

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**KAUKAUNA AREA SCHOOL DISTRICT SECRETARIAL-CLERICAL
ASSOCIATION-WEAC**

Involving Certain Employees of
KAUKAUNA AREA SCHOOL DISTRICT

Case 23
No. 61827
ME-1062

Decision No. 25846-A

Appearances:

Gregory B. Gill, Gill & Gill, S.C., Attorneys at Law, 128 North Durkee Street, Appleton, Wisconsin 54911, appearing on behalf of the Kaukauna Area School District.

Richard A. Engle, UniServ Director, Bayland Teachers United, 1136 North Military Avenue, Green Bay, Wisconsin 54303, appearing on behalf of Kaukauna Area School District Secretarial-Clerical Association-WEAC

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

On November 19, 2002, Bayland Uniserv filed a petition with the Wisconsin Employment Relations Commission on behalf of the Kaukauna Area School District Secretarial-Clerical Association-WEAC seeking to have the Commission clarify an existing Association bargaining unit of employees of the Kaukauna Area School District by including therein a position identified as "Sub Caller." Following protracted and ultimately unsuccessful efforts at resolving the dispute voluntarily, hearing in the matter was held in Kaukauna, Wisconsin on December 9, 2003, before Commission Hearing Examiner Stuart D. Levitan.

No. 25846-A

The District, contrary to the Association, asserts that the incumbent in the disputed position is a confidential and managerial employee who therefore cannot be included in the Association bargaining unit. The parties filed written argument, the last being received on April 23, 2004.

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

FINDINGS OF FACT

1. Kaukauna Area School District Secretarial-Clerical Association-WEAC, herein the Association, is a labor organization with offices in care of the Bayland Uniserv, 1136 North Military Avenue, Green Bay, Wisconsin.

2. Kaukauna Area School District, herein the District, is a municipal employer with offices at 112 Main Avenue, Kaukauna, Wisconsin. The District serves about 3,800 students. The District Administrator is John Foster and its Director of Human Resources is Mary Weber. The District also employs about 15 administrators who are not represented for purposes of collective bargaining.

3. The District has approximately 350 employees in four separate bargaining units, one comprising the four food service employees represented by an independent association, one comprising approximately 15 custodial/maintenance personnel and 70 paraprofessionals, also represented by an independent association, one comprising approximately 250 teachers and represented by the Kaukauna Education Association (KEA), and the fourth comprising approximately 20 clerical, secretarial and bookkeeping employees, represented by the Association.

4. The District employs the following three individuals who are excluded from any bargaining unit as confidential employees: Joan Jensen, the administrative assistant to the District Administrator; Patricia Van Deurzen, the administrative assistant to the Director of Human Resources; and the District accountant. Both Jensen and Van Deurzen work a 12-month year.

5. Rose Hennessey occupies a position described during the hearing as "Substitute Caller and Program Assistant." At the time the Association filed its petition initiating this proceeding, Hennessey worked under a contract that identified her position only as Substitute Caller. During the pendency of this proceeding, the District's administration proposed to amend the position description to include "Program Assistant" duties, as follows:

KAUKAUNA AREA SCHOOL DISTRICT

JOB DESCRIPTION

Position Title: Assistant to the Offices of the Superintendent of Schools and Human Resources, and the Board of Education

Department/Classification: Human Resources

Reports To: Director of Human Resources and Superintendent of Schools

JOB GOAL

Provides support to the offices of the Superintendent of Schools and Human Resources, and the Board of Education

TERMS OF EMPLOYMENT

Salary and work year to be established by the Board of Education

SUPERVISES

LICENSE

Hold and maintain a valid State of Wisconsin driver's license.

REGULAR HOURS

Established yearly by the Director of Human Resources in conjunction with the Superintendent of Schools

EDUCATION AND EXPERIENCE

- ☐ High school diploma and post high school degree and commensurate successful human resource or law office experience preferred.
- ☐ Previous multifaceted technology training and experience.
- ☐ Preferred experience with research and design.

DUTIES AND RESPONSIBILITIES *(Bulleted examples are not all-inclusive)*

1. Supports the offices of the Superintendent of Schools and Director of Human Resources.

- ☐ Works in conjunction with the Superintendent of Schools and Director of Human Resources offices on special/confidential projects.
- ☐ Assumes exempt work overload assignments.
- ☐ Serves as a substitute for the Superintendent of Schools and Director of Human Resources assistants
- ☐ Serves as a resource to administration.
- ☐ Processes administrative correspondence, including parent/community concerns and building-level issues.

2. Provides support to the Board of Education.

- ☐ Researches and prepares confidential materials for the Board of Education.
- ☐ Proofreads Board of Education packets and confidential documents, including closed session information.

3. Responsible for working closely with administration during negotiation processes.

- ☐ Researches and compiles negotiation data for the District Bargaining Team.
- ☐ Prepares documents used during negotiation processes.
- ☐ Maintains negotiation files.
- ☐ Tracks the negotiation status.
- ☐ Processes contract revisions and prepares final document.

4. Accountable for issues relating to confidential matters.

- □ Manages the professional staff advancement process, including communicating with staff, maintaining appropriate documentation and recording for advancement on the pay scale.
- □ Analyzes requests for time off, communicates appropriate means to staff, and processes requests to final disposition.
- □ Reports any suspected improper absence requests or absences relating to staff.
- □ Maintains confidentiality of information, which includes:
 - □ personal and health information pertaining to staff;
 - □ information contained within personnel files;
 - □ private student and/or district family information; and
 - □ background check information.
- □ Exercises mature judgment relating to all confidential matters.

5. Other duties as assigned.

KNOWLEDGE SKILLS AND ABILITIES

1. Language Skills

- □ Strong communication skills with the ability to communicate clearly and concisely, both orally and in writing.
- □ Ability to construct and read correspondence and memos and to write and comprehend instructions.
- □ Effectively present information in one-on-one and small group situations.

2. Mathematical Skills

- □ Ability to add, subtract, multiply and divide in all units of measure using whole numbers, common fractions and decimals.

- □ Ability to compute rate, ratio and percent, and to construct and interpret bar graphs.
 - □ Calculate figures and amounts such as discounts, interest, commissions, proportions, percentages, area, circumference and volume
3. Reasoning Ability
- □ Ability to apply common sense understanding to carry out detailed written and oral instructions.
 - □ Ability to deal with problematic issues.
4. Related Skills
- □ Experience with personal computer usage and related software.
 - □ Ability to type/keyboard 55-75 words per minute.
 - □ Experienced in the areas of data entry, record keeping and filing.
5. Participate in training as needed.

OTHER SKILLS AND ABILITIES

- □ Possesses strong, established skills in flexibility, confidentiality and mature decision-making.
- □ Ability to exercise independent judgment.
- □ Enjoys working in a fast-paced environment.
- □ Ability to work in a friendly manner and to establish and maintain effective working relationships with co-workers, students, district staff and community.
- □ Ability to handle multiple projects simultaneously.
- □ Ability to maintain composure under stressful conditions.

- ☐ Maintains professional appearance at all times and is well-groomed in accordance with district standards.
- ☐ Follows district standards for attendance and punctuality.
- ☐ Ability to perform duties while working cooperatively with the staff and district in fulfilling the district's vision, mission, and guiding principles.
- ☐ Availability for short notice call-in situations.

EVALUATION

Performance of this position will be evaluated yearly by the Director of Human Resources in conjunction with the Superintendent of Schools.

As of the hearing in this proceeding, the District Board had not formally adopted the revised position description.

6. Hennessey is a full-time employee working 9.5 months per year who spends approximately 2.5 hours per day performing her duties as Sub Caller and the remaining 5.5 hours as Program Assistant.

7. As Substitute Caller, Hennessey calls in substitute teachers to replace regular teachers who are absent using a list of approximately 200 individuals who are eligible to work as substitute teachers for the District. Hennessey attends regional job fairs in order to advertise the District's needs for substitute teachers and recruit applicants who are interested in being employed as a District substitute teacher. She checks the credentials of substitute teacher applicants, including performing criminal background checks. If the applicant passes the credential/criminal background check, the individual is then added to the substitute teacher list Hennessey uses.

Hennessey sometimes receives informal feedback regarding the performance of substitute teachers but she does not evaluate them. She has occasionally refused to comply with a principal's request for a particular substitute, where the person requested was ineligible for such assignment for one reason or another. Hennessey assists in calculating the costs of the District's budget for substitute teachers, which approximates \$350,000 annually.

8. Hennessey began performing the duties of Program Assistant in January 2002, when her work location was moved to the District's Central Office, which also houses the

District Administrator and Director of Human Resources, as well as their administrative assistants, the District accountant, and several secretarial-clerical employees who are in the Association's bargaining unit.

As Program Assistant, Hennessey has developed a database to track teacher absences, which the District has used in collective bargaining with the KEA. Hennessey has also researched salary data from other area school districts for use in collective bargaining. The Director of Human Resources occasionally uses Hennessey as a sounding board for the development of bargaining proposals, but Hennessey has no specific role in that regard. She does not cost collective bargaining proposals. She and Van Deurzen (the administrative assistant to the Director of Human Resources) share responsibility for preparing documents related to the District's collective bargaining, some of which may reflect the employer's bargaining strategy and may not be available to the Association or the KEA. She has been assigned the task of proofreading minutes of the Board of Education, including closed session minutes, after they are prepared by one of the confidential administrative assistants.

Hennessey maintains records regarding teacher requests for personal business leave and leave without pay and the reasons for which they have been granted or denied. Director of Human Resources Weber decides whether or not to grant requests for such leave, but frequently consults with Hennessey about past practices. District Administrator Foster also expects Hennessey to bring to his attention any circumstances related to teacher absences that may suggest a possible violation of leave policies. On one occasion, Hennessey played a role in researching information that resulted in the District Administrator suspending a teacher for a leave violation. Hennessey has seen confidential correspondence between the District's outside legal counsel and the District Administrator relating to KEA bargaining/contract administration issues. She also assists Weber in maintaining employee personnel files. Hennessey sometimes fills in for Jensen (administrative assistant to the District Administrator) and Van Deurzen when they are absent.

9. Prior to January 2002, Jensen and Van Deurzen handled all clerical responsibilities for the District connected with collective bargaining and grievance processing, including proofreading minutes of the School Board meetings, both open and closed session.

10. As Substitute Caller/Program Assistant to the Superintendent and Director of Human Resources, Hennessey does not have sufficient access to and knowledge of confidential matters relating to labor relations to be a confidential employee.

11. As Substitute Caller/Program Assistant to the Superintendent and Director of Human Resources, Hennessey does not sufficiently participate in the formulation,

determination and implementation of District policy or have sufficient authority to commit District resources to be a managerial employee.

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

CONCLUSION OF LAW

1. The incumbent in the position of Substitute Caller/Program Assistant is not a confidential or managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee with the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The position of Substitute Caller/Program Assistant is included in the bargaining unit represented by the Kaukauna Area School District Secretarial-Clerical Association-WEAC.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

KAUKAUNA AREA SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING 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 term “confidential employee” is not expressly defined in the statutes, but our long-standing definition of a confidential employee, i.e., one having sufficient access to, knowledge of, or participation in confidential matters relating to labor relations, has received judicial endorsement. *MINERAL POINT UNIFIED SCHOOL DISTRICT v. WERC*, 251 Wis. 2d 325, 337-338 (CT. APP. 2002). For information to be confidential, it must: (a) deal with the employer’s strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. *DANE COUNTY, DEC. No. 22796-C (WERC, 9/88)*.

While a *de minimis* exposure to confidential labor relations matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, 1/ 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. 2/ 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, 3/ 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. 4/

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

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

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

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

Applying the foregoing definition and standards/benchmarks, in MOSINEE SCHOOL DISTRICT, DEC. NO. 20479-F (WERC, 5/02), the Commission considered the status of the Payroll Accounting/Human Resources Specialist, who was sometimes privy to potential proposals the employer was considering during labor negotiations; was responsible for assembling payroll information for the District's use in determining whether and how to fill a position; reported to her supervisor her analysis of employees working outside their regular schedules, and consulted with her supervisor on policies relating to leave issues. In concluding that the position was not confidential, we noted that the Commission had "historically found that a municipal employer's decision to use a clerical/administrative employee as a 'sounding board' is not sufficient to justify excluding an individual from a bargaining unit as a confidential employee," citing BROWN COUNTY, DEC. NO. 22379-A (WERC, 8/88), and CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84). We also held in MOSINEE that a role in monitoring timecards and leave usage did not warrant excluding an employee as confidential, even though the information could trigger a District investigation: "[T]his limited role in a process that may ultimately produce discipline is not sufficient to warrant exclusion of an individual as a confidential employee," citing MANITOWOC SCHOOLS, DEC. NO. 29771-C (WERC, 7/01).

Similarly, in SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 8/02), we rejected an employer's contention that an employee was confidential, where she reviewed eligibility for leaves and provided payroll information to the District for its use in developing bargaining proposals. In WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89), we included the position of office aide in the bargaining unit, although the incumbent's filing responsibilities gave him "access to if not actual knowledge of District files which contain confidential collective bargaining information," and his need for occasionally filling in for the District's confidential secretary meant he would "perform occasional confidential labor relations tasks." We found that the incumbent office aide spent "very limited" time performing confidential labor relations work, and that "the presence of other District employees in the District office, all of whom are presently excluded from the unit, appears to give the District sufficient flexibility to reassign the minimal confidential work (the aide) performs." We said we were "not unmindful such reassignment may cause a certain inconvenience in a small office," but concluded that "should such inconvenience arise, it does not seem to us to rise to the level of being unduly disruptive."

Lastly, we recently said the following in OCONTO FALLS PUBLIC SCHOOLS, DEC. No. 26815-B (WERC, 5/04):

As to the District's organizational structure argument, a determination of confidential status fundamentally involves the balancing of the right of the employer to conduct its confidential labor relations business through employees whose interests are aligned with management and the right of employees to be represented for the purposes of collective bargaining. MENOMONEE FALLS JT. SCHOOL DISTRICT No. 1, DEC. NO. 11669 (WERC, 7/73); CITY OF SEYMOUR, DEC. NO. 28112 (WERC, 7/94). When balancing these rights, we have historically limited confidential status to those employees the employer needs to conduct its labor relations business and denied such status to employees who the employer desires to have but does not need for those purposes. Thus, for instance, we have rejected attempts by employers to acquire more confidential employees than they need by spreading confidential work among various employees. MARSHFIELD JT. SCHOOL DISTRICT No. 1, DEC. NO. 14575-A (WERC, 7/76). Applying the foregoing to the District's argument here, we conclude that the District's confidential needs are met by the two existing confidential employees and that the District's desire for teamwork and interplay as part of a horizontal organizational structure does not warrant exclusion of additional employees.

Viewed in light of this precedent and the standards/benchmarks upon which it is based, we conclude that the position of Substitute Caller/Program Assistant does not meet the standard for confidential employee status. We begin by noting that many of Hennessey's duties that were described in the record as confidential do not meet the narrow, specialized definition of confidential labor relations information which the court endorsed in MINERAL POINT, SUPRA. That is, Hennessey's access to personnel files, her role in receiving and cataloguing requests for personal leave, her role in compiling absence "databases" and salary comparables from other school districts, her role in conducting reference and background checks on potential substitute teachers, her role in checking credits for advancing teachers on the salary schedule, and her role in calculating the potential costs of the substitute teacher program based upon absence rates do not give Hennessey information regarding the District's collective bargaining or grievance strategies that is not available to the Association and/or its bargaining unit members. Thus, this information is not confidential labor relations information. Similarly, consonant with our previous case law, we see the fact that Weber occasionally "bounces off" Hennessey potential decisions regarding personal leave to be similar to the "sounding board" role that is insufficient to exclude an employee as confidential. The same is true for those occasional circumstances where Hennessey alerts management to leave-related facts which management may ultimately use as the basis for disciplining an employee.

In contrast, Hennessey is exposed to confidential labor relations information when she performs her duties assembling collective bargaining documents that are not received by the Association, proofreading Board minutes of closed sessions where collective bargaining or grievance processing may have been discussed, and occasionally viewing bargaining-related correspondence from the District's lawyer. However, given the scope of her other non-confidential responsibilities, it is clear that these duties take little time. Further, it is undisputed that, prior to January 2002, this work was handled by one of the other two excluded clerical employees in the office, primarily Van Deurzen. While the District suggests that it was necessary to redistribute the work to Hennessey because the District had recently expanded its teacher work force by 75 individuals, we are unpersuaded. Adding 75 teachers could increase the amount of personnel file maintenance, payroll processing, back ground checks, and salary adjustments owing to acquiring additional credits, but, absent specific evidence, we cannot conclude that it would have an obvious and discernible effect on the amount of confidential collective bargaining-related work so as to require a redistribution of that work. Hence, we find that the other two excluded confidential employees can absorb the small amount of confidential work that has been performed by Hennessey since January 2002, without undue disruption to the District's operation.

Managerial Status

A "managerial" employee is specifically excluded from the definition of "municipal employee" found in Sec. 111.70(1)(i), Stats. However, as is true of confidential status, there is no statutory definition of a "managerial" employee and the term has been defined by the Commission through case law. With judicial approval, the Commission has defined a "managerial" employee by considering the extent to which the employee participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer's resources. *CITY OF MILWAUKEE V. WERC*, 71 WIS.2D 709 (1976); *VILLAGE OF WHITEFISH BAY*, 103 WIS.2D 443 (CT. APP. 1981); *EAU CLAIRE COUNTY V. WERC*, 122 WIS.2D 363 (CT. APP. 1984); *KEWAUNEE COUNTY V. WERC*, 141 WIS.2D 347 (CT. APP. 1987); *MANITOWOC COUNTY V. LOCAL 986A*, 170 WIS.2D 692 (CT. APP. 1992). To confer managerial status, the employee's policy role must be "at a relatively high level" *MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92)*, or the employee's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the municipal employer's operations. *VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88)*.

In arguing that Hennessey is managerial, the District focuses upon Hennessey's role in developing and maintaining the substitute teacher list, calling substitutes for teacher absences, and assisting the District in budgeting the costs of the substitute teacher program. While these are important responsibilities, we do not think the evidence in this case meets the relatively

demanding criteria for managerial exclusion. While Hennessey recruits substitutes and calls them to work in the morning, the record does not establish that she exercises independent policy discretion in establishing the District's criteria for hiring or placing substitute teachers. 5/ Similarly, while the District in its budgeting relies on Hennessey to compile her records of anticipated teacher absence rates in order to estimate the potential costs of the substitute teacher program, there is no evidence that Hennessey exercises the kind of policy or resource discretion in deciding how much the District can and will allocate to the program, as compared with its other financial needs, that might elevate her status to that of a District manager.

5/ To the extent the District relies on Hennessey's ability to veto a principal's request that a specific substitute be assigned to a school, such authority is relevant to potential supervisory status as opposed to managerial standing. In any event, such authority falls far short of establishing that Hennessey is a supervisor.

Accordingly, we conclude that Hennessey is not subject to exclusion as a managerial employee.

Given all of the foregoing, we direct that Hennessey/her position be included in the bargaining unit represented by the Association.

Dated at Madison, Wisconsin, this 12th day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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