

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

HARTFORD SUPPORT ASSOCIATION

Involving Certain Employees of

HARTFORD UNION HIGH SCHOOL DISTRICT

Case 37
No. 64851
ME(u/c)-1143

Decision No. 23116-C

Appearances:

Nancy J. Kaczmarek, Legal Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Hartford Support Association.

James W. Mohr, Jr., Mohr & Anderson LLC, Attorneys at Law, 23 South Main Street, Hartford, Wisconsin 53027, appearing on behalf of Hartford Union High School District.

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

On June 3, 2005, Hartford Support Association, hereinafter Association, filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission clarify an existing Association-represented bargaining unit of non-professional employees of the Hartford Union High School District, hereinafter District, by including six positions. Hearing in the matter was held in Hartford, Wisconsin on September 14, 2005, before Commissioner Susan J.M. Bauman, serving as Hearing Examiner. Prior to the hearing, Commissioner Bauman disclosed prior relationships with the Wisconsin Education Association Council.

The District, contrary to the Association, asserts that the petition should be denied as to five of the six disputed positions because the Association has agreed to/acquiesced in the exclusion of said positions/employees and failed to establish any basis for allowing the

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Association to revisit that agreement. The District, contrary to the Association, further argues that: (1) the incumbent in the disputed position of Computer Lab/Software Coordinator/Web Page Coordinator (Roever) is a supervisor and professional employee; (2) the incumbent in the disputed position of Coordinator of Audio/Visual Support (Hummel) is a supervisor and professional employee; (3) the incumbent in the disputed position of Network Administrator (Hostad) is a confidential and professional employee; (4) the incumbent in the disputed position of Administrative Secretary and Assistant to Director of Community Relations & Principal/Director of Curriculum (Schlee) is a confidential employee; (5) the incumbent in the disputed position of Administrative Assistant to Principal/ Director of Curriculum, and Data Analyst (Hoefs) is a confidential employee; and (6) the incumbent in the disputed position of Accounting Assistant (Hoepfner) is a confidential employee, all of whom therefore cannot be included in the bargaining unit.

The parties filed written argument, the last of which was received on December 12, 2005.

By letter dated January 27, 2006, the District asked Chairperson Neumann and Commissioner Gordon to recuse themselves as decision-makers because of prior disclosed relationships with the Wisconsin Education Association Council. By letter dated February 6, 2006, the Commission advised the parties that Chair Neumann and Commissioner Gordon would not recuse themselves and but also asked the parties if they had any additional information as to a 1995 agreement between the parties excluding the Network Administrator from the bargaining unit. Following receipt of responsive correspondence from the parties, the Commission advised the parties on March 21, 2006 that it would be proceeding to decide the status of the Network Administrator based on the evidence presented at hearing.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Hartford Support Association is a labor organization affiliated with Cedar Lake United Educators and the Wisconsin Education Association Council, serving as the certified bargaining representative for an approximately 105 person bargaining unit consisting of all regular full-time and regular part-time non-professional employees of the Hartford Union High School District, excluding confidential, supervisory, managerial and professional employees. The most recent contract between the Association and the District covers the period July 1, 2004-June 30, 2006.

2. Hartford Union High School District is a municipal employer which has principal offices at 805 Cedar Street, Hartford, Wisconsin. In addition to the Association bargaining unit at issue in this proceeding, there is a professional District employee bargaining unit consisting of approximately 121 persons who are represented by the Hartford Education Association, also affiliated with Cedar Lake United Educators and the Wisconsin Education

Association Council. The most recent collective bargaining agreement between the Hartford Education Association and the District covers the period July 1, 2003-June 30, 2005.

3. Jeff Tortomasi is the District Administrator. Carol Walter, a confidential employee who is Tortomasi's Administrative Assistant, has primary responsibility for preparation and distribution of confidential labor relations information to the School Board and Tortomasi. She opens Tortomasi's mail (which may from time to time include confidential labor relations information), types drafts of correspondence concerning discipline and grievance matters and of memos to the Board regarding bargaining strategies and contract administration. She prepares information packets for use by Board members at Board meetings which include confidential labor relations information if such matters are on the Board's agenda for consideration.

When Walter is on vacation or ill, she is replaced by Gloria Schlee (whose position is at issue in this proceeding). Schlee was a member of the bargaining unit until 1994 when she was assigned the duty of replacing Walter and then removed from the bargaining unit. When replacing Walter, Schlee performs whatever confidential labor relations work Walter would have performed if she were present. Walter keeps Schlee up to date on the status of confidential labor relations matters and receives assistance from Schlee in the preparation of Board meeting information packets as needed.

Schlee's primary responsibilities involve providing administrative and secretarial support for Principal and Director of Curriculum Koehl and to Assistant Principal Dobner, in his role as Director of Community Relations.

Her position description, which is new because she has only worked for both Dobner and Koehl since the beginning of the school year, accurately describes her duties and reads as follows:

Provides direct support to the Director of Community Relations and the Principal, provides assistance to the District Administrator's Administrative Assistant when needed, and acts as Administrative Assistant to the District Administrator when a "substitute" is needed.

Have access to Administrative Assistant's login and password.

1. **Principal Secretary:**

- Acts as confidential secretary to Principal.
- Directs supervision of records management under the control of the principal's office.
- Prepares and maintains records of Associate Principals' performance evaluations and other performance reviews assigned to the Principal.

2. **Education for Employment Council** (quarterly)
 - Agendas, Minutes
 - Surveys, Eight [sic] Grade, Two Year Graduate, Senior
 - Tabulate, Reports, Mailings
 - Clerical assistance as needed

3. **HAPI – Hartford Area Professional Improvement** (one major event with six meetings)(support)
 - Agendas, Meeting arrangements, Attend meetings, Minutes
 - Design and create program (QuarkXpress/desktop publishing required)
 - Assist in contacts for speakers
 - Arrange for food and beverages for the morning, break time, and luncheon, Registration, Assist on actual day of in-service as needed
 - Compile survey results before and after event

4. **I-Team** – clerical support (two meetings monthly) (support)
 - Agendas, Meeting arrangements, Attend meetings, Minutes

5. **Staff Development Committee and Staff Development Activities** – clerical support (six meetings per year, events throughout the year)
 - Agendas, Meetings arrangements, Minutes
 - Graduate class assistance (updates to K-8 districts)
 - Staff development activities assistance
 - Professional Development Notebook – development and update
 - Update and maintain web calendar

6. **Study Skills Committee** – clerical support
 - Agendas, Meeting arrangements, Minutes
 - Student Planner distribution
 - Clerical support for study skills curriculum/handouts

7. **Human Growth and Development Council** (two meetings per year)
 - Agendas, Meeting arrangements, Minutes
 - Clerical support for Council and curriculum

8. **WKCE** – clerical support (as needed)
 - Clerical support as needed for reports, memo, and meetings relation to administration of examinations
 - Data analysis and dissemination of WKCE achievement data
 - Manage Turnleaf data system

9. Assist with activities related to PI34 and Professional development of staff and administrators
10. Provide the clerical and technical support for the updating of the Course Description Handbook and Career Cluster Guide
 - Update the Course Description Handbook (QuarkXpress)
 - Update the Career Cluster Guide
11. Budget responsibilities related to textbooks ordering, office management and individual professional development.
12. Other duties:
 - Non-discrimination audit (may involve confidential information?)
 - Student to student mentor program
 - Maintains department meeting files
13. Shared or back-up duties of the Assistant to the District Administrator including:
 - Drafting agendas and posting for BOE meetings
 - Preparing and assembling packets with open and closed materials
14. **Director of Community Relations Secretary:**
 - Prepare and organize summer mailing of registration materials to students.
 - Collect and deposit registrations fees from students.
 - Update Fee Tracking when fees are collected.
 - Help organize and assist at Frosh Orientation.
 - Organize Open House
 - Assist staff and students with deposit transactions.
 - Prepare and mail monthly **Families** Newsletter. Put it on website and sent it to those who have subscribed.
 - Organize Rotary Honor's Banquet, calculating gpa's., [sic] sending invitations, coordinate with Rotary rep and type program.
 - Maintain database and files for the Service to School & Community program, and track student's performance at progress report time, quarter and semester.
 - Maintain database and files for the Co-op/Internship program, and track student's performance at progress report time, quarter and semester.
 - Notify committee of **VISION** meetings, take and transcribe minutes, and assist in organizing banquet in May.
 - Assist teachers who participate in Home Show.

- Assist in organizing Recognition Retirement Luncheon, Holiday Tea and Ice Cream Social.
 - Coordinate and distribute Hartford Union High School calendar.
 - Update District Newsletter yearly, and put on website.
 - Keep info brochure, *All about HUHS*, current.
 - Maintain database and file of alumni. Keep financial records for Alumni & Friends.
 - Assist with coordination of Parent Teacher Conferences in Fall and Spring.
 - Assist FACE instructors and students with job shadowing in Winter and Spring, sending correspondence, making phone calls, and maintaining database and file.
 - Keep HUHS NEWS display bulletin board up to date with news articles & pictures.
 - Schedule display cases
 - Responsible for the VEERS Report
 - Assist with K-8 community connections.
15. Cross-train with the Administrative Assistant.
16. Perform all other duties as assigned by the Public Relations Director, Principal, District Administrator or his Assistant.

Dobner is part of the District's bargaining team and he may discuss the District's bargaining strategy with Schlee from time to time. Schlee may also be privy to drafts of employee evaluations prepared by Dobner.

Schlee's access to, knowledge of, and participation in confidential labor relations matters can be eliminated without undue disruption of the District's operations.

4. Administrator Tortomasi and his confidential Administrative Assistant Walter are located in the same office area as the District's business staff which consists of Gail Clark, Supervisor of Business Office Services, and Accounting Assistants Trischa Hoepfner and Kathy Jurgensmier. Clark is a supervisor and a confidential employee and Jurgensmier is a confidential employee. Hoepfner's position is at issue in this proceeding.

Clark, Jurgensmier and Hoepfner are cross-trained and fill-in for each other during periods of vacation and illness. Tortomasi seeks input from all three as to business office related issues that could be addressed at the bargaining table. All three are available to cost bargaining proposals for the District. All three join Tortomasi and Walter from time to time in conversation about confidential labor relations matters. None of the three have private offices.

Hoepfner began her employment with the District in 2004. Her position description which was updated within the last month prior to hearing accurately reflects her current job duties and reads as follows:

Qualifications:

1. Associate degree in Accounting
2. School accounting and financial experience
3. Ability to establish and maintain effective relationships with staff and public.
4. Possess effective communication skills to work well with the public and staff.
5. Possess effective organizational skills.
6. Ability to work independently.
7. Such alternative to the above qualifications as the Board may find appropriate and acceptable.

Reports to: Supervisor of Business Office Services

Job Goal: To assist in the administration of the district's business affairs so as to provide the maximum services for the financial resources available.

Performance Responsibilities:

1. Process Payroll including preparing withholdings, tax payments and ACH files
2. Process Accounts Payable
3. Process Accounts Receivable
4. Process Cash Receipts
5. Prepare and analyze negotiation costing for the Board of Education for collective bargaining
6. Assist in developing annual budget based on guidelines determined by the Board and District Administrator
7. Assists the Supervisor of Business Office Services with personnel functions
8. Prepare monthly bank reconciliations
9. Process student activity accounting
10. Process food service accounting
11. Assists Supervisor of Business Office Services in preparing financial statements for the Board of Education
12. Assist in the preparation of local, state and federal reports
13. Assist in the district's annual audit
14. Primary back up for Supervisor of Business Office Services
15. Supporting the Superintendent and Supervisor of Office Services
16. Other duties as assigned

Term of Employment:

Twelve-month year. Wages and work year to be established by the Board.

Hoeffner's access to, knowledge of and participation in confidential labor relations matters can be eliminated without undue disruption of the District's operations.

5. Susan Hoefs has served as the Assistant to the Director of Curriculum and Instruction for six years, during which time she was a member the Association bargaining unit. Since February, 2005, she has also served as the District Data Analyst at which time the District removed her position from the bargaining unit. Since June, 2005, she has also served as Assistant to the Principal (Mary Koehl who is also the Director of Curriculum Instruction). Hoefs' position description, as approved by the Board of Education prior to the position being filled and updated about three weeks prior to hearing accurately reflects Hoefs' duties and, in pertinent part, reads as follows:

Supervisor: Principal/Director of Curriculum and Instruction

Duties:

1. Principal Assistant

- Acts as confidential secretary to Principal/Director of Instruction
- Directs supervision of records management under the control of the principal's office.
- Prepares and maintains records of Associate Principals' performance evaluations and other performance reviews assigned to the Principal.

2. Data Analyst

The Data Analyst works under the supervision of the Director of Curriculum and Instruction and performs those administrative functions assigned to the position. The Data Analyst is authorized to make decisions within the scope of his/her authority consistent with Board of Education policies and administrative rules designed to implement those policies.

Specific areas of responsibility include:

- Reviews monthly releases of PaC Student and Financial Records Software
 1. Evaluate monthly releases for new features and enhancements that impact the daily operations at HUHS
 2. Schedule the installation of releases with the technical staff
 3. Train and direct staff on new features and enhancements

- Evaluate staff use of PaC.
 1. Identify areas of PaC Finance or Student Records being underutilized or not utilized at all, and work with Administrative and Support Staff members to develop operating procedures and policies to better utilize the software.
 2. Train and direct users to use PaC Finance or Student Records more effectively and efficiently.
 3. Support Administrative and Support Staff members to manipulate PaC Data with other software applications for reporting and decision-making purposes

- Ensure the District's compliance for data requirements of No Child Left Behind
 1. Work to standardize and maintain accurate data collection by developing processes and procedures
 2. Ensure staff members are following District processes and procedures
 3. Work with the Department of Public Instruction to understand data reporting initiatives
 4. Coordinate the collection, manipulation, and upload of data to comply with DPI's WSLS and ISES systems
 5. Coordinate the production of the District's Performance Report Card

- Manage data (including but not limited to)

A number of applications used at HUHS require the use of data contained in our PaC Student Records Software application. In order for these applications to successfully interface with PaC, the input of original data must be standard and accurate. The data analyst is responsible for insuring the procedures are in place to guarantee clean and consistent data, and is also responsible for exporting the data from PaC to the applications listed below, and oftentimes importing the results from the application back into PaC:

Scantron, WKCE, ACT, WSLN

- Provide analysis and data/reports to support the district's progress toward district goals and initiatives.
- Attend Skyward training, users meetings and change meetings as appropriate.
- Work proactively with Skyward on new features and enhancements that will result in optimal utilization of the software.

Administrative Assistant for 66:0301 Consortium Activities

3. HAPI – Hartford Area Professional Improvement (one major event with six meetings)
 - Agendas, Meeting arrangements, Attend meetings, Minutes
 - Design and create program (QuarkXpress/desktop publishing required)
 - Assist in contacts for speakers
 - Arrange for food and beverages for the morning, break time, and luncheon
 - Registration, Assist on actual day of in-service as needed
 - Compile survey results before and after event
 - Update information on website
4. Writing Assessment (one or two meetings/two day assessment)
 - Agendas, Meeting arrangements, Attend at least one meeting, Minutes
 - Coordinate Assessment with staff member
 - Correspondence with readers
 - Data entry of assessment results
 - Writing Assessment follow up
 - Writing Assessment Report (Access/Excel)
5. K-12 Curriculum (dependent upon needs)
 - Agendas, Meeting arrangements, Minutes, Clerical assistance as needed
 - Summer Academy clerical support
 - Maintain the K-12 teacher database (Access)
 - Manage listserv for all grades and subject areas
 - Process curriculum guides
 - Link updated curriculum to website
 - K-12 Curriculum Committees
 - Meeting arrangements, Minutes and agendas
 - Clerical support as needed for the following K-12 committees:

- Art, Agri-Science, Business and Information Technology/Information Technology Literacy, Counseling, Family/Consumer Education, World Language, Health/Human Growth and Development, English, Library, Math, Music, Physical Education, Science, Social Studies, Study Skills, Technology
6. Education for Employment Council (quarterly)
 - Agendas, Minutes
 - Surveys
 - Eighth Grade, Two Year Graduate, Senior
 - Tabulate, Reports, Mailings, Clerical assistance as needed,
 - Update website
 7. Scantron (as needed)
 - Agendas, Minutes
 - Technology resource
 - Distribution
 - Troubleshooting
 - Computer uploads and maintenance of database
 8. I-Team – clerical support (two meetings monthly)
 - Agendas, Meeting arrangements, Attend meetings, Minutes
 9. Staff Development Committee and Staff Development Activities – clerical support (six meetings per year, events throughout the year)
 - Agendas; minutes; meeting arrangements
 - Graduate class assistance (updates to K-8 districts)
 - Professional development activities management and assistance
 - Professional Development Notebook – development and update
 - Update and maintain web calendar
 10. Study Skills Committee – clerical support
 - Agendas; meeting arrangement; minutes
 - Student Planner distribution
 - Clerical support for study skills curriculum/handouts
 11. Human Growth and Development Council (two meetings per year)
 - Agendas; meetings arrangements; minutes and other clerical support for Council and curriculum
 - Support for monitoring dissemination of parent information

12. WKCE – clerical support (as needed)
 - Clerical support as needed for reports, memos, and meetings related to administration of examinations
 - Data analysis and dissemination of WKCE achievement data
 - Manage Turnleaf data system

Assist with Activities related to PI43 and Professional development of staff and administrators

13. Provide the clerical and technical support for the updating of the Course Description Handbook and Career Cluster Guide
 - Update the Course Description Handbook (QuarkXpress)
 - Update the Career Cluster Guide
14. Summer school – clerical support
 - Maintain eligibility lists, Summer school correspondence, Staff memos
15. Submit DPI reports electronically
 - Summer School, Curriculum Report, ESEA grant application, Nondiscrimination audit
16. Provide the clerical and technical support for the updating of the Course Description Handbook and Career Cluster Guide (October – December)
 - Update the Course Description Handbook (QuarkXpress)
 - Update the Courses on the Web page
 - Update the Career Cluster Guide
17. Maintain the K-12 Textbook Use List (annual update)
 - Order textbooks as requested
 - Update the K-8 Textbook List
 - Update the 9-12 Textbook List
18. Supervise Support Staff
 - American Heart instructors
 1. Train [sic] new instructors
 2. Update and refresh instructors
19. **Back up duties**
 - Provide back up for medical emergencies and during the summer
 - Administrative Assistant to the Superintendent when necessary
 - Administrative Assistant to the Director of Community Relations when necessary

- Receptionist back up daily one hour lunch and when necessary
 - Work permits when necessary (summer and after 3:30 daily)
20. AED Coordinator
- Instruct staff in American Heart Association CPR/WED and First Aid
 - Demonstrate in health and phy ed classes
 - Instruct student athletic trainers in CPR/AED
 - Provide refresher opportunities to staff/students that previously learned CPR/AED
 - Maintain instructor status by attending regular refreshers
 - Maintain the three AEDs currently in place at HUHS
21. Curriculum Webpage
- Update web page on a regular basis
Links page, K-12 subject area page, Veterans Project page, Curriculum Overview page, Calendar page, Education for Employment page, Professional Development Plan page, Course Handbook page, Course applications page (Counseling link)
22. Proficiency in the following programs
- QuarkXpress, Publisher, FrontPage, Skyward, Report Builder, Student Data Mining, Inspiration, Groupwise
23. Microsoft Specialist (Master level) recommended
- Word, Excel, Access, Outlook (similar to GroupWise), PowerPoint
24. Competency with the following:
- Adobe Photoshop, Adobe Illustrator, Other Adobe software as needed, Scanner software, Digital camera and software, Crystal Reports 10, Listserv software, Survey software

When providing clerical assistance to Principal Koehl, Hoefs types drafts of evaluations and disciplinary actions.

When serving as Data Analyst, Hoefst will assemble information which the District may use in collective bargaining.

Hoefst does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee.

6. Technology services are provided to the District by Computer Lab/Software Coordinator/Web Master Margaret Roever, Coordinator of Audio/Visual Support David Hummel and Network Administrator Jonathan Hostad, All three positions are at issue in this proceeding.

7. Computer Lab/Software Coordinator/Web Master Roever was included in the Association bargaining unit until 1995 when responsibilities for software, web page, and two part-time computer lab employees were added and her position was removed from the unit At that time, she received a \$5000 raise and became a salaried employee. Roever's current supervisor is Heather Pfaff, the Director of Technology. Prior to that, she was supervised by Chris Thompson.

Roever's job description, recently updated as of the time of hearing, accurately describes her duties as follows:

I. Computer Labs Supervisor

- A. Supervision, training, and evaluation of computer lab aides
- B. Supervision and training of teacher computer lab supervisors
- C. Scheduling of open labs
- D. Routine maintenance of computers in labs
- E. Demonstrate classroom software to teachers and students
- F. Supervision of students in open computer labs
- G. Monitor appropriate uses of the Internet

II. Software Coordinator

- A. Resource person for all staff for software questions
- B. Assist teachers in purchasing software
- C. Catalog/inventory all new software
- D. Arrange for installation of software on the network
- E. Assist teachers in learning new programs
- F. Maintain current collection of software catalogs
- G. Store original copies of program disks/make back-up copies of programs

III. Staff Developer

- A. Member of Staff Development Council
- B. Approve staff development bank hours related to software training
- C. Research, investigate, and problem solve software solutions
- D. Advise Staff Development Council on staff development activities
- E. Conduct staff development for professional and support personnel
- F. Serve as an Internet resource for students and staff
- G. Serve as a resource person for late start activities

IV. Technology Committee Member

- A. Assist in the recommendation of software purchases
- B. Participate in developing technology plan
- C. Train new students on the HUHS Acceptable Use Policy

V. Web Master

- A. Coordinate all HUHS webpages, including design, security, and access
- B. Keep HUHS's image on the web "first class", up-to-date and appropriate
- C. Design the five main pages on the HUHS web
- D. Determine the location of all HUHS web pages
- E. Assist students and staff with web page development
- F. Develop web pages as requested by administration and staff
- G. Serve as a resource for students and staff working on their e-portfolios
- H. Monitor the appropriateness of all HUHS web pages and links
- I. Develop web policy guidelines
- J. Attend conferences related to web page development
- K. Respond to e-mail requests sent to HUHS webmaster

V. [sic] All Other Duties as Assigned

The job description also states: "Qualifications: Bachelors Degree in Education."

Although there were two part-time computer aides at the time Roever left the bargaining unit, due to budget cuts there is now only one such part-time aide. Roever trains her, assigns her duties on a daily basis, approves extra hours of work when needed, and evaluates her once a year. She is the only person who directs the work of the computer aide. In the past two years, Roever's former supervisor (Thompson) also reviewed the evaluation with the computer aide. Roever is also responsible for directing the work of four teachers who are assigned to the computer lab. She does not evaluate the teachers but reports any performance issue to the teacher's supervisor.

Roever spends about 80% of her time working in the computer labs. Only a small portion of her time is spent directing the work of the computer aide. When serving as web master, she coordinates and designs the web pages and is responsible for the web security. She does much of this work at home.

Roever plays a significant role in the hiring of computer lab aides. She decides who is to be interviewed and conducts interviews with the Director of Technology. Roever effectively recommends who will be hired.

Since 1995, two aides have elected to resign rather than confronting discharge for performance issues. In both instances, Roemer reported/evaluated the performance issues that led to the resignations.

Roever has supervisory authority in sufficient combination and degree to be a supervisor.

8. Daniel Hummel has served as the Coordinator of Audio/ Visual Support for the District for fourteen years. Prior to that time, he served as the TV Technician for the District and was in the Association bargaining unit. Hummel's supervisor is Heather Pfaff, the Director of Technology. Hummel's position description was updated the week prior to the hearing and accurately reflects his job duties and responsibilities. It reads as follows:

Qualifications:

1. College Degree, BS, BA or Equivalent
2. Demonstrates aptitude or competency in technology involving audio/visual supports, T.V. production and duplication.
3. Keeps current on all current trends as appropriate.
4. Ability to work well with students, staff, and public.
5. Knowledge of effective managerial skills.

Reports to: Director of Technology

Job Goal: To coordinate professional and support functions associated with T.V. production, computer labs, audio/visual, central copying, special fine arts events. Supervision of one part-time TV person and students.

Major Job Functions:

1. Supervision of support staff in audio/visual and students in T.V. production. Assign duties as appropriate within respective job descriptions.
2. Evaluate the above personnel. Such evaluation shall include recommendations for staff development, promotion, demotion, suspension or termination.
3. Coordinate staff to obtain an effective, responsive delivery system of T.V. production, central copying, audio/visual, and fine arts events that aids teachers and students in the educational process.
4. Develop and coordinate budgets for the above areas. Manage the budget by approval of purchase requisitions.

Other Job Duties:

1. Co-manage T.V. productions of education functions, board meetings, special events, etc.
2. Maintain or cause to be maintained in good working order all appropriate equipment.
3. Maintain an accurate, up-to-date inventory of equipment and provide for its security.
4. Maintain a schedule of events for the drama lecture hall.
5. Assist, as may be needed, in school sponsored community events.
6. Make an annual report to the superintendent or board on the status of all responsible areas.
7. Provide appropriate, meaningful staff development for support staff.
8. Meet with staff and students to suggest, innovate and develop A.V./T.V. materials and/or productions that will enhance the educational experience.
9. Train and supervise students in the operation and use of T.V. production.
10. Assist in developing a five year plan that will focus on the effective integration of T.V. production and related technology into the high school curriculum.
11. Other pertinent duties as assigned by the superintendent or board of education.

When Hummel left the Association unit and became a salaried employee in 1991, he received an increase in pay that was, in part, to reflect supervisory responsibilities. At that time, the District hired a TV Technician to replace Hummel and Hummel has supervised that individual ever since. Hummel meets with the TV Technician, who is a part-time employee, on a daily basis and assigns tasks to him, based on the projects that are due, and determines the hours that he is to work. Hummel is the only person who gives the TV Technician any direction.

Hummel prepares annual evaluations of the TV Technician and has the authority to send him home in the event of misbehavior. He has counseled the TV Technician regarding his hours of work. Hummel can effectively recommend the termination of the TV Technician.

If the TV Technician were to be replaced, Hummel would distribute the vacancy notice and the job description, collect resumes and interview candidates along with the Principal or the Director of Technology. Hummel effectively recommends who would be hired.

Hummel has supervisory authority in sufficient combination and degree to be a supervisor.

9. Jonathan Hostad has served as the Network Administrator for seven and one-half years. His supervisor is Heather Pfaff, the Director of Technology. His position description was updated within the past two years and accurately reflects his duties. It reads as follows:

I. Network Administrator Responsibilities

- Administers the network including server utilization, file management, and performance monitoring
- Periodically monitors the use of HUHS technology by staff and students, checking for the abuse/misuse of written school computer use policies
- Installs and configures network application software, upgrades, and patches
- Data backup of applications and user data on a nightly basis
- Data recovery plan documentation and quarterly testing
- Security Administrator responsible for creating user profiles and administering changes of user access to network drives and files
- Assign/Create/Delete new users
- Create and maintain network design documentation
- Create and maintain network administration documentation pertaining to backups, user setup, and other documentation that would be helpful if the network administrator were unavailable

II. Workstation Management

- Hardware Inventory
- Setup of new workstations including configurations, testing, and cloning
- Maintain existing workstation images with updates and new software
- Install and maintain miscellaneous hardware such as printers, scanners, DVD's, etc.
- Troubleshoot and resolve a wide variety of hardware and software errors
- Computer Lab Support – weekly checkup of each lab
- Input on purchasing decisions
- Responsible for insuring necessary spare parts on hand
- Responsible for updating the Help Desk Database daily

III. E-Mail Administrator

- Group Administration
- Monitor Daily Traffic
- Troubleshoot problems such as lost mail, use of additional utilities in GroupWise

IV. Student Records Administrator

- Responsible for backup operations pertaining to PaC Student and PaC Finance databases
- Manage all user administration and security requests
- Perform application and operating systems upgrades to PaC and its servers, respectively

V. Support Classroom Instruction

- Provide insight and expertise to computer-based course
- Assist in planning and instruction of program specific curriculum in PC Systems and Maintenance, Independent Study for Certification, and other IT-focused courses
- Extend awareness and creativity to classroom teachers on available software and its usage
- Demonstrate a high level of responsiveness to teacher questions and concerns
- Identify and recruit students for school service and employment positions

VI. Miscellaneous

- Evaluate new software applications and operating systems for effective technology solutions at HUHS
- Work with school service students and summer technology staff on miscellaneous projects and activities
- Input on Strategic Planning/Budget
- Special projects as assigned
- Create ways to educate and inform users on “How To” procedures and changes in technology
- Work towards relevant certifications

To perform his job responsibilities, Hostad does not need to access confidential labor relations information and he has never been asked to do so. He monitors internet use and e-mail usage of employees. He reports inappropriate use to the Director of Technology, and the

District takes action as it deems appropriate. Hostad's reports led to the discipline of one teacher whose laptop computer had been used to access adult sites and another teacher who failed to prevent inappropriate internet use by students.

Hostad attended closed session Board of Education meetings in conjunction with expulsion hearings regarding students who hacked into the District computer system, which fact Hostad discovered.

Hostad has an associate degree from Waukesha County Technical College in information technology and a Novell CNA, Novell administrator license, Microsoft MCP [Microsoft Certified Professional] certification, Microsoft desk top operating system certification and is an A Plus certified hardware technician. Each of these certifications was obtained through self-study courses that took about six months each.

Hostad is engaged in work that is predominately intellectual and varied in character; involving the consistent exercise of judgment and discretion in its performance; of such character that output cannot be standardized in relation to a given period of time; but which does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

Hostad does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee.

10. The position Hostad holds was the subject of a stipulation signed by the Association on October 3, 1995, and by the District on October 2, 1995 to resolve "Unit Clarification Issues" which read as follows:

The Hartford Union High School Educational Support Staff Association and the Hartford Union High School District agrees [sic] to resolve the unit clarification issues of the computer network administrator/hardware position and the computer systems software specialist positions in the following manner:

- 1) The computer network administrator/hardware position (held by incumbent Jeff Gillian) will be regarded as a non-represented, exempt position.
- 2) The computer systems software specialist position (held by incumbent Lynn Gillian) will be hereafter regarded as a HUHSESSA [Association] bargaining unit position.

- 3) The hourly rate for Lynn Gillian will be the annualized rate of \$13.22. This rate will remain in effect through the remainder of 1995-96. Subsequent pay rates for Ms. Gillian will be determined as negotiated between HUHSESSA and the District.
- 4) This agreement between the parties is final in the disposition of these two positions; therefore, HUHSESSA will withdraw its petitions for unit clarification with WERC.

The 1995 agreement does not clearly specify the basis for the exclusion of the Network Administrator from the bargaining unit.

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

CONCLUSIONS OF LAW

1. Because there is no clear agreement between the District and the Association that Computer Lab Supervisor/Software Coordinator/Web Page Coordinator (Roever), Coordinator of Audio/Visual Support (Hummel); Network Administrator (Hostad); Assistant to Director of Community Relations & Principal/Director of Curriculum (Schlee) and Accounting Assistant (Hoepfner) are currently excluded from the bargaining unit for legally permissible reasons other than their alleged status as supervisors or confidential or professional employees, any such agreement does not bar the Association from seeking inclusion of these positions in the Association bargaining unit through a unit clarification petition.

2. The incumbent in the position of Administrative Secretary/Assistant to Director of Community Relations & Principal/Director of Curriculum (Schlee) is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

3. The incumbent in the position of Accounting Assistant (Hoepfner) is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

4. The incumbent in the position of Administrative Assistant to Principal/Director of Curriculum/Data Analyst (Hoefts) is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

5. The incumbent in the position of Computer Lab Supervisor/Software Coordinator/Web Page Coordinator (Roever) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

6. The incumbent in the position of Coordinator of Audio/Visual Support (Hummel) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

7. The incumbent in the position of Network Administrator (Hostad) is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats. The incumbent in the position of Network Administrator (Hostad) is not a professional employee within the meaning of Sec. 111.70 (1) (L) and (ne), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

1. The Administrative Secretary/Assistant to Director of Community Relations & Principal/Director of Curriculum, Accounting Assistant, Administrative Assistant to Principal/Director of Curriculum/Data Analyst, and Network Administrator shall be included in the bargaining unit represented by the Association as described in Finding of Fact 1.

2. The Computer Lab Supervisor/Software Coordinator/Web Page Coordinator and Coordinator of Audio/Visual Support shall continue to be excluded from the bargaining unit represented by the Association as described in Finding of Fact 1.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

HARTFORD UNION HIGH SCHOOL DISTRICT

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

We begin by addressing the District's contention that the Association previously agreed to/acquiesced in the exclusion of five of the six disputed positions (all except Data Analyst) and that said agreement/acquiescence should be honored by the Commission.

The District's contention is based on the Commission's long standing holding that where parties have agreed to include certain positions in or exclude certain positions from a bargaining unit, it will not allow a party to alter that agreement (i.e. "a deal is a deal") through a unit clarification petition unless one of the following exceptions is present:

1. The positions in dispute did not exist at the time of the agreement.
2. The positions in dispute were voluntarily included or excluded from the unit because the parties agreed that the positions could or could not be statutorily included in the unit because the incumbents were not or were supervisors, confidential, managerial, professional, or craft employees.
3. The positions in dispute have been impacted by changed circumstances which materially affect their unit status.
4. The inclusion or exclusion of the positions is repugnant to the Municipal Employment Relations Act.

As reflected by exception 2 above, if there is an agreement to exclude positions because the incumbents are alleged to be professional employees, supervisors, confidential employees, managerial employees, etc., that agreement will not bar a unit clarification proceeding by a union to determine whether the employees actually have that status because it is ultimately the Commission's responsibility to resolve such statutorily-based issues. Similarly, given our statutory obligations, an agreement to include positions/incumbents in a unit does not bar an employer from subsequently obtaining a unit clarification decision as to whether employees are supervisors or confidential employees, etc. MANITOWOC SCHOOL DISTRICT, DEC. NO. 29771-B (WERC, 7/00). However, if there is an agreement to exclude employees that is not based on their alleged supervisory, confidential, managerial, etc. status, then the Commission will honor that agreement unless exceptions 1,3 or 4 are present. JANESVILLE SCHOOLS, DEC. NO. 6678-A (WERC, 2/02)

In WISCONSIN DELLS SCHOOL DISTRICT, DEC. NO. 24604-C (WERC, 10/92), we held the following as to how an agreement can be established:

When determining whether an agreement to include or exclude positions from a unit exists, we examine all relevant evidence including any agreement by the parties to a bargaining unit description, any agreement by the parties to the eligibility list utilized in the election; the historical inclusion or exclusion of the position from the unit, and pertinent bargaining proposals or contract provisions. Thus, an agreement to include or exclude positions need not be explicitly stated by the parties and can be established by circumstantial evidence.

However, in *WISCONSIN DELLS*, we further held that “unless we are satisfied that the agreement was clearly understood by all parties, we will not honor same”

Applying all of the foregoing to the matter before us, for the District to prevail on a “deal is a deal” theory, the record must establish that there was a clearly understood agreement between the parties to exclude these five positions not because they were allegedly supervisors or confidential or professional employees but rather because of some other identifiable legally permissible factor.

Here, as to the Network Administrator, there is a written 1995 agreement (see Finding of Fact 10) between the parties to exclude the position. However, the agreement itself does not specify why the position is being excluded and there is no other conclusive evidence in this regard.¹ Therefore, we certainly cannot conclude that the agreement to exclude was based on factors other than the alleged supervisory, confidential, managerial, etc. status of the employees (i.e. the type of agreement that would be honored).² Therefore, applying *WISCONSIN DELLS*, we conclude that although there is an agreement to exclude the Network Administrator, the agreement “cannot be honored” as a bar to a decision on a unit clarification petition. Therefore, the 1995 agreement to exclude the Network Administrator does not act as a bar to our proceeding to decide whether the Network Administrator should continue to be

¹ The District argues that the Association (presumably because it is the moving party) has the burden of proving why the position was excluded (and presumably if the Association fails to meet its burden, then there is a presumption that the exclusion was based on some identifiable reason other than the alleged supervisory, confidential or professional status of the incumbents in the position). We disagree. As noted by the Examiner in her opening statement at the hearing, unit clarification proceedings are non-adversarial in nature in that the Examiner bears the ultimate responsibility to create the record upon which the Commission acts. In non-adversarial proceedings, we have held that there is no burden of proof. *VILLAGE OF MENOMONEE FALLS*, DEC. NO. 6218-B (WERC, 4/71) *DURAND UNIFIED SCHOOLS*, DEC. NO. 13552 (WERC, 4/75); *CITY OF GREEN BAY*, DEC. NO. 21210-A (WERC, 3/84); *CITY OF MAUSTON*, DEC. NO. 21424-B (WERC, 10/86) We simply take the factual record created by the parties and the Examiner and apply it to the relevant law. Here, consistent with our role in a non-adversarial proceeding, we undertook a post-hearing initiative to seek additional information as to why the Network Administrator was excluded. However the responses we received, like the record that already existed, were inconclusive and we concluded that the additional delay that a supplemental hearing would produce was not justified when measured against the inconclusive additional evidence that was likely to be presented.

² Indeed, as to all of the five positions in dispute, the context in which the positions were removed from the unit or created suggests that it was indeed the alleged status of the incumbents as confidential employees, professional employees or supervisors that motivated the District and as to which the Association acquiesced at the time.

excluded from the unit because he is a confidential or professional employee or should be included because he is a regular full-time non-professional employee of the District.

As to the four remaining positions, the District claim that the Association has agreed to exclude these positions is based on the passage of time³ between the exclusion of the positions from the unit/creation of the positions as non-unit positions and the filing of the instant petition. From the passage of time, the District asserts that the Association has acquiesced in and agreed to the exclusion of the positions. In the context of the WISCONSIN DELLS holding as to how an agreement can be established, the passage of time can be relevant evidence that could support the finding of an agreement. However, we need not determine whether an agreement to exclude exists here because, as was true for the Network Administrator, there is no clear evidence that the positions were excluded for reasons unrelated to their alleged supervisory, confidential or professional status. Indeed, as reflected in footnote 2, the record suggests that it was the alleged supervisory, confidential or professional status of the incumbents that was in play. Thus, the current exclusion of these positions does not act as a bar to our deciding whether these four positions should continue to be excluded from the unit or included therein.

Confidential Employee Status

The District has three confidential employees-the District Administrator's Administrative Assistant Walter, Supervisor of Business Office Services Clark and Accounting Assistant Jurgensmier. The District contends that four additional employees, Network Administrator Hostad, Administrative Secretary Schlee, District Data Analyst Hoefs, and Accounting Assistant Hoepfner, should continue to be excluded from the bargaining unit because they are confidential employees. We conclude that the confidential labor relations work generated by the District's two bargaining units of approximately 225 employees can be performed by Walter, Clark and Jurgensmier without undue disruption of the District's operations and that Hostad, Schlee, Hoepfner and Hoefs are not confidential employees.

The following legal standard set forth by the Commission in MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), and affirmed by the Court of Appeals in MINERAL POINT SCHOOL DISTRICT V. WERC, 251 WIS.2D 325, 337-338 (Ct. App. 2002) is used when determining whether an individual is a confidential employee:

We have held that for an employee to be held confidential, the employee must have sufficient access to, knowledge of or participation in confidential matters

³ To the extent that the District also argues that there should be a statute of limitations applicable to filing a unit clarification petition, we disagree. The Municipal Employment Relations Act does not establish any such limitation and we have long held not none should be administratively created. WAUSAU SCHOOLS, DEC. NO. 10371-A (WERC, 4/72); CITY OF WAUWATOSA, DEC. NO. 11633 (WERC, 2/73); WALWORTH COUNTY, DEC. NO. 11686 (WERC, 3/73). To do so would limit the positive role unit clarification proceedings play in resolving disputes as to the right of individuals to be represented by a labor organization. CITY OF GREEN BAY, DEC. NO. 12682 (WERC, 5/74).

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. . . .

While a *de minimis* exposure to confidential materials is generally insufficient grounds for exclusion of an employee from a bargaining unit, . . . we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. . . . Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, . . . and, similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption to the employer's organization. . . . (Citations omitted.)

Network Administrator Hostad

The position held by Network Administrator Hostad is almost exactly that of the position analyzed in MINERAL POINT, *supra*. Hostad's computer network duties as set forth in Finding of Fact 9 do not require that he access confidential labor relations information and he has never done so. Thus, as was true in MINERAL POINT, access which need not be exercised does not warrant finding an employee to be confidential. The potential for Hostad to access such information and thereby engage in misconduct is also not sufficient to establish confidential status. WAUKESHA COUNTY, DEC. NO. 26020-A (WERC, 9/89)

Hostad does review employee e-mail and internet usage, and reports on abnormalities to his supervisor. We find that this constitutes a very small amount of the work that Hostad performs and because Hostad merely reports his findings to his supervisor, but does not recommend disciplinary action, this responsibility does not constitute a sufficient basis to exclude him from the bargaining unit as a confidential employee. Hostad's activities in this regard are akin to a payroll clerk whose reports on improper leave usage to a supervisor may result in discipline. We have consistently held that such activities do not warrant exclusion of an employee from a bargaining unit as a confidential employee. SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 8/02); SHAWANO COUNTY, DEC. NO. 7197-D (WERC, 8/94); CITY OF MADISON, DEC. NO. 23183 (WERC, 1/86). Accordingly, Hostad is not a confidential employee. We will consider whether Hostad should nonetheless be excluded from the unit as a professional employee later in this decision.

Administrative Assistant Schlee

The District argues that Administrative Assistant Gloria Schlee is a confidential employee because of her duties when she replaces the District Administrator's Administrative Assistant Walter when Walter is on vacation or ill and when she provides clerical support to Principal Koehl and Director of Community Relations Dobner.

Although Walter is unquestionably a confidential employee, only a minor portion of Walter's work is confidential. The District only has two bargaining relationships and there is no evidence in the record that those relationships produce a substantial number of grievances or other labor relations litigation. Thus, when Schlee replaces Walter (roughly five weeks a year), it is unlikely that there will be any significant amount of confidential work to perform. We have consistently held that such back-up responsibilities do not provide sufficient exposure to confidential labor relations information to establish confidential status. OCONTO FALLS PUBLIC SCHOOLS, DEC. NO. 26815-B (WERC, 5/04); WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89).

In her role as secretary to the Principal Koehl, Schlee does not perform any confidential labor relations work. When providing support to Director of Community Relations Dobner, Schlee may gain information regarding the District's bargaining strategy but the record does not contain any specific evidence of such exposure and to the extent such exposure comes from conversation with Dobner, the District can limit her exposure by ending such conversations. To the extent Schlee may type drafts of employee evaluations, this provides very minimal exposure to confidential labor relations information. We note in this regard that Schlee's position description lists 23 distinct activities that Schlee is to perform in her role as Dobner's secretary but none of them are remotely related to collective bargaining or contract administration.

Considering all of the foregoing, we conclude that Schlee does not have sufficient exposure to confidential labor relations matters to warrant her exclusion from the unit as a confidential employee. Further, we are satisfied that there will be no undue disruption of the District's operations if either Clark or Jurgensmeier replace Walter when she is absent (thus ending any need for Walter to keep Schlee apprised of confidential labor relations matters) and the District revises Schlee's computer configuration to restrict access to confidential labor relations information.

Accounting Assistant Hoepfner

Accounting Assistant Trisha Hoepfner is one of three persons that work in the District's business services office. The other two (Supervisor of Business Services Clark and Accounting Assistant Jurgensmeier) are confidential employees. All three employees are cross trained and thus are available to cost bargaining proposals and provide input to the District as to ongoing labor relations matters including business office concerns that the three employees

believe should be addressed at the bargaining table. The District contends that its operations will be unduly disrupted if Hoepfner is included in the bargaining unit.

A determination of confidential status fundamentally involves the balancing of the employer's right to conduct its confidential labor relations business through employees whose interests are aligned with management and the right of employees to be represented for the purposes of collective bargaining. MENOMONEE FALLS JT. SCHOOL DISTRICT NO. 1, DEC. NO. 11669 (WERC, 7/73); CITY OF SEYMOUR, DEC. NO. 28112 (WERC, 7/94); OCONTO FALLS, *supra*. When balancing these rights, we have historically limited confidential status to those employees the employer needs to conduct its labor relations business and denied such status to employees who the employer desires to have but does not need for those purposes. Thus, for instance, we have rejected attempts by employers to acquire more confidential employees than they need by spreading confidential work among various employees. MARSHFIELD JT. SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76). Applying the foregoing to the District's argument here, we conclude that the District's confidential labor relations needs (including the desire for input from the business office as to labor relations issues) can be met by the two existing confidential employees (Clark and Jurgensmeier) without undue disruption.

First, with only two bargaining units, the amount of time taken to cost bargaining proposals is not significant and both Clark and Jurgensmeier are available to perform this work.

Second, the District's desire for input as to labor relations issues can still be met by discussions with Clark and Jurgensmeier. While that input now may not be as conveniently provided if the District wishes to keep those discussions out of Hoepfner's hearing, such convenience does not provide a basis for excluding Hoepfner as a confidential employee. As we stated in OCONTO FALLS, *supra*, when the existing office structure, if used prudently, allows for the maintenance of confidentiality, then proximity concerns do not warrant excluding employees from the bargaining unit. VILLAGE OF ASHWAUBENON, DEC. NO. 23746-C (WERC, 8/02). The availability of the District Administrator's office will meet the District's interests in having confidential discussions.

Third, while the District makes much of how busy all three employees are with their various job responsibilities, the fact remains that confidential labor relations work is a very small portion of the overall workload. Thus, while Hoepfner's bargaining unit status may require that Hoepfner perform some of Clark or Jurgensmeier's non-confidential work on those rare occasions when confidential work is pressing, the cross-trained status of all three individuals will make this easy to accomplish.

Data Analyst Hoefs

Turning to District Data Analyst and Assistant to Principal/Director of Instruction Hoefs, we begin by noting that her February, 2005 job description does not reflect any

confidential labor relations duties. However, there was testimony to the effect that Hoefs would be involved in the future in costing bargaining proposals. Because there are only two bargaining units of District employees and the District has two confidential employees in the business office (Clark and Jurgemeier) who can and do cost such proposals, we conclude (as we did as to Hoepfner) that any such duty by Hoefs can be performed by other confidential employees without undue disruption of the District. There was also testimony that Hoefs will be asked to assemble information from surrounding districts that may then be used by the District in collective bargaining. We have generally concluded that compiling data for potential use in bargaining does expose the employee to the employer's bargaining strategy to any significant degree SEE, OCONTO FALLS, *supra*. We reach the same conclusion here as to Hoefs' planned future role collecting data.

Hoefs' role as the Assistant to the Principal Koehl may involve typing drafts of employee evaluations but that does not provide exposure to any significant amount of labor relations information.

The District also contends that Hoefs' work location exposes her to confidential labor relations discussions and warrants a determination that she is a confidential employee. As we noted in our discussion of Hoepfner, the existing office structure allows the District to keep confidential labor relations discussions from Hoefs through use of the District Administrator's office.

Given all of the foregoing, we conclude that Hoefs does not have sufficient access to, knowledge of or participation in confidential labor relations matters to warrant her exclusion from the unit as a confidential employee.

Supervisory Status

The District contends that both the Supervisor of Lab Services (Roever) and the Coordinator of Audio/Visual Support (Hummel) should be excluded on the basis that they are supervisors.

Section 111.70(1)(o)1, Stats. defines a supervisor as an individual who:

. . . has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When interpreting this statutory language, we consider the following:

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

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

We first review these factors with respect to Roever.

Looking at Factor 1, we conclude that she has the effective authority to hire and discharge computer aides.

As to Factor 2, Roever assigns work to the computer aide on a daily basis and is authorized to extend the aide's hours of work if needed.

Turning to Factor 3, Roever supervises one part-time computer aide and we conclude Roever's supervisor generally does not do so.

As to Factor 4, Roever received a significant increase in pay when she took on the additional responsibilities of being software coordinator, web page coordinator and directing the work of the then two computer aides in 1995. We conclude that at least part of that raise was attributable to her supervisory responsibilities.

As to Factors 5 and 6, Roever does not spend a majority of her day supervising the work of the computer aide but does function as a supervisor when she does so.

As to Factor 7, it is clear that Roever exercises independent judgment when directing the work of the computer aide.

Considering the foregoing, we conclude that Roever does have sufficient supervisory authority to be a supervisor. While we are troubled by the fact that she only supervises one part-time employee, it is nonetheless clear that as to this employee she exercises all significant indicia of supervisory authority-particularly as to hiring and significant discipline.

In reaching this conclusion, we construe the record differently than does the Association, particularly as to the authority to effectively recommend hiring. While it is true that Administrator Tortomasi (and ultimately the School Board) have the “final say”, Tortomasi persuasively testified that Roever’s views as to hiring and discipline would be given great weight and Roever testified that she was the decision-maker when the current aide was hired. We are also strongly influenced by the role Roever played in the resignation of two prior aides.

Turning to Coordinator Daniel Hummel, we also conclude that he is a supervisor. Our Factor analysis yields the same determinations that were applicable to Roever. Although we are again troubled by the fact that he only supervises one part-time employee, it is again nonetheless clear that as to this employee he exercises all significant indicia of supervisory authority-particularly as to hiring and significant discipline. While the Association correctly notes that Hummel has not exercised his disciplinary authority to any significant degree, his testimony that “it would be my say at this point whether or not he stays or goes” is consistent with Tortomasi’s testimony in this regard and persuades us that he has the authority to effectively recommend significant discipline. His testimony and that of Tortomasi also persuade us that he has the effective authority to hire as well.

Thus, both Roever and Tortomasi are excluded from the Association unit as supervisors.

Professional Employee Status

The District contends that Roever, Hummel, and Hostad, should be excluded from the bargaining unit because they are professional employees. Because we have found Roever and Hummel to be excluded for the unit because they are supervisors, we need not resolve their alleged professional status. We turn to a consideration of Hostad’s alleged professional status.

Section 111.70(1)(L), Stats. defines a “professional employee” as follows:

1. An employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;

- c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. An employee who:
- a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
 - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

Applying this statutory definition, we conclude that Network Administrator Hostad is not a professional employee. While he meets the first three criteria of the statute, we are satisfied that his work does not require knowledge customarily acquired through a four year specialized degree. Rather, as reflected by Hostad's own background, a two year associate degree supplemented by additional technical certifications and self-study is the customary source of the knowledge needed to perform this work. Thus, Hostad's work does not meet the "prolonged course of specialized intellectual instruction" criterion in Sec. 111.70(1)(L)1.d., Stats.

Summary

Of the six disputed positions, we have concluded that two positions should continue to be excluded for the unit while four positions have been included therein.⁴

Dated at Madison, Wisconsin, this 27th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

⁴ To the extent the District has made reference to the wishes of the incumbents as to inclusion or exclusion, we have consistently held such wishes to be irrelevant to our determination. See CITY OF DELAVAN, DEC. No. 12185-A (WERC, 8/88). In this instance, the Association has been selected by a majority of the employees as the collective bargaining representative of “all regular full-time and regular part-time non-professional employees” of the District. Once having been so selected, the Association is entitled to exercise its statutory right to represent all employees who fit within that bargaining unit description.

