

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 CADOTT ASSOCIATE :
 STAFF ORGANIZATION : Case 8
 : No. 34433 ME-2
 Involving Certain Employes of : Decision No. 22880
 :
 CADOTT SCHOOL DISTRICT :
 :

Appearances:

Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Union.
 Mulcahy & Wherry, S.C., Attorneys at Law, 21 South Barstow, P. O. Box 1030, Eau Claire, Wisconsin 54702, by Mr. Stephen Weld, appearing on behalf of the Employer.

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

Cadott Associate Staff Organization, having on December 26, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to clarify a collective bargaining unit consisting of all secretarial and clerical employes and aides of the Cadott School District to include the two positions of Assistant Bookkeeper and District Administrator's Secretary; and a hearing in the matter having been conducted in Cadott, Wisconsin, on February 26, 1985, by Examiner Deborah A. Ford, a member of the Commission's staff; and a stenographic transcript of the proceeding having been received by April 2, 1985; and the parties having filed briefs by May 3, 1985; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the Cadott School District, hereinafter referred to as the District, is a municipal employer with offices located in Cadott, Wisconsin.
2. That the Cadott Associate Staff Organization, hereinafter referred to as the Union, is a labor organization having offices at 2805 Emery Drive, Wausau, Wisconsin.
3. That since 1979, the District has recognized the Union as the exclusive collective bargaining representative of the following employes of the District:

All regular full-time (6 hours or more per day), and all regular part-time (4 or more hours but less than 6 hours), secretarial and clerical employes and aides of the School District of Cadott excluding supervisors and all other employes.
4. That on December 26, 1984, the Union filed a petition requesting that the positions of Assistant Bookkeeper, hereinafter referred to as Administrative Assistant for Finance, and the District Administrator's Secretary, hereinafter referred to as Central Office Secretary/Assistant Bookkeeper, be included in the above-described unit.
5. That the parties stipulated at hearing that the position of Administrative Assistant for Finance is properly excluded from the bargaining unit with the District contending that the excluded position is confidential, managerial, supervisory, and/or professional and the Union contending that the position is confidential.

6. That the position of Central Office Secretary/Bookkeeper is currently occupied by Susan Shakal; that Shakal has held this position since April, 1984 and prior to that was employed by the District as an elementary school secretary; that as the Central Office Secretary/Assistant Bookkeeper Shakal acts as the District Administrator's receptionist, makes appointments and types all correspondence and memoranda for the District Administrator, the School Board and the Administrative Assistant for Finance; that she opens, reviews and sorts all mail, including that relating to labor relations; that Shakal assists with payroll, types purchase orders, time cards and various district reports; that Shakal assists in the budget preparation by taking the budget figures she receives and typing them on the appropriate forms and typing all drafts of the budget; that Shakal has knowledge of the amount budgeted for wage increases prior to negotiations; that Shakal types all the Board's proposals for negotiations and, if necessary, Shakal assists with the costing of such proposals; that not all of the aforementioned proposals are given to the Union; that Shakal types communications between the Board and the Union, internal communications between the Board and the administration, and those between the District and its labor negotiator all of which are related to negotiations; that she also types disciplinary notices which are subsequently given to employees, as well as layoff notices; that Shakal has access to personnel files, and that she types the minutes of executive Board meetings in which the Board discusses bargaining proposals and parameters but does not attend such meetings; and that Shakal is the only secretary performing such work; and that Shakal has access to and knowledge of confidential matters related to labor relations.

7. That the position of Administrative Assistant of Finance, which the parties agree should be excluded from the unit, is currently occupied by Shirley Washatka; that Washatka has held the position since 1970; that prior to her current position, Washatka was employed by the District as a teacher from 1960 to 1965; that Washatka is a salaried employe and not compensated for overtime; that Washatka is currently certified by the Department of Public Instruction as a District Staff -Administrative Assistant; that Washatka is responsible for the preparation of payroll, the review of purchase invoices and payment of same; that Washatka monitors the budget to make sure that there are sufficient monies in the budget to cover incoming requests and, in the case of shortages, she recommends where in the budget the extra monies may be gotten from; that Washatka meets with the District Administrator to determine what areas of the budget need to be increased or decreased; that she assists the District Administrator in the costing of the bargaining proposals of both the Union and the District; that Washatka and the Administrator prepare the costings of the various proposals which are then given to Shakal for typing; that in the absence of the District Administrator or a request from the principal of the school involved, Washatka has the authority to approve leave requests; that she also reviews such requests to make sure they are properly filled out; that Washatka continues to effectively recommend the purchase of office equipment and supplies; that she has limited authority to pay bills without prior approval from the District Administrator and has authority to borrow monies in amounts that are within the total previously approved by the Board, upon the signature of two Board members; that Washatka functioned as Acting District Administrator in June, 1983 prior to the arrival of a new District Administrator; that she was involved in discussions surrounding the decision to create the position of Assistant Bookkeeper/Secretary and effectively recommended Shakal, but did not participate in the interview of candidates for the position; that Washatka assigns work to the occupant of that position, evaluates her work and has the authority to discipline her; that prior to the creation of the Central Office Secretary position, Washatka performed all the work currently performed by Shakal; that Washatka continues to do a minimal amount of typing for her own personal use, but that the bulk of her typing duties have been transferred to Shakal.

8. That Shakal and Washatka are the only two employes working in the District's administrative office.

CONCLUSION OF LAW

1. That the individual occupying the position of Central Office Secretary/Assistant Bookkeeper 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 the bargaining unit set forth in Finding of Fact 3.

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

ORDER CLARIFYING BARGAINING UNIT 1/


1. That the position of Central Office Secretary/Assistant Bookkeeper shall be, and hereby is, excluded from the collective bargaining unit described herein.

Given under our hands and seal at the City of
Madison, Wisconsin this 5th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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

(Footnote 1 continued on Page 4)

(Footnote 1 continued)

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. 227.20 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.

CADOTT SCHOOL DISTRICT

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

Positions of the Parties

District

The District contends that the Assistant Bookkeeper/Central Office Secretary is a confidential position because of her access to personnel files and her typing responsibilities which include the typing of internal management memos related to negotiations, as well as alternative bargaining positions not all of which were presented to the Union. Moreover, the District argues the amount of confidential work is not de minimis and that the only excluded confidential employe is not a secretary and thus is not available to perform the confidential duties currently performed by Shakal.

Union

The Union argues that the excluded position of Administrative Assistant For Finance is not held by a managerial or professional employe as alleged by the District and that the assignment of confidential typing to her continues to be within the normal range of her potential job assignments. Moreover, the Union contends the amount of confidential work performed by Shakal is de minimis and insufficient to cloak her with confidential status.

Discussion

Before an employe will be found to be confidential the Commission has held that such an employe must have access to, knowledge of, or participate in confidential matters relating to labor relations. In order for the information to be confidential for purposes of exclusion it must be the type of information which: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (2) is not information that is available to the bargaining representative or its agents. 2/

Examination of the record reveals that Shakal's position was originally created for the purpose of shifting the typing duties of Washatka to another employe. As a result, Shakal not only types any correspondence dictated by the District Administrator and Washatka, but she also types all the correspondence between the administration and the Board, the administration and the Union, the administration and Board committee members and the administration and its labor negotiator. Not all of the information in the foregoing correspondence is made available to the Union. Although not present at Board meetings, Shakal types up the minutes of such meetings including those where bargaining strategy and parameters are discussed. She also types all proposals considered by the District during bargaining, again, not all of which are communicated to the Union. She is sometimes called upon to assist in the costing out of bargaining proposals, although most of the costing is done by the District Administrator and Washatka. In addition to her access to personnel files, Shakal also types grievance responses and layoff notices, which are then given to the employes. Given the foregoing, we do not agree with the Union's contention that the amount of confidential work performed by Shakal is de minimis, and because Washatka no longer performs a significant amount of secretarial duties, the imposition of

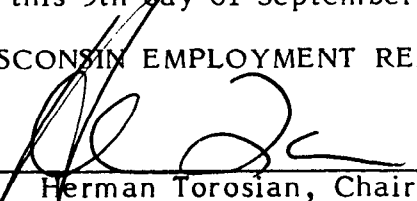
2/ Jefferson Water and Electric Department, Dec. No. 20511 (WERC, 4/83).

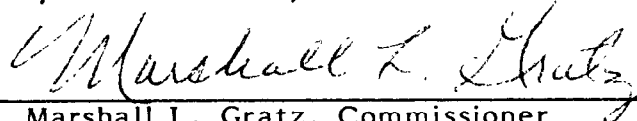
Shakal's confidential work on Washtaka would go beyond simply assigning additional duties to similarly situated employees. 3/ We therefore conclude that under the circumstances Shakal performs a sufficient amount of confidential work to warrant exclusion from the unit as a confidential employee.


Dated at Madison, Wisconsin this 5th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Dandee Davis Gordon, Commissioner

3/ Cudahy Board of Education, Dec. No. 12087 (WERC, 8/73).