duties are handling the paperwork for all employee insurance programs (life, health, dental and LTD) and worker compensation claims, processing retirements, and maintaining employee attendance records, which includes determining the category to which an absence is charged; that if LeMoyné is unsure of how to categorize an absence, Johnston determines the proper category; that LeMoyné has access to personnel files through the computer; that LeMoyné has compiled data concerning retirement and insurance costs for the District's use in negotiations; and that LeMoyné does not have access to a significant amount of confidential labor relations matters.

10. That Geraldine Dusseault occupies the position of Head Payroll Clerk and is responsible for entering into the computer all information relating to the payroll, including such things as salary changes, wage garnishments, etc.; that Dusseault has compiled data on the costs of various benefits which the District has used in negotiations, has access to personnel files, has filled in for LeMoyné, and has done verifications of employment; that Dusseault adds information to the packets which are prepared for Board meetings before the packets are given to the Board members, so that she has knowledge of administration recommendations on certain matters, e.g. employee requests for leaves of absence, terminations, new hires, contract changes, etc., prior to Board action on these matters; and that Dusseault does not have access to a significant amount of confidential labor relations matters.

11. That Jayne Kerstner occupies the position of Bookkeeper and is responsible for all bookkeeping duties for the District's two high schools including making bank deposits, writing checks, doing computer coding of accounts receivable and disbursements, and reconciling checking accounts for the District; that Kerstner codes the administration's proposed budget for the next school year into the computer before the proposed budget is acted on by the Board; (that, prior to her current position, Kerstner was first a bookkeeper and then an assistant secretary at one of the District's high schools, in which positions she had knowledge of employees who had drug or alcohol abuse problems;) and that Kerstner has minimal access to confidential labor relations matters.

12. That Diane Dietzler occupies the position of Personnel Records Secretary and works in the Personnel office with Johnston and Joni VandenHeuvel, the Administrative Assistant; that Dietzler maintains all personnel files and records, makes necessary changes in the personnel records, sets up files for grievances, prepares and handles correspondence concerning grievances and negotiations, types up new contracts after negotiations have been completed, proofreads minutes of negotiating sessions prepared by VandenHeuvel, proofreads bargaining proposals typed by Johnston which proposals may be given, although some have not been given, to a union in a contract negotiating session prior to such presentation, assists VandenHeuvel in costing both possible alternative proposals the District may make to a bargaining unit and proposals to the District from a bargaining representative, processes license and certification documents for employees, handles paperwork for teacher education credits, updates and prepares individual contracts, deals with the records of employees whose names are submitted to the Board by the administration as possible layoffs or nonrenewals prior to such information being made known to the affected employees or their bargaining representative, sends notices of layoff or nonrenewal to the affected employees including the reasons for nonrenewal, and helps VandenHeuvel open the mail received by Johnston's office; that, although Dietzler does not participate in the discussion of grievances by Johnston and other administrators, she frequently overhears those conversations because Johnston generally does not close the door between his office and Dietzler's work area and, further, that VandenHeuvel, who does attend such grievance discussions, usually informs Dietzler of what occurred during those discussions; and that Dietzler has access to a significant amount of confidential labor relations matters.

CONCLUSIONS OF LAW

1. That the occupants of the positions of Secretary to the Superintendent, Secretary to the Assistant Superintendent/Operations, Secretary to the Assistant Superintendent/Academic Services, and Personnel Records Secretary are confidential employees and, therefore, are not municipal employees within the meaning of Sec. 111.70(1)(i) Stats.

2. That the occupants of the positions of Employee Benefits Secretary, Head Payroll Clerk, and Bookkeeper are not confidential employees and, therefore, are municipal employees within the meaning of Sec. 111.70(1)(i) Stats.

ORDER CLARIFYING BARGAINING UNIT 1/

1. That the positions of Secretary to the Superintendent and Personnel Records Secretary shall remain excluded from the bargaining unit described in Finding of Fact 3 above and that the Secretary to the Assistant Superintendent/Operations and Secretary to the Assistant Superintendent/Academic Services, shall be, and hereby are, excluded from the bargaining unit described in Finding of Fact 3 above.

2. That the positions of Employee Benefits Secretary, Head Payroll Clerk and Bookkeeper shall remain included in the bargaining unit described in Finding of Fact 3 above.

Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

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, 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 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. 227.49, 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

(Footnote 1 continued on Page 5.)

(Footnote 1 continued from Page 4.)

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.

. . .

(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.

APPLETON SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Association contends that most of the duties performed by the occupants of the seven positions at issue here involve information which is available to the Association and/or the employees. Although certain of the duties may be deemed confidential, those duties are de minimus. Further, the District has other confidential employees who could perform the confidential work.

The District contends that each occupant of the seven disputed positions perform confidential duties which are neither de minimus nor duplicative of the duties of other confidential employees. Further, it would be disruptive of the District's organization to require the shifting of confidential work between employees in order to minimize the number of confidential employees.

DISCUSSION

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

Secretary to the Superintendent

The incumbent of this position, Betty Von Haden, has access to internal memos, correspondence and other documents involving information on bargaining strategies, staffing levels and preliminary budget proposals, which information is not readily available to the bargaining representatives of the District's employees. Although Von Haden's duties relating to such confidential matters do not consume a major portion of her time, they are significant and are closely related to the Superintendent's responsibilities. Therefore, it is appropriate to exclude Von Haden's position from the bargaining unit as a confidential employee to avoid undue disruption of the District's organization. 3/

Secretary to the Assistant Superintendent/Operations

The incumbent of this position, Lois Mattern, performs numerous duties, as described in the Findings of Fact, which give her access to confidential labor relations matters before the District selects a course of action and the information becomes available to the bargaining representatives. Those matters include potential employee discipline, allegations of sexual abuse, and preliminary recommendations for staffing changes, as well as contract negotiations. Consequently, this position is appropriately excluded from the bargaining unit as a confidential employee.

2/ Menomonee Falls School District, Dec. No. 13492-A (WERC, 10/85); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

3/ Rhineland School District, Dec. No. 17021-A, (WERC, 12/86).

Secretary to the Assistant Superintendent/Academic Services

The incumbent of this position, Judy Kraft, is privy to materials and information relating to the investigations of alleged sexual abuse involving employees prior to any action by the District, the District's strategy in contract negotiations with the representatives of its employees including Cabinet discussions of possible proposals to be made, and the content of preliminary employee performance evaluations. Kraft also has access to communications between her supervisor and Johnston regarding the impact of certain proposals if the proposals are included in a contract. The Commission concludes that Kraft should be excluded from the bargaining unit as a confidential employee.

Employee Benefits Secretary

The incumbent of this position, Mary Jo LeMoynes, does have access to employee personnel files. Although LeMoynes does maintain employee attendance records and exercises some discretion in determining the category to which an absence is charged, the affected employees also have knowledge of their leave time use. As the Commission has previously held, access to personnel files and the charting of leave time, without more, does not confer confidential status. 4/

While LeMoynes has compiled data concerning retirement and insurance costs for the District's use in negotiations, the record does not establish that LeMoynes was privy to any bargaining strategy based on such data. It is concluded that LeMoynes's exposure to confidential labor relations matters is insufficient to warrant her exclusion from the bargaining unit as a confidential employee.

Head Payroll Clerk

The incumbent of this position, Geraldine Dussault, has access to employee personnel files and to payroll information, which files and information are available to individual employees. As noted above, such access does not establish confidential status.

The District has argued that Dussault does have access to the packets of material assembled by various District offices for Board meetings, because she adds to the packet the payroll impact of any staffing changes, e.g., terminations, leaves of absence, new hires, etc., which the Board will be considering. However, as Dussault's testimony did not provide any specific examples how said access would in any significant way make her privy to confidential labor relations matters. Dussault's position is not found to be confidential and remains included in the bargaining unit.

Bookkeeper

The incumbent of this position, Jayne Kerstner, performs a variety of bookkeeping functions. Her primary duty involving arguably confidential labor relations information is the coding into the computer of the budget proposed by the administration for the next school year prior to Board review of and action on the proposed budget. Kerstner is not privy either to the Board's deliberations over the proposed budget, or to the Board's strategy in deciding how the money in various accounts, e.g., salaries and fringe benefits, in the adopted budget will be spent. Thus, the Commission is not persuaded that Kerstner has more than a de minimus access to confidential labor relations information and, therefore, Kerstner's position is included in the bargaining unit. 5/

Personnel Records Secretary

The incumbent in this position, Diane Dietzler, does have access to significant amounts of confidential labor relations information on a regular basis, including the following: correspondence and discussions relating to grievances which may contain possible alternative responses by the District; material prepared by Johnston containing potential proposals to be made in negotiations, not all of which proposals have been given to the bargaining

4/ City of New Berlin, Dec. No. 13173-B (WERC, 8/83).

5/ School District of Bruce, Dec. No. 19318-A (WERC, 5/83).

representatives; correspondence to the Board from the administration over recommended layoffs or nonrenewals of employes and the reasons for nonrenewal, which recommendations may not have been made known to the affected employes; and, the cost impact of possible alternative proposals the District considers for negotiations, as well as the cost impact of proposals made by the bargaining representatives.

The record demonstrates that Dietzler functions as a confidential employe whose position is appropriately excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 29th day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner