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In the Matter of the Petition of	:	
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WISCONSIN COUNCIL 40,	:	
AFSCME, AFL-CIO	:	Case 4
	:	No. 36097 ME-2534
Involving Certain Employees of	:	Decision No. 23746
	:	
VILLAGE OF ASHWAUBENON	:	
	:	

Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, WI 54304, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Mr. Richard C. Yde, Village Attorney, 2280 South Broadway, Green Bay, WI 54304, appearing on behalf of the Village of Ashwaubenon.

Wisconsin Council 40, AFSCME, AFL-CIO, having on December 9, 1985, 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 employees of the Village of Ashwaubenon; and hearing in the matter having been conducted on February 19, 1986, at Ashwaubenon, Wisconsin before Examiner Andrew Roberts, a member of the Commission's staff; and a transcript of the proceeding having been received on March 19, 1986; and the parties having filed initial briefs by April 28, 1986, and the Village having filed a reply brief on May 5, 1986, and the Union have indicated on May 8, 1986, that it would waive filing a reply brief; and the Commission having considered all the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

1. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization which has its offices located c/o James W. Miller, 2785 Whippoorwill Drive, Green Bay, Wisconsin.

2. That the Village of Ashwaubenon, hereinafter referred to as the Village, is a municipal employer which has its principal offices located at 2280 South Broadway, Green Bay, Wisconsin.

3. That on December 9, 1985, the Union filed a petition for election of certain municipal employees employed by the Village; and that at hearing the parties stipulated to the following proposed bargaining unit description:

All regular full-time and regular part-time clerical employees of the Village of Ashwaubenon, excluding managerial, confidential, supervisory, professional, and all other employees.

4. That in Village of Ashwaubenon (Department of Public Safety), Dec. No. 19430 (WERC, 3/82), the Ashwaubenon Public Safety Officers Association was certified as the exclusive bargaining representative of the following employees of the Village:

All regular full-time and regular part-time employees with the power of arrest employed by the Department of Public Safety of the Village of Ashwaubenon, excluding sergeants, and all executive, supervisory, managerial, and confidential employees;

and that in Village of Ashwaubenon (Department of Public Works), Dec. No. 22378 (WERC, 4/85), the Ashwaubenon Public Works Employees Association was certified as the exclusive bargaining representative of the following employees of the Village:

All regular full-time and regular part-time employees of the Village of Ashwaubenon (Department of Public Works), including Parks employees, but excluding supervisory, managerial, confidential and clerical employees.

5. That the Union seeks to represent 15 clerical employees; that of those 15, the Village contends that Chief Clerk/Dispatcher/Court Clerk Judeann Maslinski is a supervisory employee and that Executive Secretary Rae Yakel and Legal Secretary Mary Nooyen are confidential employees; that the Union contends that these three employees should appropriately be included in the bargaining unit described in Finding of Fact 3; and that other than the Village's proposed confidential positions, currently there are no other confidential employees in the Village.

6. That Judeann Maslinski holds a joint position as Chief Clerk/Dispatcher/Court Clerk in the Public Safety Department of the Village; that Maslinski works under the direct supervision of Director of Public Safety John Konopacki; that there is an Assistant Director of Public Safety position which is currently vacant but which will be filled in the future; that the Assistant Director will direct the supervisors in the Public Safety Department (such as sergeants) and will also direct Maslinski; that as Court Clerk, Maslinski mainly works overtime in the evening after her regular shift (Court is in session at night); that as Chief Clerk/Dispatcher she directs three full-time dispatchers and two part-time dispatchers; that dispatchers work eight-hour shifts; that the three full-time dispatchers work six days on and three days off with one dispatcher working 3:00 p.m. to 11:00 p.m., a second dispatcher working 11:00 p.m. to 7:00 a.m., and the third dispatcher working 3:00 p.m. to 11:00 p.m. for three days and 11:00 p.m. to 7:00 a.m. three days; that as Chief Clerk/Dispatcher Maslinski primarily works on the day shift from 7:00 a.m. until 3:30 or 4:00 p.m., Monday through Friday, although she occasionally works the 3-11 p.m. shift; that on that shift one part-time dispatcher works Sunday through Tuesday and one part-time dispatcher works Thursday through Saturday; that generally employees who work the evening or night shifts do not change shifts; and that Maslinski receives an hourly wage rate of \$7.70 per hour (plus overtime paid at time and one-half for her Court Clerk duties) while the dispatchers receive \$6.42 per hour.

7. That Maslinski has the authority to issue oral and written warnings and suspend dispatchers with pay; that on one occasion she issued a written reprimand to a dispatcher; that Public Safety Sergeants have the authority to send dispatchers home when Maslinski is not on duty if the dispatcher is unable to perform her duties; that Maslinski (along with Public Safety Sergeants) sit in on interviews of dispatcher applicants; that Maslinski recommends which applicant should be hired; that in the past Maslinski's recommendations have always been followed; that Maslinski recommends whether a dispatcher has passed the six-month probationary period; that on one occasion the Village extended the probation of a dispatcher because Maslinski was not satisfied with that dispatcher's performance; that Maslinski then recommended that said dispatcher not pass probation and that dispatcher was then terminated; that Maslinski directs the activities of dispatchers, including assigning them tasks; that Maslinski schedules dispatchers; that Maslinski approves dispatchers' requests for time off; that after Maslinski approves time off requests, Konopacki "signs off," but he has never denied such requests that Maslinski has approved; that Maslinski schedules overtime for dispatchers; that Maslinski has the responsibility to attempt to resolve certain employee complaints, such as wage payment disputes; that she has on a regular basis met with dispatchers and discussed their performance with them; that the Village is in the process of developing a more formal evaluation system for dispatchers; that Maslinski will then perform such evaluations of dispatchers; and that Maslinski possesses and exercises supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

8. That Tony Frigo has been Village President and Administrator since 1981; that as Administrator, Frigo manages the Village's affairs, including certain labor relations matters primarily involving Village administrators; that Frigo is also Personnel Director for the Village; that Rae Yakel has occupied the position of Executive Secretary since approximately 1979; that as Executive Secretary,

Yakel performs secretarial duties as assigned by Frigo, including receptionist, typing, filing, responding to correspondence, scheduling, and processing survey and plat maps; that Yakel also serves as recording secretary for the Finance and Personnel Committee, the Fire and Police Commission, and the Planning Board; that in that capacity, she has attended approximately three or four closed executive sessions of the Finance and Personnel Committee in the past four or five years (twice in the last year) wherein labor relations matters were discussed with respect to non-bargaining unit employees; that wage increases for employees in the Public Safety and Public Works Departments are discussed at the Village Board level and the Village Clerk usually takes minutes of closed sessions of the Village Board wherein these matters are discussed; that Yakel has access to personnel files; that prior to the Village hiring an attorney, Frigo prepared contract proposals on behalf of the Village for negotiations involving the two bargaining units of Village employees and wage proposals for Village administrators; that Yakel would type said proposals; that since the Village attorney was hired, Frigo no longer prepares contract proposals for negotiations involving the two bargaining units, but continues to prepare Village proposals for wage increases for administrators; that Village administrators are not in any bargaining unit; that since the Village attorney was hired, Yakel types Village proposals for salary increases for administrators but does not type Village proposals for contracts involving the two bargaining units; that Frigo handles all grievances involving dispatchers if not settled by supervisors in the Public Safety Department; that Frigo is the Village's first step response for all grievances involving Village clerical employees; that Frigo has only received one or two grievances and one disciplinary problem--the latter involving an administrator--in the past year; that Yakel does not recall ever typing any internal memoranda about grievances that did not go to the employee or union involved; that Yakel would type any written proposed responses to said grievances prepared by Frigo, but has never done so; that she has typed written reprimands which employees have then received; and that Yakel does not have access to, knowledge of, or participate in confidential matters relating to labor relations to a sufficient degree to be deemed a confidential employee.

9. That Richard Yde is the attorney for the Villages of Ashwaubenon and Howard; that Yde and his legal secretary are paid by the Village of Ashwaubenon and the Village of Howard pays the Village of Ashwaubenon for services provided by Yde and his legal secretary; that Yde is the Village of Ashwaubenon's principal representative for contract negotiations with the two bargaining units described in Finding 4 above; that Mary Nooyen has occupied the position of Legal Secretary since about July, 1984; that Legal Secretary Nooyen is Yde's secretary and spends approximately 25 to 35 percent of her work time on the following labor relations matters affecting the two bargaining units: costing estimates on collective bargaining proposals, typing all drafts of Village contract proposals and counter proposals, and typing reports and memoranda on collective bargaining matters which employees and unions do not have access to; that Nooyen has access to all labor negotiations files; that she has access to the Village Board's executive session minutes and twice has taken minutes of Village Board meetings wherein salary negotiations matters were discussed; that Nooyen types advice from Yde to the Village President and Village Board regarding strategy, position and status of contract negotiations, mediation, and arbitration; that she is privy to discussions concerning labor relations matters that employees and unions do not have access to; and that Nooyen has access to, knowledge of, and participates in confidential matters relating to labor relations such that she is a confidential employee.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time clerical employees of the Village of Ashwaubenon, excluding managerial, confidential, supervisory, professional, and all other employees, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among the employees of the Village of Ashwaubenon in the appropriate collective bargaining unit described in Conclusion of Law 1 above.

3. That the occupant of the position of Chief Clerk/Dispatcher/Court Clerk is a supervisory employe and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and is excluded from the unit described in Conclusion of Law 1 above.

4. That the occupant of the position of Executive Secretary is not a confidential employe and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and is included in said unit.

5. That the occupant of the position of Legal Secretary 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.

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

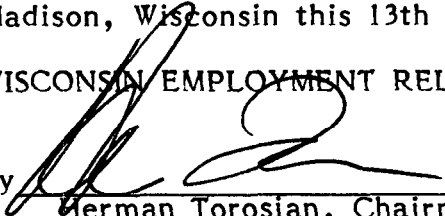
DIRECTION OF ELECTION

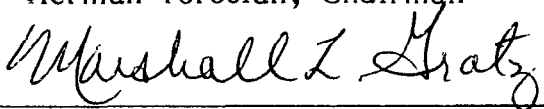
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within the forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time clerical employes of the Village of Ashwaubenon, excluding managerial, confidential, supervisory, professional, and all other employes who were employed by the Village of Ashwaubenon on June 13, 1986, except such employes as may, prior to election, quit their employment or be discharged for cause, for the purposes of determining whether a majority of said employes voting desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for the purpose of collective bargaining with the Village of Ashwaubenon on wages, hours and conditions of employment, or whether such employes desire not to be so represented by said labor organization.

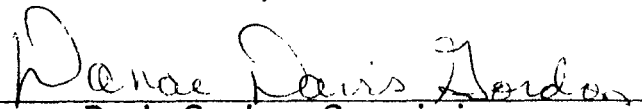
Given under our hands and seal at the City of
Madison, Wisconsin this 13th day of June, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

VILLAGE OF ASHWAUBENON

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

Position of Union

The Union maintains that Maslinski is not a supervisor because the evidence indicates she would have little time to perform any supervisory functions. At most, she is a lead worker as Chief Clerk/Dispatcher. With respect to her duties as Court Clerk, there is no evidence of supervisory responsibilities.

While the Union acknowledges in its brief that the evidence with respect to Nooyen demonstrates that she holds confidential status, it contends that as to Yakel, the record indicates that she is not a confidential employee.

Position of Village

The Village argues the record clearly shows that Maslinski has supervisory authority. According to the Village she has authority to: effectively recommend hiring, to discipline and discharge dispatchers, to direct dispatchers and assign them work, to adjust employee grievances, and to evaluate employees. The only other person with supervisory authority is Director Konopacki. The sergeants' only authority is to send a dispatcher home if the employee is unable to perform her duties. Moreover, Maslinski is paid substantially more than the dispatchers. Contrary to the Union's contention, Maslinski's supervisory status is not dependent upon her having continuous close observation of the dispatchers.

With respect to Executive Secretary Yakel, the Village maintains she is appropriately a confidential employee because her supervisor, Village President Frigo, has a number of personnel responsibilities. Simply because Frigo is able to resolve labor problems so that the need for Yakel's confidential services is not as great should not detract from her clear confidential status.

Legal Secretary Nooyen is plainly a confidential employee for she spends 25 to 35 percent of her time on confidential labor relations matters. The Village points out that Nooyen prepares many of the Village's confidential reports and communications.

Supervisory Status

The Village contends that the Chief Clerk/Dispatcher/Court Clerk position currently occupied by Judeann Maslinski should be excluded from the bargaining unit on the basis of supervisory status. Sec. 111.70(1)(o) 1., Stats., defines "Supervisor" as:

. . . any 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.

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 employees;
2. the authority to direct and assign the work force;
3. the number of employees supervised, 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 has paid for his or her skill or for his or her supervision of employees;
5. whether the supervisor is primarily supervising activities or primarily supervising employees;
6. whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees;
7. the amount of independent judgment and discretion exercised in the supervision of employees. 1/

The record reflects that Maslinski has the authority to impose certain forms of discipline (e.g., oral and written warnings and suspension with pay); that she has issued a written warning; and that she can recommend more serious forms of disciplinary action such as suspensions without pay or termination. Maslinski effectively recommends whether to hire dispatcher applicants and recommends whether dispatchers will pass probation. She schedules dispatchers, schedules their overtime, grants their time off requests, attempts to resolve dispatcher grievances, evaluates dispatchers, and assigns them tasks. Problems arising on shifts Maslinski is not working are referred to her by the Sergeant on those shifts for corrective action. She receives \$1.32 more than the dispatchers. The foregoing persuasively demonstrates that she has supervisory authority in sufficient combination and degree so as to be deemed a supervisory employee. Though the Union contends she does not have the time to supervise employees, the record demonstrates that, while she is a working supervisor, she is the primary person in charge of all five full-time and part-time dispatchers. The only person with similar or greater authority is the Director who is in charge of the entire Department of Public Safety and in the future the Assistant Director will direct supervisors including Maslinski. We conclude Maslinski is a supervisory employee and therefore exclude her from the bargaining unit involved herein.

Confidential Status

The Village argues that both the Executive Secretary and the Legal Secretary are confidential employees. The Commission has held that in order for an employee to be considered a confidential employee, such an employee must have access to, 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 which:

1. Deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar methods pertaining to labor relations and grievance handling between bargaining representatives and the employer;
2. Is not information which is available to the bargaining representative or its agents. 2/

Rae Yakel has been Executive Secretary for the Village President since about 1979. Prior to the Village hiring a Village attorney and Legal Secretary, Yakel typed the Village's contract proposals and related documents for negotiations with the two bargaining units of Village employees. Since Yde was hired as Village attorney, his Legal Secretary is primarily responsible for typing bargaining proposals. Yakel does still type Village proposals for salary increases for Village administrators and has, on occasion, been privy to other labor relations discussions concerning administrators.

We note that Yakel does have access to personnel files located in Village President Frigo's office. We have held that said access, alone, is an inadequate

1/ Nicolet College and Technical Institute, Dec. No. 23366 (WERC, 3/86).

2/ Crivitz School District, Dec. No. 22208-A (WERC, 2/86).

basis for excluding a position as being confidential in nature. 3/ Here, in addition to access to personnel files, the Village cites Yakel's above-noted responsibilities concerning labor relations affecting administrators, her occasional access to confidential documents, and occasional typing of grievance responses and employe reprimands, as establishing her confidential status. Moreover, the record reveals that Yakel is the recording secretary for the Village's Finance and Personnel Committee, Fire and Police Commission and Planning Board.

As the Village correctly acknowledges, because the Village has few grievances "the handling of confidential labor relations matters has not been as great a part of the Executive Secretary's duties as it might otherwise be." The Village argues, however, that to deny the Village President a confidential secretary in the circumstances would be to punish the Village for successful management. Notwithstanding that contention, we conclude, for the following reasons that the record does not warrant excluding the Executive Secretary position from the bargaining unit involved herein.

Much of the testimony from Village President Frigo centered on Yakel's access to, knowledge of, and participation in labor relations matters affecting Village administrators. For, as Personnel Director and Administrator, Frigo is chiefly responsible for preparing Village proposals and counter proposals for salary increases for administrators, as well as, handling contract administration concerns and grievances involving administrators. Yakel does any related typing required by Frigo. In addition, Frigo advises the Village Board on matters Frigo considers confidential including grievance or disciplinary problems involving administrators.

However, administrators are not in any bargaining unit. Thus, Yakel's responsibilities and access to information relating to administrators are not of the type that deal with "the employer's strategy or position in collective bargaining . . . between bargaining representative and the employer."

A close review of the record and testimony reveals that the Village has had relatively few grievances or disciplinary problems over the past few years. In fact, Yakel could not recall ever having typed any written proposed internal memoranda on grievances prepared by Frigo and any written responses to grievances typed by Yakel were immediately given to the employe or union involved. Frigo estimates he received only one or two grievances from employes and one disciplinary problem (involving an administrator) in the past year. We conclude that Yakel's typing the Village's responses to grievances is not confidential work since Yakel has access to no more than does the grievant or representative in that regard. 4/

With respect to collective bargaining, as previously noted, Yde's Legal Secretary, not Yakel, now types all proposals, counter proposals, documents relating to Village strategy and position in bargaining and any other advisory correspondence from Yde to the Village Board or to the Village President relative to negotiations with the two bargaining units. Yde's secretary, not Yakel, is privy to confidential discussions between Yde and other Village management concerning collective bargaining matters. The record indicates Yakel may on occasion see confidential correspondence sent to Village President Frigo in this regard. However, we find this access to confidential materials unsubstantial and avoidable by the Village without undue interference with its organization and operation. We also find Yakel's responsibilities as recording secretary are de minimus. For, the record shows that Yakel has attended only three or four closed executive sessions of the Finance and Personnel Committee in the past four or five years--twice in the last year--wherein labor relations matters involving administrators was discussed. Furthermore, labor relations matters involving employes in the Public Safety and Public Works Departments are discussed at the Village Board level and the minutes of those meetings are usually typed by the Village Clerk.

3/ City of Milwaukee (Police Department), Dec. No. 11971-D (WERC, 6/81); Forrest County, Dec. No. 17528-B (WERC, 6/85).

4/ See, Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

Our review of the record as a whole convinces us that Yakel performed more arguably confidential labor relations duties before the Village attorney and his Legal Secretary were hired. Moreover, it appears that Nooyen (who we conclude is confidential for reasons set forth below) now handles the bulk of the Village's clerical confidential labor relations tasks, primarily because Yde handles all contract negotiations and related matters for the Village. We find the small amount of confidential labor relations work done by Yakel is an insufficient basis for excluding her from a bargaining unit, especially where, as here, there is another confidential employee available to do the majority of the work. 5/ We therefore conclude that Yakel does not have access to, knowledge of, or participate in confidential matters, to a sufficient degree to be deemed a confidential employee.

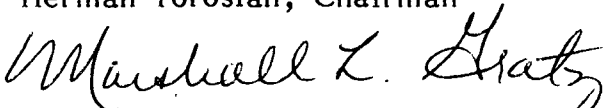
As to Legal Secretary Nooyen, as previously mentioned, one of her primary responsibilities is to type all the collective bargaining proposals of the Village and to prepare various confidential reports and costing estimates for negotiations with two other bargaining units. She has access to confidential minutes from the Village Board's executive session relative to collective bargaining strategy, and she is privy to confidential discussions by Village administrators on collective bargaining matters. Moreover, she estimated that she spends approximately 25 to 35 percent of her time performing such responsibilities. The foregoing persuades us that she handles confidential collective bargaining information to such an extent that she is a confidential employee. Accordingly, we exclude her position from the bargaining unit involved herein.

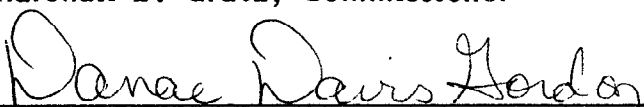
Dated at Madison, Wisconsin this 13th day of June, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

5/ Wisconsin Heights School District, supra; Walworth County (Lakeland Nursing Home), Dec. No. 16031-A (WERC, 7/85).