

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of

TEAMSTERS "GENERAL"

LOCAL NO. 200

Involving Certain Employes of

CITY OF GREENFIELD  
-----

Case 91

No. 40408 ME-2776

Decision No. 25646

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by  
Ms. Marianne Goldstein Robbins, 788 North Jefferson, P.O. Box 92099,  
Milwaukee, Wisconsin 53202, appearing on behalf of the Petitioner.

Mulcahy & Wherry, S.C., by Mr. Robert W. Mulcahy, 815 East Mason Street,  
Suite 1600, Milwaukee, Wisconsin 53202-4080, appearing on behalf of the  
City..

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTIONS

Teamsters "General" Local No. 200 filed a petition with the Wisconsin Employment Relations Commission on March 30, 1988 to conduct an election in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time professional employes of the City of Greenfield and all regular full-time and regular part-time nonprofessional employes of the City of Greenfield not currently included in another bargaining unit, but excluding all supervisors, confidential employes, sworn personnel and elected officials, to determine whether said employes desire to be represented for the purpose of collective bargaining by the Petitioner. A hearing was held on June 1, 1988 and on June 7, 1988 in Greenfield, Wisconsin, before Examiner Martha Askins, a member of the Commission's staff. A stenographic transcript of the proceedings was prepared, and briefs by the parties were submitted July 5, 1988. 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 Teamsters "General" Local No. 200, hereinafter the Union, is a labor organization with offices at 6200 West Bluemound Road, P.O. Box 2073, Milwaukee, Wisconsin 53201.

2. That the City of Greenfield, hereinafter the City, is a municipal employer with offices located at Greenfield City Hall, 7325 North Forest Home Avenue, Greenfield, Wisconsin 53220.

3. That the Union sought, in its petition, an election in a claimed appropriate unit consisting of all regular full-time and regular part-time professional employes of the City of Greenfield and all regular full-time and regular part-time nonprofessional employes of the City of Greenfield not currently included in another bargaining unit, but excluding all supervisors, confidential employes, sworn personnel and elected officials.

4. That, at the hearing conducted on June 1, 1988, the parties stipulated to an election in a bargaining unit consisting of:

All regular full-time and regular part-time professional employes of the Health Department of the City of Greenfield which includes the Registered Sanitarian, Environmental Health Specialist and Public Health Nurses, excluding supervisory, managerial, confidential and firefighting employes, elected officials, law enforcement employes with the power of arrest and employes in existing bargaining units.

5. That the parties at the hearing conducted on June 1, 1988, stipulated to the following voting groups for one, two or three bargaining units separate from the Health Department:

Voting Group No. 1

All regular full-time and regular part-time professional employees of the City of Greenfield, which include the City Accountant, Deputy City Assessor, Assistant City Engineer and Engineering Technician, excluding supervisory, managerial, confidential and firefighting employees, elected officials and law enforcement employees with the power of arrest and employees in existing bargaining units.

Voting Group No. 2

All regular full-time and regular part-time craft employees of the City of Greenfield, which include the Plumbing Inspector, excluding supervisory, managerial, confidential and firefighting employees, elected officials and law enforcement employees with the power of arrest, and employees in existing bargaining units.

Voting Group No. 3

All regular full-time and regular part-time nonprofessional, noncraft employees of the City of Greenfield, which include the Police Department Utility Person, excluding the Deputy City Clerk, the secretary to the Chief of Police, the Assistant Superintendent of Public Works, supervisory, managerial, confidential and firefighting employees, elected officials, law enforcement employees with the power of arrest, and employees in existing bargaining units and conditionally excluding professional and craft employees;

and that the parties stipulated to the exclusion of the Deputy City Clerk and the secretary to the Chief of Police as confidential employees and of the Assistant Superintendent of Public Works as a supervisory or managerial employee.

6. That the only position in dispute before the Commission is the secretary to the Director of Public Works and the City Engineer; and that the City argues that the position, currently occupied by Ms. Maryella Riesen, should be excluded on the basis of confidential status.

7. That in City of Greenfield, Dec. No. 12947 (WERC, 8/74), the Commission dismissed an election petition filed by District Council 48, AFSCME, AFL-CIO and its Affiliated Local 2 on the basis of the Petitioner's representation that the City of Greenfield had voluntarily recognized it as the exclusive bargaining representative for a unit described as:

all regular full-time and regular part-time clerical and administrative employees of the City of Greenfield, excluding supervisory employees and confidential employees consisting of the secretary to the Director of Public Works 1/ and the Deputy Chief Clerk.

8. That in City of Greenfield, Dec. No. 14532 (WERC, 4/76), the Commission clarified a unit described as:

an existing bargaining unit consisting of all regular full-time and regular part-time clerical employees of the City of Greenfield, excluding Deputy City Clerk, Secretary to the

---

1/ Emphasis added in each of the following descriptions.

Director of Public Works, and all supervisory, confidential and managerial employes (citing City of Greenfield, Dec. No. 14529 (WERC, 4/76);

to include the classification of Fire Dispatcher.

9. That in City of Greenfield, Dec. No. 15955-B (WERC, 12/77), the Commission certified Teamsters "General" Local Union No. 200 as the exclusive bargaining representative of a bargaining unit consisting of:

all regular full-time and all regular part-time clerical employes of the City of Greenfield, conditionally excluding the Secretary to the Director of Public Works, and excluding the Deputy City Clerk, Secretary to the Chief of Police and all supervisory, professional, confidential and managerial employes;

10. That in City of Greenfield, Dec. No. 18304-B (WERC, 2/81), the Commission certified AFSCME as the exclusive bargaining representative of a bargaining unit consisting of:

all regular full-time and regular part-time clerical employes in the City Hall, Fire Department and Police Department, excluding the Deputy City Clerk, Secretary to the Director of Public Works, Secretary to the Police Chief and all supervisory, professional, confidential and managerial employes;

11. That in City of Greenfield (Department of Public Works), Dec. No. 18864 (WERC, 9/81), the Commission certified AFSCME as the exclusive bargaining representative of a bargaining unit consisting of:

all regular full-time and regular part-time employes in the City of Greenfield Department of Public Works, including garage mechanics, operators, truck drivers, maintenance, engineering aides, supply, and custodian, but excluding supervisory, managerial, confidential, professional and craft employes, and further excluding all temporary and seasonal employes;

12. That in each of the collective bargaining agreements for the "clerical" unit from 1975 through 1985, whether the representative was AFSCME or the Teamsters, the Recognition clause excluded the Secretary to the Director of Public Works from the unit description.

13. That Ray Dwyer became the City Engineer in February of 1973 and the Director of Public Works in March of 1974, and currently holds both positions; that Dwyer participates in labor negotiations for the Department of Public Works employes, represented by AFSCME, and has been involved in such negotiations for the better part of his tenure with the City; that Dwyer is the individual who responds to public works employes' grievances at step two of the grievance procedure; that Dwyer communicates through correspondence and otherwise with both the Personnel Committee and the City's chief labor negotiator and attorneys (the law firm Mulcahy & Wherry) regarding grievances, bargaining matters and other personnel issues; that Dwyer has filled out a form on at least one occasion supplied to him by the law firm Mulcahy & Wherry called "Management Negotiations Survey" which asks for a summary of any significant complaints and grievances he has received by employes, specific goals and objections for upcoming contract negotiations and suggestions to increase productivity; that the last Management Negotiations Survey Dwyer completed was approximately three years ago, before negotiations for the most recent collective bargaining agreement; that Dwyer reduces verbal reprimands to writing which are then typed and placed in the affected employee's personnel file, along with written reprimands and suspensions; that Dwyer investigates allegations of misconduct by public works employes, and disciplines them if warranted; that Dwyer supervises two secretaries in the Department of Public Works, Maryella Riesen and Diana Maliborski, and that Maliborski has done some clerical work for Dwyer; that Dwyer attends most of the City committee meetings, including Common Council, Planning, Board of Public Works, Sewer and Water, Finance, and Personnel committee meetings.

14. That the law firm Mulcahy & Wherry is the chief negotiator and legal advisor for the City in its labor and personnel matters; that Mulcahy & Wherry prepares agendas and minutes for City Personnel Committee meetings; that Dwyer periodically corresponds with Mulcahy & Wherry for advice on personnel matters in the Department of Public Works; that the Deputy City Clerk position whose office is in the City Hall, is currently vacant, but that the former Deputy City Clerk performed some clerical duties relating to confidential labor relations matters for the Department of Public Works as well as other City departments.

15. That the Secretary to the Director of Public Works is currently Maryella Riesen; that Riesen's actual job duties include transcribing dictation, transcribing minutes of Board of Public Works meetings and Sewer and Water Commission meetings, answering phones, filling work orders and performing general office work; that, as Dwyer's secretary, Riesen types verbal reprimands that have been reduced to writing, types written reprimands, types responses to grievances at the second step of the grievance procedure, and types any correspondence from Dwyer to the Personnel Committee regarding grievances at the third step of the grievance procedure; that Riesen types correspondence from Dwyer to Mulcahy & Wherry, including correspondence involving contract negotiations, proposed changes in the contract and requests for clarification of contract language, as well as "rough drafts" of those communications; that Riesen types job descriptions and other correspondence involving personnel matters for the Department of Public Works; that Riesen has not costed proposals or agreements or assisted in developing bargaining strategy; and that while some labor-related work typed by Riesen is forwarded to a Union representative, other such work is not.

16. That Maryella Riesen, the incumbent secretary to the Director of Public Works, has sufficient access to, knowledge of, or participation in confidential matters relating to labor relations to render her a confidential employee.

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

#### CONCLUSIONS OF LAW

1. That the incumbent Secretary to the Director of Public Works is a confidential employee, and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and thus is ineligible for inclusion in the petitioned-for residual bargaining unit.

2. That the following unit description constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d), Stats.:

All regular full-time and regular part-time professional employees of the Health Department of the City of Greenfield which includes the Registered Sanitarian, Environmental Health Specialist and Public Health Nurses, excluding supervisory, managerial, confidential and firefighting employees, elected officials, law enforcement employees with the power of arrest and employees in existing bargaining units.

3. That employees of the City of Greenfield employed in the following voting groups may constitute either one single appropriate collective bargaining unit, or two or three separate and distinct appropriate collective bargaining units (three units if both professional and craft units vote against merger; two units if only one votes for merger with Voting Group 3, depending on the outcome of the representation ballot):

#### Voting Group No. 1

All regular full-time and regular part-time professional employees of the City of Greenfield, which include the City Accountant, Deputy City Assessor, Assistant City Engineer and Engineering Technician, excluding supervisory, managerial, confidential and firefighting employees, elected officials and law enforcement employees with the power of arrest and employees in existing bargaining units.

#### Voting Group No. 2

All regular full-time and regular part-time craft employes of the City of Greenfield, which include the Plumbing Inspector, excluding supervisory, managerial, confidential and firefighting employes, elected officials and law enforcement employes with the power of arrest, and employes in existing bargaining units.

#### Voting Group No. 3

All regular full-time and regular part-time nonprofessional, noncraft employes of the City of Greenfield, which include the Police Department Utility Person, excluding the Deputy City Clerk, the secretary to the Chief of Police, the Assistant Superintendent of Public Works, supervisory, managerial, confidential and firefighting employes, elected officials, law enforcement employes with the power of arrest, and employes in existing bargaining units and conditionally excluding professional and craft employes;

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

#### DIRECTION OF ELECTIONS

1. That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date of this directive, in the following voting groups for the purposes indicated therein:

#### Voting Group 1

All regular full-time and regular part-time professional employes of the City of Greenfield, which include the City Accountant, Deputy City Assessor, Assistant City Engineer and Engineering Technician, excluding supervisory, managerial, confidential and firefighting employes, elected officials and law enforcement employes with the power of arrest and employes in existing bargaining units who were employed on August 25, 1988, except such employes as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining:

- (1) Whether a majority of said employes in said voting group desire to be included in a single collective bargaining unit with those eligible employes in Voting Groups 2 and 3, and
- (2) Whether a majority of such employes voting desire to be represented, for the purposes of collective bargaining with the City of Greenfield on wages, hours and conditions of employment, by the Teamsters "General" Local No. 200, or be unrepresented.

#### Voting Group No. 2

All regular full-time and regular part-time craft employes of the City of Greenfield, which include the Plumbing Inspector, excluding supervisory, managerial confidential and firefighting employes, elected officials and law enforcement employes with the power of arrest, and employes in existing bargaining units who were employed on August 25, 1988, except such employes as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining:

- (1) Whether a majority of said employes in said voting group desire to be included in a single

collective bargaining unit with those eligible employees in Voting Groups 1 and 3, and

(2) Whether a majority of such employees voting desire to be represented, for the purposes of collective bargaining with the City of Greenfield on wages, hours and conditions of employment, by the Teamsters "General" Local No. 200, or be unrepresented.

Voting Group No. 3

All regular full-time and regular part-time nonprofessional, noncraft employees of the City of Greenfield which include the Police Department Utility Person, excluding the Deputy City Clerk, the secretary to the Chief of Police, the secretary to the Director of Public Works, the Assistant Superintendent of Public Works, supervisory, managerial, confidential and firefighting employees, elected officials, law enforcement employees with the power of arrest, and employees in existing bargaining units, and conditionally excluding professional and craft employees, who were employed on August 25, 1988, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented, for the purpose of collective bargaining with the City of Greenfield on wages, hours and conditions of employment, by the Teamsters "General" Local No. 200, or be unrepresented.

2. That a separate election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the following stipulated unit:

All regular full-time and regular part-time professional employees of the Health Department of the City of Greenfield which includes the Registered Sanitarian, Environmental Health Specialist and Public Health Nurses, excluding supervisory, managerial, confidential and firefighting employees, elected officials, law enforcement employees with the power of arrest and employees in existing bargaining units, who were employed on August 25, 1988, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented, for the purpose of collective bargaining with the City of Greenfield on wages, hours and conditions of employment, by the Teamsters "General" Local No. 200, or be unrepresented.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Hempe  
A. Henry Hempe, Commissioner

CITY OF GREENFIELD

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

POSITIONS OF THE PARTIES

Union

The Union argues that the Secretary to the Director of Public Works should be included in the petitioned-for bargaining unit because the amount of confidential work Riesen performs is de minimus, and, in addition, could be performed by another confidential employee in the City Clerk's office, citing Village of Ashwaubenan, Dec. No. 23746 (WERC, 6/86). The Union claims that, contrary to her job description, Riesen's job duties do not expose her to labor negotiations, that she does not prepare documents for labor negotiations or minutes from bargaining sessions, and that Riesen does not sit in on negotiations or hear from Dwyer what was said at such negotiations. The Union states that much of the personnel work Riesen does for Dwyer is sent to a union representative, and therefore is not confidential, and that her access to personnel records is inadequate to justify her exclusion from the unit. In sum, the Union's position is that Riesen's actual job duties fail to meet the Commission standard for a confidential employee, and moreover, any confidential work Riesen does perform could be handled by the City Clerk's office which already handles the bulk of labor relations matters for the City.

In anticipation of the City's alternative argument that if the disputed position is not confidential, it belongs in AFSCME clerical unit, the Union argues that the position is properly included in the Teamsters residual unit. It notes, in support, that the disputed position has historically been excluded from the AFSCME clerical unit and that there is no evidence to show that AFSCME seeks to represent the position.

City

The City argues that because the position of Secretary of Public Works has historically been voluntarily excluded from the clerical unit, the Union, as the Petitioner, must show a change in circumstances from the time of the original exclusion of the position to prove the inclusion would be appropriate, citing, inter alia, Mid State Vocational, Technical and Adult Education District No. 14, Dec. No. 14526-A (WERC, 5/85) and City of Port Washington, Dec. No. 21205-A, 21206-A (WERC, 11/84). The City argues that the Union failed to meet its burden regarding the required change in circumstances.

The City also claims that even if the Commission must reach this issue, the position of Secretary to the Director of Public Works, currently held by Maryella Riesen, meets the standard set by the Commission of who is a confidential employee. The City alleges that Riesen's duties include typing proposals or revisions of proposals for collective bargaining or memoranda relating to bargaining proposals, typing board meeting minutes and correspondence dealing with labor relations, typing drafts of grievance answers and recommendations, reviewing negotiation proposals, denials of disciplinary recommendations and minutes from management meetings, access to and maintenance of employees' files and discussion of bargaining proposals. The City argues that these factors, all present in this case, establish Riesen's confidential status. The City claims that there are no other confidential employees who are readily available to do the confidential work Riesen performs due to both the amount of work required and the location of the other confidential employees' offices.

In addition, the City notes that the DPW organizational chart refers to Riesen as "confidential secretary." Further, it states that the City will require at least three confidential employees to handle the confidential work for the soon-to-be seven bargaining units in the City. In sum, the City argues that, as in Rhineland School District, Dec. No. 17021-A (WERC, 12/86), although the amount of confidential work Riesen does is not great in volume, it is significant and not de minimus and warrants her exclusion from the unit.

In the alternative, the City argues that in the event the Commission were to determine that the position in dispute is not confidential, the position belongs in the clerical unit represented by AFSCME rather than this residual unit, citing City of Greenfield, Dec. No. 14529 (WERC, 4/76). In that case the Commission put fire dispatchers in the clerical unit rather than the firefighter unit based on the position's community of interest the dispatchers shared with the existing clerical unit.

## DISCUSSION

The City initially argues that the historical exclusion of the Secretary from the clerical unit should prevent the Petitioner from seeking inclusion of that position in a residual unit absent a change of circumstances. We reject the City's argument noting that the doctrine upon which the City appears to be relying has no application where, as here, the potential eligibility for inclusion of the position in a residual unit has never been subject to any agreement by these parties and that the Petitioner was not a party to the original exclusion agreement between AFSCME and the City in 1974. We would also note that where, as here, the position's unit inclusion is sought by an election petition, the general prohibition against seeking expansion of a unit through the unit clarification process is not applicable.

Likewise, we are not persuaded that the position should be excluded on the basis of an election petition filed by this Petitioner in 1977. It appears from the face of that petition that the Union simply recorded the existing bargaining unit description which was represented at the time by AFSCME. Finally, we do not give any weight to Riesen's job title as "confidential secretary;" our conclusion is based on her actual job duties.

The Commission has held that for an employee to be confidential, the employee must have access to, knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential, the information must:

1. 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
2. not be available to the bargaining representative or its agents. 2/

It is apparent from the record as a whole that the chief labor negotiator and legal advisor as to personnel issues for the City is the law firm Mulcahy & Wherry. As the Director of Public Works noted, that firm effectively acts as the legal secretary and records keeper for the City, and consequently handles the majority of confidential labor relations matters for the City. It is also apparent from the record, however, that while Mulcahy & Wherry acts as the chief negotiator, others are very involved in collective bargaining, including Ray Dwyer as the City Engineer and Director of Public Works. The record reflects that Dwyer is an integral part of the City's labor relations function, and as Dwyer's secretary, Riesen performs work for him involving that labor relations function. As noted above, Dwyer sits at the bargaining table in negotiations with the Union, acts as step two in the grievance procedure under the collective bargaining agreement, often follows up on grievances that proceed to the Personnel Committee, and investigates complaints concerning employees. In addition, Dwyer communicates with Mulcahy & Wherry regarding all types of personnel matters, including grievances and bargaining. As Dwyer's secretary, Riesen types responses to grievances, including any rough drafts of those responses, and types Dwyer's correspondence, including that going to Mulcahy & Wherry. Although the evidence shows, contrary to the City's argument, that Riesen does not type bargaining proposals, and although grievance responses do go to the Union, Riesen has access to material which is not available to the Union and which may reveal the City's

---

2/ Appleton Area School District, Dec. No. 22338-B (WERC, 7/87); Menominee Falls School District, Dec. No. 13492-A (WERC, 10/85); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).



position with respect to collective bargaining and contract administration. 3/ Clearly, Riesen is the conduit for information and questions from Dwyer to Mulcahy & Wherry when those communications are written. As we said in City of LaCrosse, Dec. No. 15710-A (WERC, 5/79):

When the confidential duties secretaries perform are closely related to the labor relations responsibilities of the person for whom they work, these secretaries will be excluded as confidential to avoid undue disruption of the employer's organization.

We therefore conclude that, while Riesen does not do a great volume of confidential work for Dwyer, it amounts to approximately two hours per week and therefore is significant and not de minimus, and warrants her exclusion from the proposed residual bargaining unit.

The Union argues that the confidential duties Riesen does perform could be performed by someone in the City Clerk's office, presumably the Deputy City Clerk. There was evidence adduced at the hearing to indicate that the former Deputy City Clerk performed some confidential clerical work for Dwyer. At the present time, however, the Deputy City Clerk position is vacant. We are reluctant to conclude that another position, currently unoccupied, can handle the confidential work of this position. In addition, we are persuaded that the Director of Public Works is sufficiently involved in confidential labor relations matters that it would be unduly disruptive of the City's operations to require him to send this work elsewhere. 4/ This is particularly true when, as here, setting aside the position in dispute, there are presently only two confidential positions in the City of Greenfield, one of which is not located in the City Hall (the Secretary to the Chief of Police), and the other which is currently unoccupied.

Both parties addressed the contingent issue of whether the position in dispute, if found not to be confidential, should properly be placed in the clerical unit currently represented by AFSCME. Because we conclude the Secretary to the Director of Public Works is confidential, we need not reach that issue.

Therefore, on the basis of the record before us, we conclude that the incumbent Secretary to the Director of Public Works, on balance, performs sufficient confidential labor relations work to render her a confidential employee. Accordingly, we exclude her position from the bargaining unit involved here.

Dated at Madison, Wisconsin this 25th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Hempe  
A. Henry Hempe, Commissioner

---

3/ For example, the "Management Negotiations Survey."

4/ City of LaCrosse, Dec. No. 15710-A (WERC, 5/79).