

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 WISCONSIN COUNCIL OF COUNTY :
 AND MUNICIPAL EMPLOYEES, : Case 8
 COUNCIL 40, AFSCME, AFL-CIO : No. 33911 ME-2392
 : Decision No. 22825
 :
 Involving Certain Employes of :
 :
 LAONA SCHOOL DISTRICT :
 :

Appearances:

Ms. Georgia Johnson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2041 - 9th Street, P. O. Box 692, Marinette, Wisconsin 54143, appearing on behalf of the Union.
 Korth, Rodd, Mouw, Mustacci & Vocke, S.C., Attorneys at Law, First National Bank Building, P. O. Box 757, Rhinelander, Wisconsin 54501, by Mr. Timothy L. Vocke, appearing on behalf of the Employer.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Council 40, AFSCME, AFL-CIO, having on October 8, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employes in the employ of the School District of Laona; and hearing in the matter having been conducted on January 29, 1985, at Laona, Wisconsin, before Examiner Deborah A. Ford; and a transcript of the proceedings having been received on February 15, 1985; and the District having filed a brief on March 14, 1985, and the Union having declined to file a brief; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, hereinafter referred to as the Union, is a labor organization, and has its principal offices at 2041 - 9th Street, Marinette, Wisconsin 54143.

2. That the School District of Laona, hereinafter referred to as the District, is a municipal employer which has its principal offices at Forest Avenue, Laona, Wisconsin.

3. That in its petition initiating the instant proceeding the Union seeks an election among employes employed by the District in the following alleged appropriate unit:

All regular full-time and regular part-time, non-professional employes of the Laona School District including custodians, cleaning persons, bus drivers, secretaries, bookkeeper, cooks and aides, excluding managerial, confidential, supervisory and professional employes.

4. That the District, contrary to the Union, contends that the bookkeeper/business manager, Laurel Geske, should be excluded from the unit as a confidential and managerial employe, that Steve Carter, the custodial/maintenance/transportation supervisor, should be excluded from the unit as a supervisory and managerial employe, and that the substitute bus drivers, Sam Byrd and Katherine Hoefs, should be excluded from the unit as casual employes.

5. That at hearing the parties stipulated to the exclusion of the positions of administrative secretary, currently occupied by Sherry Kramer on the grounds that she is a confidential employe, the head of the school lunch program, Eunice

Peterson, on the grounds that she is supervisory and managerial, and Margaret Fredrich and Audrey Brecker on the grounds that they are not employees of the District.

6. That Laurel Geske is the bookkeeper/business manager for the District; that as such she is responsible for maintaining the financial and personnel records for the District; that Geske is responsible for preparation of the payroll, any and all tax forms, monthly, quarterly and annual financial and budget reports and budget reports for DPI, maintaining vacation and sick leave accounts of employes, processing of Worker's Compensation claims, monitoring the District's various bank accounts, and preparation of salary and fringe benefit information needed for negotiations; that Geske is authorized to make purchases or recommendations for purchases related to the performance of her job as well as office and computer products; that she, however, needs approval from the School Board for extraordinary purchases; that Geske has typed grievance responses which were subsequently given to the employe; that Geske is the only employe trained to use the computer, which, among other things is used to cost bargaining proposals; that Geske is a salaried employe; that her desk is located next to that of Kramer, whom the parties agreed to exclude as a confidential employe; that both Geske and Kramer have access to personnel files and minutes from closed Board meetings; that on occasion Geske fills in for Kramer during her absences and assists her when there is excess work; that Geske is present during most of the closed Board meetings where bargaining strategy and economic proposals for negotiations are discussed; that she does all of the costing of negotiations proposals for the Board and advises it on the economic impact of changes in the salary and fringe benefit levels; and that the bookkeeper/business manager has access to, knowledge of and participates in confidential matters relating to collective bargaining and labor relations.

7. That Samuel Byrd and Catherine Hoefs are employed by the District as substitute bus drivers; that the parties agree that Byrd and Hoefs are similarly situated; that as a substitute bus driver, Byrd is called in to work whenever regular bus drivers are absent; that he does not have a regularly assigned route or hours; that when he substitutes on a route he gets a per diem percentage of the regular driver's wages although he receives no fringe benefits; that he has no written contract with the District although he does not have to reapply for employment every year; that if Byrd refuses a route it is simply offered to the next driver on the substitute list; that Byrd has been filling in for one regular driver the first Monday of every month while the driver serves as president of the Tavern League Association; that Byrd generally works 3-4 times a month although there have been some months when he did not work during the entire month; that Byrd and Hoefs have worked approximately 32 and 25 hours, respectively, during the period September, 1984 to January, 1985; that the assignment of drivers is done by seniority; and that Byrd has been told that the most senior substitute driver will get the route of a regular driver in the event of resignation or retirement; and that the substitute bus drivers do not perform work of sufficient frequency and regularity to render them regular part-time employes.

8. That the position of custodial/maintenance/transportation supervisor is currently occupied by Steve Carter; that as such, Carter is responsible for the operation of the school bus system, building maintenance and security, and inventory supply; that Carter advises the Administrator on road conditions and possible school closings; that Carter is a salaried employe and is paid "substantially more" money than other employes in his department; that he does not receive overtime pay; that unlike other employes in his department, Carter is required to contribute to his fringe benefit costs; that Carter spends the majority of his working time performing work similar to that of other employes including mechanical and custodial work and the operation of one bus route; that Carter initially screens job applicants for his department, participates in the interview process and effectively recommends which individuals should be hired; that Carter has effectively recommended the hiring of at least five employes; that he has been told he has the authority to adjust grievances and recommend discipline; that Carter has effectively recommended the suspension of one employe; that he signs timecards and approves time off requests; that bus drivers are trained and scheduled by Carter; that drivers who call in sick contact Carter who in turn is responsible for getting a substitute driver to take the route; that Carter handles complaints from the public about drivers; that Carter trains and assigns work to custodial and maintenance employes and establishes job priorities; that Carter prepares the budget for his department, including requests for new equipment and possesses the authority to approve purchases beyond the amount designated in the budget in some areas; that Carter has purchased or effectively

recommended purchases valued in the thousands of dollars; that Carter spends approximately 25% of his time performing supervisory tasks; that the custodial/maintenance/transportation supervisor has the authority to hire, fire, discipline, assign work, and grant time off or effectively recommend same; and that, therefore, Carter possesses supervisory authority in sufficient combination and degree to warrant supervisory status.

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

CONCLUSIONS OF LAW

1. That the individual occupying the position of bookkeeper/business manager is a confidential employe, and therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and is excluded from said unit.

2. That the substitute bus drivers employed by the Laona School District are casual employes who do not share a community of interest with the members of the petitioned for unit and are therefore excluded from said unit.

3. That the occupant of the position of custodial/maintenance/transportation supervisor is a supervisor, and therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and is excluded from said unit.

4. That all regular full-time and regular part-time non-professional employes of the Laona School District, including custodians, cleaning persons, bus drivers, secretaries, cooks and aides, but excluding managerial, confidential, supervisory and professional employes, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

5. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among the employes of the School District of Laona in the appropriate collective bargaining unit described above.

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

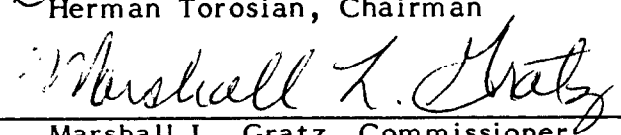
DIRECTION OF ELECTION

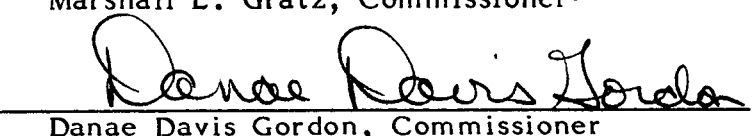
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time non-professional employes in the employ of the Laona School District including custodians, cleaning persons, bus drivers, secretaries, cooks and aides, but excluding professional, managerial, supervisory and confidential employes, who were employed by the Laona School District on August 9, 1985, except such employes as may prior to election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes voting desire to be represented by the Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, for the purpose of collective bargaining with Laona School District on wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 9th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

 _____
Marshall L. Gratz, Commissioner

 _____
Danae Davis Gordon, Commissioner

LAONA SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

POSITIONS OF THE PARTIES

The District

The District contends that the bookkeeper/business manager should be excluded as a confidential employe because (1) she is involved in the development of the school board's strategy and position during collective bargaining; (2) she fills in for the confidential secretary during her absences and performs any excess work; and (3) she has confidential responsibilities that no other employe has or is capable of performing, specifically involving her work on the computer. Although not addressed in its brief, the District contended at hearing that the bookkeeper should also be excluded on the grounds that she is a managerial employe.

The District also argues that the custodial/maintenance/transportation supervisor should be excluded from the unit based on his supervisory duties. At hearing, the District also contended that Carter should be excluded from the unit because of his managerial responsibilities related to budget preparation.

Finally, the District contends that substitute bus drivers should be excluded from the unit because they are casual employes who do not possess a sufficient community of interest with the remaining employes in the petitioned-for unit.

The Union

The Union's position is that Geske should not be excluded from the unit because much of the information she handles is not confidential in nature and there already exists a confidential employe to handle any confidential work which does arise. With respect to the custodial/ maintenance/transportation supervisor, the Union argues that he should be included in the unit because he spends the majority of his time performing unit work. Finally, the Union contends that the substitute bus drivers should be included in the unit because they have an expectation of continued employment with the District.

DISCUSSION

Substitute Bus Drivers

Byrd and Hoefs work on an on-call basis. They are only called in when a regular driver is absent. Moreover, substitute drivers are offered available work in seniority order but have the right to refuse or reject work assignments without suffering adverse consequences. Byrd testified that since March, 1983, he has worked an average of 3-4 times a month, but that there is no regular schedule as to when these occasions occur. Indeed, there have been some months, exclusive of summer, when he did not work during the entire month. Although Byrd had recently begun substituting for the driver of one route on the first Monday of every month, the assignment is infrequent and indefinite in duration since it will last only as long as the replaced driver serves as President of the Tavern League Association. Between September, 1984 and January, 1985, Byrd has worked a total of 32 hours. Neither Byrd nor Hoefs is guaranteed a set number of hours per month or pay period. Based on the foregoing, we find the employment of the substitute bus drivers is not sufficiently frequent and regular to warrant the conclusion that they are regular part-time employes. 1/

1/ Ozaukee County, Dec. No. 22667 (WERC, 5/85); Montello Schools, Dec. No. 17829 (WERC, 5/80).

Custodial/Maintenance/Transportation Supervisor

In determining whether a position is supervisory in nature, the Commission has consistently considered the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employes;
5. Whether the supervisor is supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employes;
7. The amount of independent judgement exercised in the supervision of employes. 2/

The Commission has also held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, we will find an employe to be a supervisor. 3/

In his current position, Carter is responsible for building maintenance and security and the operation of the school bus system, including the scheduling of routes, assignment of drivers and the upkeep and purchase of transportation equipment. He directs the activities of seven drivers and five custodial and maintenance employes. Not only is Carter paid at a higher rate than the other employes in his department, he is also compensated on a salaried basis, does not receive overtime pay, and is required to contribute to his fringe benefit costs, unlike the other employes. Carter screens the application forms of job applicants in his department, participates in the employment interviews and effectively recommended the hiring of a number of individuals. In addition to approving time cards and granting requests for time off, Carter has been told that he has the authority to lay off employes and adjust grievances. In fact, on one occasion Carter effectively recommended the suspension of an employe. Although, Carter only spends 25% of his time performing supervisory duties, performs all of the mechanical work for the Districts, regularly drives one of the bus routes and performs some custodial work, we are nonetheless satisfied that the significant supervisory authority Carter possesses and exercises warrants the conclusion that his position should be excluded as a supervisor.

The District argued at hearing that Carter should also be excluded on the grounds that he is a managerial employe. Having concluded that Carter is a supervisor and therefore excluded from the unit, we need not address the question of whether Carter should also be excluded on the bases of his alleged managerial status.

2/ School District of Tomahawk, Dec. No. 22495 (WERC, 3/85); Shawano County (Maple Lane Health Care Facility), Dec. No. 7197-A (WERC, 10/84).

3/ Dunn County, Dec. No. 21198 (WERC, 11/83).

Bookkeeper/Business Manager

The District argues that Geske should be excluded on the grounds that she is a confidential employe. In order for an employe to be considered a confidential employe and thereby excluded from the bargaining unit, the Commission has held that such employe 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 that: (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. 4/

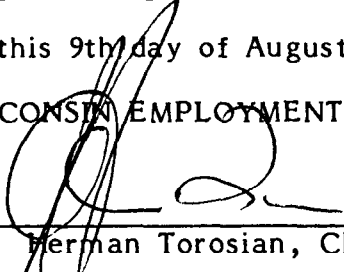
Here, Geske is the only employe trained to use the computer which she uses in carrying out her responsibility for costing out the salary and fringe benefit proposals considered by the Board during negotiations. Also Geske is present during Board meetings where negotiation strategy and alternative proposals relating to economic items, are discussed. She also is sometimes asked to research certain proposals as well as to advise the Board on the staffing or economic impact of same.


For the foregoing reasons, despite the presence of another confidential employe (the administrative secretary), we find Geske's confidential duties to be such as to warrant the exclusion of her position from the bargaining unit as a confidential employe. Having concluded same the question of whether Geske should also be excluded based on her alleged managerial status need not be addressed.

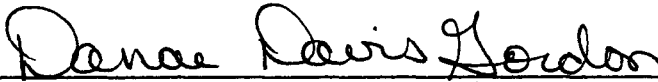
Dated at Madison, Wisconsin this 9th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

4/ City of Ashland, Dec. No. 18808 (WERC, 7/81); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).