

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :
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 BROWN COUNTY :
 :
 Involving Certain Employes of : Case 253
 : No. 40328 ME-256
 : Decision No. 22379-A
 BROWN COUNTY :
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Appearances:

- Mr. Kenneth J. Bukowski, Corporation Counsel, Northern Building, 305 East Walnut Street, Green Bay, Wisconsin 54305-5600, on behalf of Brown County.
- Mr. William S. Kowalski, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, on behalf of Teamsters Local Union No. 75.

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

Brown County having, on March 14, 1988, filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit of "all regular full-time and regular part-time employes of Brown County employed at the Neville Public Museum and Hazelwood Historical House . . ." to exclude one position, that of Museum Executive Secretary, from that unit on the grounds that the position is a confidential one; and hearing on the petition having been conducted at Green Bay, Wisconsin on May 31, 1988 before Examiner Sharon Gallagher Dobish; and a stenographic transcript of the proceedings having been prepared and received on June 29, 1988; and the parties having filed briefs by August 1, 1988; and the Commission having considered the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Brown County, herein the County, is a municipal employer and has its offices at the Northern Building, 305 East Walnut Street, Green Bay, Wisconsin 54305-5600.
2. That Teamsters Local Union No. 75, herein the Union, is a labor organization and has its offices at 1546 Main Street, Green Bay, Wisconsin 54302.
3. That the Union is the certified exclusive collective bargaining representative for certain employes of the County in a bargaining unit described as follows:

 all full-time and regular part-time employes of Brown County employed at the Neville Public Museum and Hazelwood Historical House, including professional employes, but excluding managerial, supervisory and confidential employes.
4. That on September 9, 1982 the Wisconsin Employment Relations Commission issued its decision in Brown County, Dec. No. 19891, in which the Commission found inter alia that the position of Executive Secretary at the Neville Public Museum (hereafter NPM), then occupied by the current incumbent, Bonita C. Cagle, was neither supervisory nor confidential within the meaning of the Municipal Employment Relations Act, and that the position and its incumbent should be included in the bargaining unit as described in Finding of Fact 3.
5. That at the hearing herein, as well as in its brief, the County argued that the Executive Secretary's job duties have changed since 1982 such that she should now be excluded from the unit as a confidential employe.

6. That at the hearing and in its brief the Union contended that the Executive Secretary's duties have not changed since 1982 and, in any event, the incumbent does not now perform any significant amount of confidential work, and, therefore, the position and the incumbent should remain in the bargaining unit.

7. That the Neville Public Museum (NPM) was formerly operated by the City of Green Bay until January 1, 1982, when Brown County assumed the operation of the NPM and Historic Hazelwood; that NPM is primarily an art and history museum which opened a new facility in Green Bay in April, 1983; that it is funded and directed by Brown County as is the Historic Hazelwood House (hereafter HHH) and together the NPM and HHH constitute the Museum Department, a County department; that the HHH is located about 1.5 miles from the NPM and consists of several restored historic buildings which are open to the public for tours; that HHH and NPM together employ 13 full-time and 3 part-time County employes; that the County contracts with Rex-Clean to perform daily cleaning services and with J J Security to perform security guard services at the NPM and HHH; that from time to time, the County also utilizes County maintenance employes to perform maintenance at the Museum and at Hazelwood, but these County employes are employed by a different County department; that at the NPM the County employs one full-time Clerk-Typist III, one part-time Receptionist, and the Museum Executive Secretary, Bonita C. Cagle, all of whom are members of the above-described bargaining unit; that the Museum office also normally employs one High School co-op student who is not a member of the bargaining unit; that the NPM and HHH are governed by a Museum Board which is made up of members appointed by the County Board; that the Museum Board and the Neville Public Museum Corporate Board run the NPM and the HHH under the supervision of the County's Standing Committee on Education and Recreation which is itself subject to the control of the Brown County Board of Supervisors; that the NPM Corporation is a non-profit "friends" group which performs fundraising activities for the Museum Department, operates the gift shop at the NPM and sponsors special exhibits; that the Museum Board, the NPM Corporate Board, Museum Director Koski and one member-at-large make up the Museum's Long-Range Planning Committee, a Committee initiated by Koski to help implement long-range planning for the Museum Department.

8. That in January, 1986 Ms. Ann Koski was hired as Director of the NPM and HHH; that after becoming Director, Koski directed all Museum employes, including Cagle, to write up descriptions of their jobs and duties; that pursuant to this directive and after Cagle discussed Cagle's job description with Koski, the following job description was produced for Cagle's job as it existed on and before July, 1986:

MUSEUM, EXECUTIVE SECRETARY

General Description

Under general supervision of the Museum Director performs complex secretarial and bookkeeping duties, coordinates activities of Typist III, Receptionist and other employees and volunteers working in administrative offices of the Museum.

Performs other related duties as requested.

Examples of Duties

Provides secretarial support for Museum Board. Composes and types letters, memos, forms, purchase orders, and reports; mails all Museum correspondence; prepares, maintains and submits all appropriate personnel and payroll records for Museum and Hazelwood staff; assists Museum Director and Chief Curator in the adherence to various Museum and County policies; records minutes of Museum Board meetings and prepares permanent minutes; compiles and types data for monthly financial reports to the Museum Board; prepares, maintains and submits all appropriate records, bills, invoices, purchase orders, petty cash and special accounts of Museum and Hazelwood expenditures in time, service and supplies; assists Museum Director and staff in annual budget preparation; submits orders of equipment, supplies, books,

magazines, and periodicals for the Museum and Hazelwood; answers telephone, schedules tours and room use, and receives visitors to the office in the absence of the Receptionist, Clerk/Typist III and Co-op student worker; receives, opens, and distributes mail and/or packages; files all correspondence; coordinates the activities of the Clerk/Typist III and Receptionist; interviews, trains and supervises Co-op students, interns and appropriate volunteers; prepares various oral or written reports upon direction of the Museum Director.

Knowledge, Skills and Abilities

Knowledge of policies, procedures and regulations which are relevant to the department; knowledge of office practices, procedures, equipment and clerical techniques; basic knowledge of bookkeeping practices; knowledge of business English, spelling and punctuation; ability to initiate and complete a variety of work assignments with brief instructions; skills in keeping complex office records; ability to prepare accurate reports from file records and materials; ability to establish and maintain effective working relationships with fellow employees and the public; skill in operation of typewriter and other standard office equipment; ability to type neatly and accurately at a minimum rate of 50 net words per minute and the ability to take dictation at a minimum of 80 net words per minute.

Education and Experience

Any combination of education and experience or equivalent three to four years' secretarial experience which is related to the type of duties required by the position;

that in January, 1988 prior to the filing of the petition herein but after the County dropped its November, 1987 bargaining proposal to remove Cagle from the bargaining unit on grounds of confidentiality, the County revised Cagle's job description as follows:

Position Purpose: Serves as confidential secretary to Museum Director and correspondence secretary for Museum Governing Board.

Position in Organization: Under the direction of the Museum Director; directly supervises the Clerk/Typist III, the Receptionist, and appropriate Co-op students, interns and volunteers.

- Major Duties:
- 1) Composes and types everyday business letters, memos, forms, purchase orders, and reports; mails all Museum correspondence; types all of Director's letters, memos, budgets, grants, etc.
 - 2) Prepares, maintains and submits all appropriate personnel and payroll records for Museum and Hazelwood staff. This includes confidential job evaluations, grievance procedures, and other personnel information.
 - 3) Assists Museum Director and Chief Curator in implementing the various applicable portions of Brown County Procedures as outlined in the Brown County Code and Museum Employee's Union contract.
 - 4) Records minutes of Museum Board meetings and prepares permanent minutes. Compiles and types data for monthly financial reports to the Museum Board.

- 5) Prepares, maintains and submits all appropriate records, bills, invoices, purchase orders, etc., of Museum and Hazelwood expenditures in time, service and supplies.
- 6) Assists Museum Director in annual budget preparation.
- 7) Maintains Museum's and Hazelwood's Petty Cash and all other special accounts, making deposits and withdrawals as necessary.
- 8) Orders all equipment, supplies, books, magazines, and periodicals for the Museum and Hazelwood.
- 9) Answers telephone, schedules tours and room use, and receives visitors to the office in the absence of the Receptionist, Clerk-Typist III, and Co-op Student worker.
- 10) Receives, opens and distributes mail and/or packages.
- 11) Files all correspondence.
- 12) Supervises the activities of the Clerk/Typist III and Receptionist. Interviews, trains and supervises Co-op students, interns and appropriate volunteers.
- 13) Prepares various oral and written reports upon direction of the Museum Director.
- 14) Keeps abreast of new techniques/procedures in office equipment and management.
- 15) Performs other related duties as directed.

Knowledge, Skills and Abilities

Knowledge of policies, procedures and regulations which are relevant to the department; knowledge of office practices, procedures, equipment and clerical techniques; basic knowledge of bookkeeping practices; knowledge of business english (sic), spelling and punctuation; ability to initiate and complete a variety of work assignments with brief instructions; skills in keeping complex office records; ability to prepare accurate reports from file records and materials; ability to establish and maintain effective working relationships with fellow employees and the public; skill in operation of typewriter and other standard office equipment; ability to type neatly and accurately at a minimum of 50 net words per minute and the ability to take dictation at a minimum of 80 net words per minute.

Education and Experience

Any combination of education and experience equivalent to an associate degree which is related to the type of duties required by the position.

9. That since Koski has been Museum Director, she has, at the request of NPM staff, implemented a system of performance evaluations; that these performance evaluations, if negative, would not be considered disciplinary and are not performed pursuant to any County directive or policy; that each evaluation lists a variety of tasks to be completed satisfactorily during a one-year period, which tasks are agreed upon between Koski and the employe; that Koski reviews these task

lists with each employe in private interviews every six months to determine how well each employe is doing and whether the list needs revision; that Cagle types the performance evaluation sheets and gives a copy thereof to the employe involved; that Cagle does not sit in on the private interviews which Koski conducts with individual employes; that Cagle has herself been evaluated under this system and that Cagle's performance evaluation for 1987-88 lists the following tasks to be completed by Cagle in 1988:

- 1 Maintain budget journal with expenditures noted so it is current at all times. Assist Director with construction of 1989 budget and research for and involvement in the 1989/90 union negotiations.
- 2 Purchase/requisition supplies, books, materials for Museum and Hazelwood staff. Process all bills for Museum and Hazelwood for items purchased. Maintain card file records of same.
- 3 Prepare materials, agendas, minutes relative to monthly Governing Board meetings. Distribute minutes and materials to appropriate individuals and media. Maintain journal of Board minutes and information.
- 4 Maintain confidential personnel files for Museum and Hazelwood employees. Maintain record of sick, vacation, personal and compensatory time earned and taken. Verify and maintain record of time worked. Begin work on Museum Personnel Manual.
- 5 Type letters, labels, publicity releases, personnel forms and general reports for Museum Director, staff and Board members;

that copies of employe performance evaluations are kept in employe personnel files, located in Koski's desk; and that Cagle has a set of keys to Koski's desk.

10. That after Koski became Museum Director, she established a Long-Range Planning Program for the Museum Department; that Koski formed a Long-Range Planning Committee, as described in Finding of Fact 7, and this Committee has submitted its first five-year Long-Range Plan (hereafter LRP) to the Museum Board, the NPM Corporate Board and to the Education and Recreation Committee of the County Board; that the LRP has been adopted by the Museum Board and the NPM Corporate Board; that following its consideration by the Education and Recreation Committee, which Committee is empowered to change any provision of the LRP, the LRP will then be submitted to the entire County Board; that the LRP includes projections over the next five years regarding Museum Department staffing, finances, facilities, education, exhibits and collections; that County Executive Cuene has ordered the LRP Committee to prepare a financial plan covering the costs of the LRP; that Cagle's role in the LRP process has been that she has assisted the Director by gathering information used in preparing the LRP and the financial plan and she has typed the LRP for submission to the County hierarchy; that the only other County Department which has an LRP is the Library.

11. That the Museum Department's annual budget is approximately \$785,000; that Koski asks Cagle as well as other Department employes for their input on the budget; that both Koski and Cagle receive information and requests from Department employes regarding the status of the current budget as well as any proposals for future budgets; and that Cagle is responsible for keeping track of budgetary expenditures.

12. That Cagle has typed and filed any disciplinary actions taken against unit employes by Koski; that although Cagle takes minutes of all Museum Board meetings, such meetings do not relate to labor relations; that, to date, Cagle has not been present at any contract negotiation meetings, although Koski has regularly attended these meetings; that Cagle has never typed any notes, minutes or strategy documents used in or relating to contract negotiation; that Cagle has had discussions with Koski regarding the LRP, reclassifications Koski may be considering and Koski's In-House Advancement Program that Koski hopes to present to the Union during the upcoming contract negotiations; that in toto, such conversations regarding the reclassification and IHAP matters have lasted approximately five hours; and that Cagle is currently assisting Koski in compiling information to support the IHAP.

13. That Cagle does not have sufficient access to or involvement in confidential matters relating to labor relations so as to render her a confidential employe.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. That the position of Museum Executive Secretary, since it is not a confidential position, is occupied by a "municipal employe" within the meaning of Sec. 111.70 (1)(i) of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Museum Executive Secretary at the Neville Public Museum shall continue to be included in the collective bargaining unit consisting of certain employes of Brown County, described above in Finding of Fact 3, supra, presently represented by Teamsters Local Union No. 75.

Given under our hands and seal at the City of Madison, Wisconsin this 26th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, 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 therefore 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.

(Footnote one continued on page seven)

(Footnote one continued from page six)

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 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.

BROWN COUNTY

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

POSITIONS OF THE PARTIES

The County pointed out that the Museum Executive Secretary is involved in the Performance Evaluation Program, instituted by Director Koski; that Cagle has been privy to information regarding Departmental reclasses, Koski's proposed In-House Advancement Program and Long-Range Plan; that Cagle has had access to oral and written warnings issued by Koski and that Cagle has access to Koski's personnel and private files. These items, the County argued, prove that Cagle is a confidential employe within the meaning of the Municipal Employment Relations Act.

The Union contended that the evidence is insufficient to demonstrate that Cagle is a confidential employe. The Union asserted that Cagle's exposure to confidential labor relations matters is de minimus and her work in this area has been of a routine, clerical nature; that her duties have remained essentially unchanged since her hire in 1973; that the Commission has previously found Cagle not to a confidential employe; and, therefore, that there are no new grounds upon which Cagle should be excluded from the bargaining unit. The Union also asserted that the grievance forms and performance evaluations typed by Cagle are available to each individual employe involved and that Cagle's access to Koski's files is insufficient ground to demonstrate that she is a confidential employe.

DISCUSSION

The Commission has held that in order for an employe to be considered a confidential employe, such employe must have access to, 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 between the bargaining representative and the employer and
2. Is not available to the bargaining representative or its agents. 2/

A de minimus exposure to confidential labor relations matters generally is insufficient ground for exclusion. 3/

Cagle does not attend negotiation sessions or management strategy sessions and she does not type minutes of meetings relating to labor relations. Although Koski has used Cagle as a "sounding board" for some of Koski's plans regarding reclassification and an in-house advancement program, in toto her discussions with Koski regarding labor relations topics have amounted to approximately five hours duration over the past year.

Cagle has access to Koski's employe files and types and files disciplinary actions and personnel evaluations to be placed therein as well as any resultant grievance material. However, as noted by the Commission in Appleton School District, Dec. No. 22338-B (WERC, 7/87) (slip. op. at p. 7), the fact that an employe has access to personnel files does not confer confidential status, particularly where the personnel files contain individual performance evaluations, disciplinary actions and grievance documents which are available to the individual employes affected.

2/ Laona School District, Dec. No. 22825 (WERC, 8/85). See also Rock County, Dec. No. 8243-J (WERC, 2/88).

3/ Wonewoc Union Center School District, Dec. No. 22684 (WERC, 5/85).

On balance, we are not persuaded that Cagle's duties warrant her exclusion from the unit as a confidential employee. Her involvement in discussions with Koski over matters which could impact on management strategy in bargaining (i.e. possible proposed reclassifications, or a proposed internal advancement program or long term planning) occupy a very small portion of her overall workload and thus are de minimus. As noted earlier, the typing of disciplinary and grievance material is not confidential work where, as here, the affected employees are privy thereto.

Based upon all of the above, Bonita Cagle, Museum Executive Secretary, is not a "confidential employe" within the meaning of MERA and the position and incumbent properly continue to be included in the bargaining unit.

Dated at Madison, Wisconsin this 26th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner