

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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NORTHERN EDUCATIONAL	:	
SUPPORT TEAM	:	Case 2
	:	No. 38777 ME-2699
Involving Certain Employees of	:	Decision No. 24982
	:	
BOULDER JUNCTION JOINT	:	
SCHOOL DISTRICT	:	
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Appearances:

Mr. Gene Degner, Executive Director, WEAC UniServ Council #18, 25 East Rives Street, Rhinelander, Wisconsin 54501, appearing on behalf of the Northern Educational Support Team.

Mr. Steven C. Garbowicz, Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, P. O. Box 639, Eagle River, Wisconsin 54521, appearing on behalf of the Boulder Junction Joint School District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Northern Educational Support Team having, on May 13, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act, among certain employes in the employ of the Boulder Junction Joint School District; and hearing in the matter having been conducted on July 30, 1987, at Manitowish Waters, Wisconsin, before Examiner Amedeo Greco; and a transcript of the proceedings having been received on August 20, 1987; and the parties having filed briefs by September 17, 1987; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Northern Educational Support Team, hereinafter referred to as the Association, is a labor organization with its principal offices at 25 E. Rives Street, Rhinelander, Wisconsin 54501.

2. That the Boulder Junction Joint School District, hereinafter referred to as the District, is a municipal employer with its principal offices at North Lakeland Elementary School, Manitowish, Wisconsin 54545.

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

All educational support personnel of the Boulder Junction Joint School District, including aides, cooks, custodians, clerical, and bus drivers;

that the parties have stipulated that said unit is appropriate and that the affected employes are not presently represented by any other labor organization; that the parties also stipulated to the exclusion of the positions of Head Custodian and Head Cook from the bargaining unit and to the inclusion of teacher aide Adelle Duranso in the bargaining unit; and that the District, contrary to the Association, contends that Business Manager JoAnn McDonald, and Board and Administrative Secretary Carol Tassi should be excluded from the unit as confidential employes.

4. That Business Manager JoAnn McDonald performs all of the District's bookkeeping functions involving accounting and payroll; that McDonald is the only employe in the District trained to use the computer and available to cost out all contracts and contract proposals regarding collective bargaining negotiations for the professional and nonprofessional staff; that McDonald serves as the District's secretary in all negotiation sessions and attends all Board sessions in

which strategy for said negotiations is discussed; that there have been over twenty-six such strategy sessions this past year; that McDonald sits in on all other meetings involving labor relations in the District if she is available and if her assistance is needed in costing out wages, fringe benefits, or other contract proposals; that McDonald types all contract proposals during negotiations, including the actual contract language; that McDonald types all employment contracts for the District and issues them after they are signed by the Board; that McDonald attends executive sessions of the Board if requested and takes minutes for these sessions if Administrative Secretary Tassi is unavailable; that McDonald has access to all personnel files for all District employes; that McDonald assisted the Board in conducting a survey of other school districts in order to set wages for nonsupport staff and summarized the survey results; that McDonald compiles the substitute teachers' list and meets weekly with the school administrator and principal to discuss office policy and personnel problems; that she effectively recommends the hiring or not hiring of certain substitutes and decides which substitutes to call in as needed; that McDonald consults with teachers and other District Representatives to assess the effectiveness of substitute teachers the District considers for hire or rehire; that McDonald's office is right off the main office and teachers have access to her on a regular basis; that McDonald reviews and distributes all incoming mail and sends out all outgoing mail; that McDonald maintains a calendar in which she records all staff absences and issues a report at the end of the year to each employe of his or her leave status; that McDonald is consulted by the Board should a question of leave abuse arise; and, that McDonald has sufficient access to and involvement in confidential matters relating to labor relations so as to constitute the occupant of said position a confidential employe.

5. That Administrative Secretary Carol Tassi is the only secretary employed by the District and thus types all correspondence for the Board and Administrator Sherer, some of which involves confidential labor relations matters; that Tassi takes minutes in shorthand at executive sessions of the Board which numbered about 24 or 25 in the 1986-87 school year; that subjects discussed therein included hiring, firing, disciplinary action, evaluations, bargaining strategy, salary proposals, and reports from the head of the negotiating team; that Tassi does not attend pre-negotiation strategy sessions of the Board, nor does she attend actual negotiation sessions with either the professional or nonprofessional staff; that Tassi types up minutes from each executive session to be proofread by McDonald, reviewed by Sherer, and submitted to the Board for approval; that minutes of closed executive sessions are made public after a certain waiting period, and minutes of open sessions are of public record; that Tassi types up the agendas for the Board meetings and executive sessions; that when Tassi is on vacation or ill, McDonald substitutes for Tassi at executive sessions and types correspondence for Sherer; that while McDonald can substitute for most of the work performed by Tassi, McDonald, unlike Tassi, cannot take shorthand; that the District on occasion has hired a teaching assistant or part-time bus driver to substitute for Tassi; that while Tassi has access to personnel files, such access is limited to occasional filing of course completion information provided by staff members; that while she is aware that Sherer has separate files in his office containing reports on teachers who have committed rule violations, Tassi does not have access to said files and does not know where they are kept; that Tassi types memos for Sherer which are put in these files; that Tassi occasionally attends the weekly meetings with Sherer, the school principal, and McDonald, where administrative and personnel matters are discussed; and that Tassi has sufficient access to and involvement in confidential matters relating to labor relations so as to constitute the occupant of said position a confidential employe.

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 educational support personnel of the Boulder Junction Joint School District, including aides, cooks, custodians, clerical and bus drivers, but excluding managerial, confidential, supervisory and professional employes, constitute 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 employes of the Boulder Junction Joint School District in the appropriate collective bargaining unit described above.

3. That the occupants of the positions of Business Manager and of Administrative and Board Secretary are confidential employees, and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time educational support personnel of the Boulder Junction School District, including aides, cooks, custodians, clerical and bus drivers, but excluding professional, managerial, supervisory and confidential employees, who were employed by the Boulder Junction Joint School District on November 17, 1987, except such employees who may prior to election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees voting desire to be represented by the Northern Educational Support Team, WEAC UniServ Council #18, for the purpose of collective bargaining with Boulder Junction Joint School District on wages, hours, and conditions of employment, or to not be so represented.

Given under our hands and seal at the City of  
Madison, Wisconsin this 17th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

BOULDER JUNCTION JOINT SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

At the hearing in this matter, the Association asserted that the positions held by Business Manager McDonald and Board and Administrative Secretary Tassi were properly included in the bargaining unit as municipal employees. In its brief, the Association concedes that the position of Business Manager is confidential in nature, asserting: "We believe the testimony and the exhibits indicate that the business manager/bookkeeper in this district performs the work that is normally determined by the Wisconsin Employment Relations Commission as confidential secretarial work . . ." But the Association still maintains that Tassi is not a confidential employee, asserting in essence that any confidential duties she performs are strictly de minimus and that the District therefore can easily transfer such duties to McDonald.

While otherwise agreeing that the petitioned-for unit is appropriate, the District contends that the positions of Business Manager and Board and Administrative Secretary should be excluded from said unit because both positions are confidential in nature and in support thereof points to various facts in the record to support its position.

DISCUSSION

The Commission has held that in order for an employe to be considered a confidential employe, such employe 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 matters pertaining to labor relations between the bargaining representative and the employer and
2. Is not available to the bargaining representative or its agents. 1/

A de minimus exposure to confidential labor relations matters generally is insufficient ground for exclusion. 2/

Reviewing the position of Business Manager JoAnn McDonald, the record shows that she attends pre-negotiation strategy sessions and serves as Board secretary for all negotiation sessions with professional and nonprofessional staff. McDonald also types all contract proposals and all employment contracts for the District, and she also costs out all wage, benefit, and other contract proposals for professional and non-professional negotiations. Accordingly, it is clear that her position is confidential in nature and hence should be excluded from the collective bargaining unit described herein.

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1/ Laona School District, Dec. No. 22825 (WERC 8/85).

2/ Wonewoc Union Center School District, Dec. No. 22684 (WERC, 5/85).

Board and Administrative Secretary Tassi, on the other hand, does not attend any pre-negotiation strategy sessions for either professional or nonprofessional staff and she does not become directly involved with negotiations involving the two groups. However, Tassi does attend all Board executive sessions, which in 1986-87 numbered approximately 24 or 25, and she takes and types up the minutes for each session. There, Tassi is privy to confidential information involving hiring and firing policies, disciplinary actions, personnel evaluations, bargaining strategy, and salary proposals and she is present when labor relations matters are discussed. Additionally, Tassi types all correspondence for the Board and Administrator Sherer, some of which involves confidential labor relations matters. Given the extensive nature of these duties, we conclude that she is a confidential employe.

In so finding, we find without merit the Association's claim that McDonald could easily take over Tassi's confidential duties and that the District should transfer Tassi's job responsibilities to McDonald, since the record in fact shows that Tassi is the only secretary in the school and that the transfer of her numerous confidential duties would be too impractical and burdensome for the District.

Dated at Madison, Wisconsin this 17th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner