

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In The Matter of the Petitions of :
SCHOOL DISTRICT OF WEBSTER and : Case 14
CHEQUAMEGON UNITED TEACHERS : No. 46180 ME-526
Involving Certain Employes of the : Decision No. 22399-A
SCHOOL DISTRICT OF WEBSTER :
- - - - - :

Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, P.O.
Mr. Stephen L. Weld, Weld, Riley, Prenn and Ricci, S.C., Attorneys at
Law,
715 South Barstow, Suite 111, Eau Claire, Wisconsin 54702-1030, on
behalf of the District.

Box 31

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

On August 27 and September 16, 1991, the School District of Webster and the Chequamegon United Teachers, respectively, filed petitions with the Wisconsin Employment Relations Commission requesting the Commission clarify an existing collective bargaining unit of support staff personnel. The District sought the exclusion from the unit of the position of Administrative Secretary; the Union sought the inclusion in the unit of the position of Bookkeeper. Hearing in the matter was scheduled for December 10, 1991, and rescheduled for May 19, 1992, in Webster, Wisconsin, before Stuart Levitan, a member of the Commission's staff. A stenographic transcript of the proceeding was provided to the parties by June 11, 1992. The Union and District filed written briefs on August 21 and August 24, 1992, and reply briefs September 14 and September 16, 1992, respectively. The Commission, being fully advised in the premises, hereby issues the following

FINDINGS OF FACT

1. Chequamegon United Teachers, hereafter the Union, is a labor organization with offices at P.O. Box 311, Hayward, Wisconsin. At all times material, Barry Delaney has been the Executive Director of the Union.

2. The School District of Webster, hereafter the District, is a municipal employer with offices at 26428 Lakeland Avenue South, Webster, Wisconsin. The District has approximately 100 employes. The District's primary physical plant consists of three elementary schools, a combined junior/senior high school, and an administrative building situated between the junior/senior high school and one of the elementary schools. The administrative office, with two main rooms, houses the District Administrator and, in a separate office, both the Bookkeeper and Administrative Secretary. The acoustics and size of the building are such that it is not difficult to overhear conversations. There are eight District employes not represented by a labor organization, namely the District Administrator, three principals, the psychologist, two counselors, the custodial supervisor and the Bookkeeper. The District retains the law firm of Weld, Riley, Prenn & Ricci to handle its labor relations. Meetings of the Board of Education and of district managers/administrators are held in the administrative office.

3. At all times material, the Union has been the exclusive representative of a bargaining unit of "all regular full time and regular part time employes of the District including custodians, bus drivers, cafeteria workers, instructional assistants, secretaries, teacher aids (sic), cooks and cafeteria workers, but excluding instructional employes (professional), supervisory, confidential, managerial and all other employes." There are approximately 33 positions in the bargaining unit represented by the Union. At the time of the hearing, the Union and District were set to begin bargaining on a successor contract to an agreement covering the period July 1, 1990 - June 30, 1992.

4. At all times material, the District has recognized the Webster Education Association, hereafter the Association, as the exclusive bargaining representative for all regular employes of the District engaged in teaching, including classroom teachers, study hall supervisors and librarians, but excluding administrators, supervisors, non-instructional personnel, per diem employes, office, clerical, maintenance and operating employes. At all times material, Barry Delaney has been the Association's Executive Director. There are approximately 51 positions in the bargaining unit represented by the Association. There is currently a collective bargaining agreement between the District and the Association for the period 1990-1993.

5. Orlin Anderson is the incumbent District Administrator. On occasion, he has typed initial bargaining proposals for exchange with the Union and the Association. In preparation for collective bargaining, Anderson prepares a list of items he wishes to address, which list he either deals with internally or advances to outside counsel, Atty. Stephen L. Weld of the law firm of Weld, Riley, Prenn & Ricci. Not all of the proposals or items which Anderson initially notes are ultimately presented to the unions. In addition to Anderson and Riley, negotiations are handled on the District's behalf by its negotiating committee, a subgroup of the Board of Education.

6. Lois Edaburn is the incumbent Administrative Secretary, a bargaining unit position she has held full time for close to eight years. Her position description, which she prepared at the District's request, reads as follows:

TITLE: Administrative Secretary

QUALIFICATIONS:

- 1. High School diploma
- 2. Administrative Secretarial degree from Technical School.
- 3. Office experience.

REPORTS TO: Superintendent

SUPERVISES: High School student assigned to work in our office.

JOB GOAL: To complete the detail and written work and to coordinate other matters essential to the efficiency and effectiveness of the Superintendent.

PERFORMANCE RESPONSIBILITIES:

1. Transcribes all dictation of various types, including correspondence, reports, notices and recommendations. This includes much of which is of a very personal and confidential subject matter.
2. Obtains, gathers, and organizes pertinent data as needed, and puts it into usable form.
3. Maintains a regular filing system, as well as a set of locked confidential files, and processes incoming correspondence as instructed.
4. Places and receives telephone calls, and records messages.
5. Orders and maintains supplies as needed for Administration Office. Also maintains purchase order records for district and enters P.O. encumbrances in the computer before mailing the orders.
6. Takes care of accounts payable. Does the computer input and check runs for all the District bills.
7. Maintains a schedule of appointments and makes arrangements for conferences and interviews.
8. Welcomes visitors and arranges for their comfort and screens unexpected callers in accordance with predetermined policy.
9. Maintains confidentiality and loyalty to the Webster District.
10. Maintains computer record of all personnel attendance.
11. Monthly reports - Hot Lunch, Chapters I and II.
12. Makes sure Board Members receive all pertinent information before board meetings.
13. Posts agendas and other notices before important meetings and keeps the press informed.
14. Publishes all legal notices concerning district business.
15. Receipts and makes deposits of incoming revenue (Hot lunch, takes, State Aid, etc.).
16. Types teacher contracts.

17. Performs such other tasks as may from time to time be assigned.

TERMS OF EMPLOYMENT: Twelve month year.

Edaburn types written communications from Anderson to the District's bargaining committee and special labor counsel, except correspondence which Anderson types himself in light of Edaburn's current inclusion in the support staff unit. Edaburn types all correspondence -- to employe, Union, Association, outside counsel, middle management and the Board -- concerning grievances. Edaburn opens Anderson's mail, except that which is marked personal or marked confidential (the latter especially if originating from outside counsel). Edaburn types minutes of open and closed Board meetings, including executive sessions involving District strategies for collective bargaining, discipline and grievances. Edaburn has access to employe personnel files, except that Anderson keeps some files locked in his desk. Edaburn has not attended any Union meetings since her hire because unit members have indicated they felt she was too closely aligned with management. Edaburn has spent a small amount of her total work time over the past three years engaged in confidential clerical duties. Due to the physical arrangement of the offices, Edaburn has become privy to discussions of confidential matters involving the Board and District management.

7. Mary Ellen Smith, the District's sole fiscal affairs staff, has since about 1987 been the incumbent Bookkeeper for the District. In July, 1992, she, in conjunction with Anderson, prepared a job description for this non-unit position as follows:

SCHOOL DISTRICT OF WEBSTER

Title: District Bookkeeper

Reports to: District Administrator

Job Goal: To keep financial records and perform accounting work. Will work with little supervision and be responsible for bookkeeping work done by the district secretary.

Education: 1.) 2 yr. degree in Accounting or equivalent work experience.

2.) Background in office skills (basic clerical duties, receptionist duties, and ability to operate basic office equipment including computers).

Qualification:

- 1.) Have working knowledge of accounting and bookkeeping principles and procedures.
- 2.) Have familiarity with school appropriations, budgets and fund accounting.
- 3.) Have ability to keep fiscal and financial records and make reports.
- 4.) Have judgment and initiative in carrying out established accounting and administrative procedures.
- 5.) Have ability and accounting knowledge to establish a working relationship with outside auditors.

- 6.) Have effective organizational abilities.
- 7.) Must present the school and school matters in a favorable light to the public. Keep in confidence concerns of the district office.

Performance Responsibilities:

- 1.) Assisting in the administration of the district's business affairs.
- 2.) Keeping financial records of monthly checking accounts, certificates of deposit, and savings accounts.
- 3.) Compiling and preparing all forms, reports and checks in regard to payroll, insurance, retirement, etc.; maintain and update employee files and records.
- 4.) Assisting in preparing accounts payable, vouchers, checks, and encumbrances.
- 5.) Operating computer for payroll, budget, fixed assets, and DPI reports.
- 6.) Preparing monthly financial records including bank reconciliation, cash flow statement, balance sheets, detail account analysis, and adjusting journal entries.
- 7.) Performing other duties as may be assigned by the district administrator.

Smith's primary role relating to labor relations is the costing of proposals made by the respective parties in negotiations. She does not participate directly in negotiation sessions, nor meet with the Board negotiating team during caucuses. During the last round of bargaining with the Association, the parties shared data very openly. On at least two occasions, Smith costed out wage and benefit packages which the District was considering offering. Smith has, on occasion, costed packages which the District has not offered either the Union or the Association. So that the Association may accurately cost bargaining proposals, Smith provides to its representatives information on insurance premiums, other fringe benefit costs, placement on salary schedules, and so on. As of the time of hearing, Smith had not costed any proposals for a successor agreement with the Union. Smith has no independent authority to alter budgeted amounts as approved, on a function-by-function basis, by the Board, and has no independent authority to make investment decisions, other than to manage the cash flow and obtain the highest rate of return from deposits in Board-approved financial institutions.

8. Lois Edaburn, the incumbent Administrative Secretary, has sufficient access to and participation in confidential matters relating to labor relations to be deemed a confidential employe.

9. Mary Ellen Smith, the incumbent Bookkeeper, has sufficient access to and participation in confidential matters relating to labor relations to be deemed a confidential employe.

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

CONCLUSIONS OF LAW

1. Lois Edaburn, the incumbent Administrative Secretary, is a confidential employe and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. Mary Ellen Smith, the incumbent Bookkeeper, is a confidential employe and therefore is not a municipal employe within the meaning of

Sec. 111.70(1)(i), Stats.

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

ORDER 1/

The bargaining unit referenced in Finding of Fact 3 is hereby clarified by the exclusion therefrom of the incumbents occupying the positions of Administrative Secretary and Bookkeeper.

Given under our hands and seal at the City
of Madison, Wisconsin this 6th day of November,
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, 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

(Footnote 1/ continued on page 8)

1/ Continued

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 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.

WEBSTER SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

In support of its position, the Union asserts:

Administrative Secretary

The District uses an inaccurate and overly broad definition of "confidential," in that most of the information that Edaburn handles would not give the Union an advantage in negotiations or contract maintenance. Edaburn is not privy to discussions regarding bargaining proposals affecting the support staff; has not typed internal communications relating to support staff negotiations; has neither attended any Board of Education executive sessions, nor typed minutes from such meetings relating to support staff negotiations or grievances. She has no access to District negotiations proposals or other confidential information; indeed, the District Administrator himself types the initial proposals. Edaburn does not open confidential mail, or mail from outside counsel, addressed to the Administrator. Under even a broad interpretation of "confidential," Edaburn has spent only about 10-12 hours over the past three years on confidential tasks involving the support staff, representing less than 0.2% of her total work time.

The District erroneously argues that Edaburn's involvement with purported confidential matters relating to the teacher unit has some relevance here, even though the two units are separate and distinct unions. However, if the Commission were to find such activity relevant, it is still very clear that the confidentiality and the amount of time Edaburn spends on such teacher issues to be very limited.

Regarding teacher negotiations, Edaburn has not been privy to District strategies; has not typed proposals; has not filed any confidential documents, and has not attended executive sessions of the Board. Over the past three years, she has spent only about 21-25 total hours on confidential matters relating to the teacher unit, or about 0.3% - 0.4% of her total work time.

Clearly, even combining the activities relating to the teacher unit and the support staff unit, the Commission must conclude that the administrative secretary spends only a minimal amount of time on confidential matters, and cannot be taken out of the bargaining unit.

Bookkeeper

The District errs in asserting that the bookkeeper has sufficient confidential and managerial duties to exclude her from the bargaining unit.

As to the claimed managerial status, the record shows that the incumbent has neither authority to set budget figures nor deviate from those set by the District. Consequently, she neither formulates, determines nor carries out management policies, nor does she have authority to establish an original budget, or to allocate funds for different purposes. Her duties are those of a number cruncher, not of a managerial employe.

As to the claimed confidential status, the record shows the incumbent has no budgetary information otherwise not available to the Association. She is not present during negotiations, and has never been asked by the District to calculate what salary increases the District could afford. While she did do some costing of packages, all her costings were shared with the Association. The bookkeeper has had no knowledge or information of what the District might or might not offer the Union.

Over the past three years, the bookkeeper has spent only about 16 hours doing costings for each unit -- a minimal amount of time, even if it were considered confidential. Further, even this minimal amount of purportedly confidential work could be eliminated if she merely calculated a one percent increase, leaving to the District negotiators the task of thereafter figuring out other percentage increases.

In support of its position, the District asserts:

Bookkeeper

The bookkeeper administers the District's business operations; manages all District financial accounts; prepares all monthly financial statements; maintains the requisite financial and employe records necessary to prepare and administer payroll; maintains all computer records necessary for preparing and monitoring the District's budget, fund accounts, fixed assets and

governmental reports; manages District cash flow; and recommends staffing and equipment purchases for her department.

Because the District determines its bargaining parameters for salaries and benefits, and then has the bookkeeper incorporate those figures into a budget to the cost impact can be calculated, the bookkeeper is privy to District strategies and knowledgeable of the parameters the District will use in negotiations. Because this information is not a public record until approved by the District's Board, the bookkeeper does indeed have knowledge of confidential negotiations parameters not available to the Union, and does participate in confidential discussions with the Administrator, and attends confidential meetings of the Board.

The Union's effort at confusing "costing options" with "costing data" should not obscure the fact that not all costing options were shared with the Union.

The incumbent bookkeeper, who performs no clerical tasks, is the only employe qualified or experienced in such fiscal matters, and essentially constitutes a one-person business department. Were the incumbent a male, with the exact same job duties, her job title would likely be "Business Manager" rather than the more traditional "bookkeeper" title often relegated to females.

The Union's petition was filed in retaliation for the District's petition seeking removal of the administrative secretary from the unit, and is without merit. The bookkeeper position, originally excluded from the unit by voluntary agreement of the parties in recognition of her confidential status, should remain outside the unit.

The bookkeeper also supplements her confidential work with managerial work, especially as regards her active role in the preparation of the District budget. As the principal (only) financial officer of the District, the bookkeeper is integrally involved in making decisions relating to balancing the budget, in a personal way that imbues her relationship with management with interests significantly at variance with the interests of other employes, including herself.

Administrative Secretary

Administrative Secretary Edaburn is the sole clerical employe available to type correspondence, documents and reports, and perform other clerical tasks for both the District Administrator and the bookkeeper. While originally voluntarily included in the unit, the position has evolved to the point where the duties involve the regular processing of confidential material.

Edaburn is more heavily involved in clerical and other support tasks involving the teacher unit than with the support staff unit; in order to shield Edaburn from confidential material relating directly to her own unit, the District Administrator himself performs clerical tasks (typing, filing, etc.) This situation is clearly both wasteful and indicative of the confidentiality of the material with which Edaburn works.

On a personal level, Edaburn is under constant pressure caused by her unit status; pressed to divulge confidential information, she has never attended a Union meeting because she was made to feel unwelcome.

Any Union contention that all the material with which Edaburn works is ultimately made available, and is thus not confidential, is contrary to the record evidence. Moreover, given the physical lay-out of Edaburn working in an office immediately outside the Administrator's office, Edaburn cannot help but become privy to discussions of confidential material.

Any Union attempt to draw a meaningful distinction between confidential information affecting the teacher unit as opposed to the support staff unit is misplaced and irrelevant. The key to confidential status is not the unit placement of the employe, but the nature of the work performed. Moreover, it is noteworthy that the professional representative for both units is the same person.

The Union also errs in arguing that the two incumbents spend only a minimal amount of time on confidential duties; the record evidence indicates that confidential labor relations matters comprise a substantial portion of their duties.

The bookkeeper is the only employe available to perform costing and budgeting of salary and benefits, clearly a confidential function. The administrative secretary is the only employe available to type documents regarding negotiations and grievances, clearly a confidential function. Both positions entail a significant amount of confidential labor relations work.

Both positions are confidential, and should be excluded from the bargaining unit.

In response, the Union posits further as follows:

The employer's assertion that the administrative secretary spends 15-20 percent of her work time on confidential activities is preposterous, beyond reason and unbelievable, in that there have been only two bargains and two grievances over the past three years. The reality is that the incumbent spends an average of 13 hours per year on such activities, or one-half of one percent of her work time.

Moreover, the testimony showed that the incumbent was not privy to the District's strategy, had no access to the truly confidential materials which the administrator kept in a locked file, and typed only material which was not truly confidential. The incumbent testified she did not type any District proposals pertaining to the teacher negotiations during the last three years, even though there was bargaining.

Nor can the District rely on the "work station" argument. Simply because the administrator may be sloppy in discussing potential confidential issues involving teacher negotiations does not mean that the job duties of the administrative secretary are confidential in nature.

As to the bookkeeper, the record does not support the employer's claim that the position is the only financial officer in the district, in that the administrator and the Board's budget committee are such financial officers. Indeed, it is the administrator who acts as business manager when making budget decisions, with the bookkeeper simply keeping track of the arithmetic and recording of transactions.

The Union does not accept the employer's claim that the information to which the bookkeeper becomes privy during the budget process constitutes confidential information, or even information which would prove beneficial to the Union. Such information is sketchy, and subject to change, and does not determine how the bargain progresses. If settlements -- or arbitration awards -- were determined by what employers budgeted, there would be no real collective bargaining.

Nor is the bookkeeper privy to the employer's strategies, and has no knowledge of what the employer might or might not propose. Thus, as the Union has full knowledge of all data needed to cost out packages on its own, the bookkeeper's knowledge of "what if" costings would not provide any advantage to the Union.

As to claimed managerial status, the bookkeeper is simply a number cruncher, without duties relating to determining what is placed in the budget or how the money will be spent.

In response, the District posits further as follows:

The administrative secretary, the only employee available to perform confidential clerical duties for the administrator, and privy to all discussions regarding negotiations, grievances, discipline and

litigation, is a confidential employe. The Union's argument against this conclusion consists of inaccurate statements contrary both to the record as well as to WERC decisions.

Contrary to the Union's assertion, the incumbent did type proposals for the current round of support staff negotiations, and was kept from typing such proposals in the past so as to protect her from the awkward knowledge of confidential information.

Contrary to the Union's implication, attendance at Board meetings is not dispositive; what is significant is that the incumbent types the minutes of closed meetings at which the Board discusses and acts on confidential matters.

Contrary to the Union's implication, the reason the incumbent does not open confidential mail addressed to the administrator is that such mail could contain information relating to her own position; were the incumbent not in the unit, she would certainly open all mail.

Contrary to the Union's assertion, the WERC has never held that an employe must spend a "substantial" amount of time on confidential duties to be found confidential. Instead, the incumbent clearly meets the established test of performing confidential duties closely related to the administrator's labor relations duties; the "undue disruption," which the WERC strives to avoid, is present in the administrator's having to type and file his own confidential documents.

As the only person in the District available to perform confidential duties, the administrative secretary must be excluded from the unit as a confidential employe.

The bookkeeper should also be excluded from the unit as both a confidential and managerial employe.

While the bookkeeper naturally does not have the autonomous authority to set budget items -- an authority vested in the Board -- it is clear that her interests are more closely aligned with management than with the Union, thus making her a managerial employe.

And, because the incumbent is the sole employe assisting the administrator in budget preparation, and the only employe with costing skills, she has knowledge of parameters and options considered by the District in negotiations, which information the Union is not privy to.

DISCUSSION

It is well-settled that, for an employe to be held confidential, such employe 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. 2/

While a de minimis exposure to confidential materials is generally insufficient grounds for exclusion of an employe from a bargaining unit, 3/ we have also sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management. 4/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 5/ and, similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as her or his secretary may be found to be confidential, even if the actual amount of

2/ Dane County, Dec. No. 22796-C (WERC, 9/88).

3/ Boulder Junction Joint School District, Dec. No. 24982 (WERC, 11/87).

4/ CESA Agency No. 9, Dec. No. 23863-A (WERC, 12/86).

5/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85).

confidential work is not significant, unless the confidential work can be assigned to another employe without undue disruption of the employer's organization. 6/

It is clear that in the context of a 2,088 hour work year and the amount of confidential work generated by two units, the Administrative Secretary performs a de minimis amount of confidential work. However, it is also clear that Administrator Anderson has kept some confidential material and duties away from Edaburn precisely because she is currently represented by the Union. Notwithstanding the role of outside labor counsel, Anderson does have significant labor relations responsibility; Edaburn is the only clerical available to him. Making the District Administrator responsible for his own typing and filing, so as to prevent confidential material becoming known to the Union, constitutes an undue disruption of the District's organization. Further, the record establishes that the currently excluded Bookkeeper (Smith) does not have significant clerical skills.

It is equally clear the Smith, through her role in budget preparation and costing, has access to and knowledge of information dealing with the employer's strategy in collective bargaining, which information is not available to the unions. Not all costing is as routine as the Union asserts, and knowledge of the range of options which the District is considering would indeed give the unions a significant advantage in bargaining; Smith has such knowledge. Although the amount of time Smith spends performing confidential work is de minimis, she is the only employe aside from the District Administrator who can perform the work. Her inclusion in the unit would constitute undue disruption of the District's organization.

Accordingly, we have found both positions to be confidential, and thus excluded from the bargaining unit.

Dated at Madison, Wisconsin this 6th day of November, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

6/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).