

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
NEENAH EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

Involving Certain Employees of
NEENAH JOINT SCHOOL DISTRICT

Case 2
No. 60047
ME(u/c)-1029

Decision No. 24393-A

Appearances:

Mr. Roger W. Palek, Executive Director, WEAC – Fox Valley, 921 West Association Drive, Appleton, Wisconsin 54914, appearing on behalf of the Neenah Educational Support Personnel Association.

Davis & Kuelthau, S.C., by **Attorney Tony J. Renning**, 219 Washington Avenue, Oshkosh, Wisconsin 54903, appearing on behalf of the Neenah Joint School District.

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

On June 13, 2001, the Neenah Educational Support Personnel Association filed a petition with the Wisconsin Employment Relations Commission to clarify an existing Association bargaining unit of Neenah Joint School District employees by including the position of Facilities Services Coordinator. The District opposes inclusion of the Coordinator because it believes the incumbent is a confidential or managerial employee.

Examiner John R. Emery, a member of the Commission's staff, conducted a hearing on September 10, 2001, in Neenah, Wisconsin. The parties filed briefs by December 21, 2001, whereupon the record was closed.

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To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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

FINDINGS OF FACT

1. The Neenah Joint School District, herein the District, is a municipal employer with offices at 410 South Commercial Street, Neenah, Wisconsin 54956.

2. Neenah Educational Support Personnel Association, herein the Association, is a labor organization with offices at 921 West Association Drive, Appleton, Wisconsin 54914.

3. At all times material, the Association has been the certified exclusive bargaining representative for a unit described in the parties' 1999-2002 collective bargaining agreement as:

. . .all regular full-time and regular part-time classified employees of the Neenah Joint School District, excluding supervisory, managerial, confidential, craft, and professional employees. Casual (student) and seasonal employees are also excluded from the bargaining unit.

4. In November, 1992, Jane Bahr was employed by the District as a secretary in the Maintenance and Operations Department and was a member of the bargaining unit. Her initial job description provided as follows, in pertinent part:

. . .

Under the supervision of the Coordinator of Maintenance and Operations, carry out the clerical work of the Department. Requires independent judgment in dealing with prescribed routines and procedures in accordance with general directions. Assist with overflow work from other departments within the Administration Building as determined by the Director of Business Services.

EXAMPLES:

1. Maintain records, file and prepare reports.
2. Receive and process mail.
3. Type memos, letters, work orders, etc.
4. Operate computer software programs.
5. Schedule substitutes for custodians who are absent.

6. Communicate with maintenance staff via pagers, FM radios, and telephone.
7. Assist other clerical staff in the Administration Building with special projects and overflow.

...

5. In 1995, the Operations and Maintenance Department was segregated from the Business Services Department and Thomas Beck was promoted from Coordinator of Maintenance and Operations to Director of Operations and Maintenance. At that time, at Beck's request, Bahr was reclassified to the bargaining unit position of Secretary IV and her job description was revised, as follows:

...

Under the supervision of the Coordinator of Operations & Maintenance, carry out the day-to-day office management and clerical work of the Department. Requires independent judgment in dealing with prescribed routines and procedures in accordance with broad directives. The District facility usage agreements, invoicing and rental contracts are managed by the Office Secretary. Construction purchase orders are prepared and reconciled monthly by account.

EXAMPLES:

1. Maintains records, files and prepares reports.
2. Receive and process mail.
3. Type memos, letters, process work orders, etc.
4. Creates and operates computer software programs, such as Lotus 1-2-3, FileMaker Pro, etc.
5. Scheduled substitute for custodians.
6. Communicates and coordinates with maintenance staff and outside contractors.
7. Process purchase order requisitions, acquires pricing, ordering and scheduling of deliveries from vendors.
8. Manages facility usage agreements, invoicing and rental information.

...

6. On May 15, 2001, on the recommendation of Director Beck, the Neenah Board of Education created the non-bargaining unit position of Facilities Services Coordinator and awarded the position to Jane Bahr. The Board also adopted a job description for the position of Facilities Services Coordinator, which states, in pertinent part:

POSITION TITLE: Facilities Services Coordinator

REVISION DATE: May, 2001

ACCOUNTABLE TO: Director of Operations & Maintenance

SUMMARY STATEMENT:

Reports to the Director of Operations & Maintenance. Coordinates activities of the Theater Technician, schedules overtime assignments of the Operations staff, and coordinates bid solicitation, awarding of bids and scheduling with outside vendors and contractors. Requires independent judgement in dealing with routines and procedures in accordance with broad directives. Deals with staff, administrators, community members and outside contractors on a daily basis.

The Coordinator develops and maintains cost and work history records for negotiations with NESPA and management of the Operations and Maintenance staff. Disciplinary letters, employee management policies and confidential planning regarding NESPA and Departmental goals are developed with the Coordinator.

The Coordinator manages the District's building rental agreements, including direct contact with renters, contract management, invoicing, and collection of past due invoices.

MAJOR AREAS OF RESPONSIBILITY:

Office Management

- Communicates and coordinates the work of the maintenance staff and outside contractors.
- Processes purchase order requisitions, procures pricing, ordering and scheduling of deliveries with vendors.
- Gives specific directives to Operations & Maintenance staff.
- Maintains building statistics for the District
- Composes responses to inquiries and completes surveys from outside districts, the Wisconsin School Board Administration, and others.

Personnel Management

- Develops and maintains cost and work history records for Director.
- Works with Director, while maintaining the strict confidentiality, in long-range NESPA staffing projections and the development of departmental staffing goals.
- Participates in management meetings.

- Participates in implementing policy.
- Coordinates pre-screening interviews and testing.
- Maintains organizational information.
- Records absences for individual employees and runs absentee reports.
- Deals with worker compensation claims pertaining to return to work.
- Works with the Director of Operations & Maintenance on matters of the Neenah Educational Support Personnel Association (NESPA) while maintaining strict confidentiality as required.
- Directs the work activities of Pickard Auditorium
- Directs the overtime activities of NESPA employees in the operations of the District.

Management of District Facility Usage

- District Building Rental Agent.
- Prepares Building Use Permits and estimate of charges for approved rentals.
- Calculates invoices based on schedule of fees and collection there of.
- Deals with Administrators, PTA'S, booster clubs and outside groups on building usage and interpretation of the Administrative Rules.

. . .

7. The Association bargaining unit includes 48 District employees who work in the Operations and Maintenance Department. When the District bargains a labor agreement with the Association, Director Beck is a member of the District's bargaining team. When preparing for collective bargaining, Beck consults with Coordinator Bahr and the two Department supervisors regarding issues/proposals that the District should pursue in collective bargaining. At Beck's request, Bahr assembles cost information for Beck's use during collective bargaining. She also provides Beck with clerical support as to Beck's confidential bargaining correspondence and notes.

Bahr participates in Operations and Maintenance Department management meetings held to discuss how to respond to grievances filed by Association represented Department employees. She provides Beck with clerical support as to confidential grievance correspondence.

Bahr has sufficient access to, knowledge of, and participation in confidential labor relations matters to be a confidential employee.

Director Beck and Coordinator Bahr work on the second floor of the District's administration building. Six confidential clerical employees (Champeau, Reichl, Frundl, Wolters, Sachs and Peterson) work on the first floor of the administration building. Champeau provides clerical support as to the District's payroll and benefits function. Reichl provides clerical support in the District's business office. Frundl is the secretary of the Director of

Secondary Education and Human Resources. Wolters is the secretary of the Director of Business Services. Sachs is the secretary of the Superintendent of Schools. Peterson provides clerical support for the Directors of Elementary Education, Secondary Education and Instructional Support Services.

Bahr's confidential labor relations duties could not be assigned to other District employees without undue disruption.

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

CONCLUSION OF LAW

1. The Facilities Services Coordinator is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Facilities Services Coordinator shall continue to be excluded from the bargaining unit referenced in Finding of Fact 3.

Given under our hands and seal this 3rd day of April, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

NEENAH SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Association

The Facilities Services Coordinator does not meet the Commission's criteria to be considered a managerial employee. The employee is subordinate to the Director of Operations and Maintenance Services, to whom the Board has delegated ultimate authority for all managerial decisions within the Department. She makes budget recommendations, but does not make budget decisions. The employee gathers data and processes requests for supplies and purchase orders, but has little discretion in determining the needs of the District or in how the needs are to be filled. She also does not reallocate District personnel beyond finding replacements and substitutes for employees who are on vacation or call in sick. Contrary to the District's assertions, the employee does not manage Pickard Auditorium, which is actually part of the job description of the Theater Technician, nor does she create policy for the District. Her role in development of policy, handling usage of Pickard Auditorium and explaining District policies to the public is actually clerical in nature and does not differ significantly from the duties of other bargaining unit secretaries.

The Coordinator also does not have sufficient exposure to confidential labor relations material to qualify as a confidential employee. The Director of Operations and Maintenance Services and Director of Human Resources handle bargaining with the Department's bargaining unit employees, who constitute a minority of the total bargaining unit. Bargaining occurs every three years, so the Director is only involved in bargaining infrequently. The Director, in turn, solicits information and opinions from the Facilities Services Coordinator, who is even farther removed from the process. This is not sufficient to confer confidential status. The employee also does not have regular access to, or contact with, other employees' confidential personnel record, which are maintained in the Human Resources Office on a different floor of the Administration building. She is also not a confidential employee based on her knowledge of confidential information gleaned at staff meetings. Two other exempt employees attend the same meetings, and have access to the same information, but are categorized as managerial/supervisory employees, not confidential. She has done some clerical work which exposed her to labor relations material related to grievances or bargaining, but only on a *de minimis* level. Further, to the extent any such work could be considered confidential, the District has other confidential employees capable of performing it.

The District

The Facilities Services Coordinator position includes significant confidential responsibilities. The Coordinator assists the Director of Operations and Maintenance Services in bargaining, contract administration, grievance processing, and other matters which expose

her to confidential labor relations information. She has knowledge of the District's strategy and position in collective bargaining, departmental staffing strategy and goals, and information relative to bargaining proposals. She processes grievances, attends management strategy meetings and makes determinations on issues regarding uses of personal leave and vacation. Furthermore, the Coordinator is the only employee in the Operations and Maintenance Department available to perform these confidential functions. Her confidential duties cannot be assigned to other District confidential employees without undue disruption.

The Facilities Services Coordinator also has significant managerial responsibilities. She is responsible for formulating, determining and implementing District policy and has authority to commit significant District resources. She oversees the work of the Theater Technician, makes determinations regarding the scheduling of overtime and solicits bids for contracts for goods and services for the District. She also makes determinations regarding the use of District facilities. She has formulated policies regarding the District's safe schools program and well as the use of vacation, sick leave and personal leave. She has significant input into the development of the District's utility and supply budgets and arranges for the provision of gas and electricity. She develops projections for future supply needs and oversees a supply budget of approximately \$300,000.00 and has authority to expend up to \$5000.00 at a time to purchase good or services without approval from the Director. Furthermore, she is likely to have added managerial responsibilities in the future. For the foregoing reasons the Facilities Services Coordinator should be excluded from the bargaining unit.

DISCUSSION

Confidential status

Section 111.70(1)(i), Stats., defines a municipal employee in pertinent part as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or **confidential**, managerial or executive employee. (Emphasis added.)

The statutory term "confidential employee" is not statutorily defined. With judicial approval (See MINERAL POINT UNIFIED SCHOOL DISTRICT V. WERC, CASE 00-CV-126, (CT. APP. 1/2002) RECOMMENDED FOR PUBLICATION), we have defined a confidential employee as having sufficient access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential in the labor relations context, 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. 1/

1/ DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88)

While a *de minimis* exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 2/ 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. 3/ 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, 4/ 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 of the employer's organization. 5/

2/ *BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. No. 24982 (WERC, 11/87)*

3/ *CESA AGENCY No. 9, DEC. No. 23863 (WERC, 12/86)*

4/ *TOWN OF GRAND CHUTE, DEC. No. 22934 (WERC, 9/85)*

5/ *HOWARD-SUAMICO SCHOOL DISTRICT, DEC. No. 22731-A (WERC, 9/88)*

As recited in Finding of Fact 7, the record establishes that Bahr has significant access to, knowledge of and participation in confidential labor relations matters. Much of this access, knowledge and participation is due in part to the significant administrative responsibilities assigned to Bahr by Department Director Beck. When preparing for collective bargaining, Director Beck consults with Coordinator Bahr and the two Department supervisors regarding issues/proposals that the District should pursue in collective bargaining. At Beck's request, Bahr assembles cost information for Beck's use during collective bargaining. She also provides Beck with clerical support as to Beck's confidential bargaining correspondence and notes.

Bahr participates in Operations and Maintenance Department management meetings held to discuss how to respond to grievances filed by Association represented Department employees. She provides Beck with clerical support as to confidential grievance correspondence.

The Association argues that the knowledge and information to which Bahr has access is not confidential because the Association ultimately gains access to the information either at the bargaining table or when a grievance response or disciplinary action is issued. We do not agree.

First, it is apparent that through her: (1) participation in management discussions during which options/issues may be explored that are not pursued and; (2) costing of bargaining proposals that may never be made; and (3) typing of proposed responses and disciplinary actions that may subsequently be modified, Bahr is privy to labor relations information that is never revealed to the Association.

Second, as to information that is ultimately revealed to the Association, it is the timing of Bahr's access to and knowledge of the labor relations information that makes the information confidential. For instance, although the Association ultimately will see a District bargaining proposal that addresses an Operations and Maintenance Department issue, the District is strategically entitled to keep that proposal confidential until it is ready to introduce it at the bargaining table. Thus, before the proposal is made, it is confidential labor relations information and Bahr's knowledge of the proposal is a relevant consideration when we determine whether she is a confidential employee.

The Association also contends that Bahr's confidential clerical work can be performed by other confidential clerical employees without undue disruption of the District's operation. First, we would note that Bahr's confidential responsibilities include her participation in management discussions regarding bargaining proposals, grievance responses, etc. and that these responsibilities cannot be delegated to other clerical employees. To the extent the Association argues that the District should be compelled to simply live without Bahr's participation in these management discussions, we reject this contention. Bahr is an active participant in these management discussions and there is no evidence that her participation is the result of a bad faith plan by the District designed to gain her continued exclusion from the unit. Second, as to the clerical component of her confidential duties, the record evidence as to the existing workload and physical location of the other confidential employees persuades us that it would cause undue disruption to have these duties performed by other confidential employees.

Given all of the foregoing, we conclude that Bahr is a confidential employee who should continue to be excluded from the bargaining unit. In light of this conclusion, we need not and do not resolve her alleged managerial status.

Dated at Madison, Wisconsin, this 3rd day of April, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner