

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

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WEST SALEM SCHOOL EMPLOYEES :

ASSOCIATION/CRUE/WEAC : Case 12

: No. 41460 ME-304

Involving Certain Employes of : Decision No. 22514-A

:

WEST SALEM SCHOOL DISTRICT :

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Appearances:

Mr. Thomas C. Bina, Executive Director, Coulee Region United Educators, NEA, WEAC, 2020 Caroline Street, P.O. Box 684, LaCrosse, Wisconsin 54602-0684, appearing on behalf of the Petitioner.
Mr. Darrel A. Talcott, Attorney at Law, P.O. Box 190, West Salem, Wisconsin 54669, appearing on behalf of the District.

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

West Salem School Employees Association/CRUE/WEAC, having on December 15, 1988, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing bargaining unit consisting of nonprofessional employes to include within that unit the position of District office aide; and a hearing in the matter having been conducted on March 8, 1989, at West Salem, Wisconsin, before Examiner Karen J. Mawhinney, a member of the Commission's staff; and the parties having made oral argument at the close of the hearing in lieu of filing post-hearing briefs; and a transcript of the hearing having been received on May 15, 1989; and the Commission being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That West Salem School Employees Association/CRUE/WEAC, referred to herein as the Association, is a labor organization with its offices at Box 684, LaCrosse, Wisconsin 54602-0684.

2. That West Salem School District, referred to herein as the District, is a municipal employer with its offices at 405 East Hamlin Street, West Salem, Wisconsin 54669.

3. That the Association is the exclusive bargaining representative for all regular full-time and part-time employes including custodial employes, bus drivers, clerical employes, school luncheon program employes, teacher aides, and school bus maintenance employes, but excluding temporary employes, school administrators, teaching faculty, nurses, substitute teachers, supervisory, confidential, and managerial employes.

4. That the Association seeks to include within the bargaining unit the position of District office aide; that the District contends that the position should be excluded as confidential; that the position is currently held by Pat Bahr; that the District employs 160 people who are represented by two different labor organizations -- the support staff union and the teachers' association; and that personnel within the District office who are currently excluded from a bargaining unit include the District secretary (Vera Drecktrah), the bookkeeper/transportation supervisor (Shirl Fosler), and a computer operator (Bill Smiley).

5. That Bahr started working for the District as a work-study student while completing his high school education; that following Bahr's graduation in either 1986 or 1987, he worked on the District's newsletter on a temporary basis; that during the 1987-88 school year, Bahr worked half time or less for the District, at a rate of \$5.50 per hour; that during the 1988-89 school year, Bahr worked between three-fourths to full time for the District, at a rate of \$5.25 per hour; that Bahr has received no fringe benefits from the District other than paid holidays; that Bahr reports to the District Administrator, Gene Ertz; and that Ertz is recommending to the School Board that Bahr's position become funded as a full-time permanent position.

6. That Bahr's duties include typing curriculum revision work, typing the master collective bargaining agreements and making revisions following negotiations, typing individual employe contracts, filing material and updating educational credit information in personnel files, filing invoices and vouchers, secretarial duties as needed, and substituting in the absence of the District secretary or clerical and instructional aides; that since the District office was physically separated from the high school office in the last year, Bahr spends about 95 percent of his time in the District office and another five percent substituting for instructional aides or working on machines in another office; that due to the location of his work station in the office, Bahr is in a position to overhear conversations between Ertz and other employes; that Bahr has access to all files in the District office; that Bahr reports primarily to Ertz, although Ertz, Drecktrah, and Fosler may assign work to him; that Bahr substitutes for Drecktrah for an hour-and-a-half on a daily basis, performing her duties which may, on occasion, include typing matters dealing with negotiations, personnel, and discipline; that Bahr substituted for Drecktrah for 17 days during her absence due to illness in the last year; that Drecktrah spends a maximum of 10 percent of her time on confidential labor relations matters; that Bahr has access to Ertz's files on labor relations and personnel and presently spends about 25 percent of his time filing material therein; that Bahr may, on occasion, type communications from Ertz to the Board dealing with labor relations strategy; that attorneys hired by the District have prepared bargaining proposals and Bahr has not participated in the development of such proposals; that Smiley, and not Bahr, is involved in costing bargaining proposals; that Bahr does not attend Board meetings where labor relations are discussed; that Bahr does not usually open or see correspondence relating to bargaining; that Bahr has not been involved in disciplinary or personnel matters other than the typing and filing work as assigned; and that Bahr does not have sufficient access to, knowledge of, or participation in confidential matters relating to labor relations to be deemed a confidential employe.

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

CONCLUSION OF LAW

That the occupant of the position of District office aide is not a confidential employe and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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 District office aide is included in the bargaining unit represented by the Association.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of August,
1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

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 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

(Footnote 1/ continued on Page 4)

1/ Continued

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.

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

THE PARTIES' POSITIONS:

The Association notes that the District secretary, who is already excluded from the bargaining unit, spends about 10 percent of her time performing confidential work involving labor relations. Thus, while the Association agrees that the District has a need for someone to do the confidential labor relations work, it argues that the secretary could perform any confidential labor relations duties of the District office aide. The Association points out the Commission has ruled that the location of the work site is not dispositive of the issue of the confidential status of an employee. Finally, the Association contends that if the District is concerned about the office aide having access to files with confidential information, the District could exclude the office aide from having such access. Therefore, the Association argues that the office aide, Bahr, is not a confidential employee and should not be excluded from the bargaining unit.

The District points out that the office aide has performed the same duties as the secretary. The District also notes that the aide had to fill the secretary's position for a period of 17 days when the secretary was absent. Moreover, the District contends that the aide is expected to file materials dealing with bargaining, grievances, and personnel. The District believes that the amount of confidential work being performed by either the secretary or the aide should not be the determining factor in this case because both of them are expected to do this work in a small school district. Finally, the District argues that the aide has performed confidential work in the past, and that the aide should be excluded from the bargaining unit.

DISCUSSION

The Commission has consistently held that for an employe to be considered confidential and thereby excluded from a bargaining unit, the employe must have sufficient access to, knowledge of, or participation in confidential matters relating to labor relations. Information is confidential if it is the type that (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations, and (2) is not available to the bargaining representatives or its agents. 2/ A de minimis exposure to confidential materials is insufficient grounds for excluding an employe from a bargaining unit. 3/

The confidential exclusion protects a municipal employer's right to conduct its labor relations through employes whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. 4/ However, we have said that an employer clearly cannot be allowed to exclude an inordinately large number of employes by spreading the work of a confidential nature among such employes or giving them occasional tasks of a confidential nature. 5/ We have also held that the physical proximity of confidential and nonconfidential employes or the effect of a finding of a confidential status or nonconfidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employes are confidential employes. 6/ Lastly, it should be noted that access to personnel files is not typically sufficient to confer confidential

2/ Sheboygan County, Dec. No. 7671-A (WERC, 1/88).

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

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

5/ Marshfield Joint School District No. 1, Dec. No. 14575-A (WERC, 7/76).

6/ Ibid.

status because the information contained therein is typically accessible to employees or their union 7/ and because the employer can limit access if it chooses. 8/

Bahr's filing responsibilities presently give him access to if not actual knowledge of 9/ District files which contain confidential collective bargaining information. Bahr also may perform occasional confidential labor relations tasks when filling in for the District's secretary Drecktrah. However, on balance, we are persuaded that Bahr's exposure to confidential matters is not sufficient to warrant his exclusion from the unit as a confidential employee.

The amount of time Bahr spends performing confidential labor relations functions is very limited. While he may spend 25% of his work week filing material for the District, the majority of that time is spent filing invoices and vouchers for the bookkeeper and updating personnel files with material which is accessible to the employees/union. As the record indicates that District secretary spends at most 10 percent of her time performing confidential functions 10/ the fact that Bahr replaces her during meal and coffee breaks does not generate any significant amount of confidential work. Furthermore, the presence of other District employees in the District office, all of whom are presently excluded from the unit, appears to give the District sufficient flexibility to reassign the minimal confidential work Bahr performs. We are not unmindful such reassignment may cause a certain inconvenience in a small office; at the same time, should such inconvenience arise, it does not seem to us to rise to the level of being unduly disruptive.

For the foregoing reasons, we find that the position of the District office aide currently occupied by Pat Bahr is appropriately included in the bargaining unit represented by the Association.

Dated at Madison, Wisconsin this 17th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

7/ Appleton Area School District, Dec. No. 22338-B (WERC, 7/87).

8/ Waukesha Joint School District No. 1, Dec. No. 10823-A, (WERC, 3/81).

9/ Bahr presumably has actual knowledge of whatever confidential labor relations documents he actually files.

10/ This estimate by the District Administrator may well be overstated given that his definition of "confidential" encompassed not only labor relations matters but also communications with students and citizens (Tr. 27-28).