

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
MILWAUKEE DISTRICT COUNCIL 48, :
AFSCME, AFL-CIO : Case 64
Involving Certain Employees of : No. 42413 ME-341
CITY OF GREENFIELD : Decision No. 26423
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Appearances:
Ms. Monica M. Murphy, Podell, Ugent & Cross, S.C., Attorneys at Law,
207 East Michigan Street, Milwaukee, WI 53202-4905, appearing on
behalf of the Union.
Mr. Robert W. Mulcahy, Mulcahy & Wherry, S.C., Attorneys at Law, 815 East
Mason Street, Suite 1600, Milwaukee, WI 53202-4080, appearing on
behalf of the City.

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

Milwaukee District Council 48, AFSCME, AFL-CIO, filed a petition on June 20, 1989, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit by including in that unit the position of Confidential Secretary - Fire Department. A hearing in the matter was held on November 30, 1989, before Examiner Karen J. Mawhinney, a member of the Commission's staff. Both parties filed briefs by February 6, 1990. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, AFL-CIO, referred to after this as the Union or AFSCME, Local 2, is a labor organization with its offices at 3427 West St. Paul Avenue, Milwaukee, WI 53208.
2. The City of Greenfield, referred to after this as the City, is a municipal employer with its offices at 7325 West Forest Home Avenue, Greenfield, WI 53220. The City is represented for the purposes of labor relations by the law firm of Mulcahy and Wherry.
3. The Union and the City are parties to a 1986-1988 collective bargaining agreement wherein the City recognizes AFSCME, Local 2, as the bargaining representative for all regular full-time, regular part-time and temporary clerical employees in the City Hall, Fire Department, Police Department, Municipal Court, and Health 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 employees.
4. The Union seeks, through this petition, to include within the bargaining unit described above the position of the Confidential Secretary - Fire Department. The City asserts that the position is confidential and therefore excluded from the bargaining unit. The incumbent of the position is Ann Switalski, who has held the position since October 9, 1989.
5. The parties agreed to the following factual stipulations:
 - (1) The City of Greenfield is the 17th or 18th largest City in the State of Wisconsin with a population of approximately 34,000. There are approximately 200 to 225 employees in the City.
 - (2) The City has an existing bargaining relationship with six separate bargaining units as follows: police sergeants and lieutenants; Local 2 or the clerical unit; DPW contract; Local 695 police contract; International Association of Fire Fighters Local 1963; and a residual bargaining unit represented by Teamsters Local 200, which is still negotiating for a first contract.
 - (3) The City has a total of four confidential secretaries, and one of those four is in dispute in this proceeding. The three other positions are confidential secretary for the Department of Public Works, the Deputy City Clerk and the Secretary to the Police Chief. The Deputy City Clerk is located in the City Hall on first floor. The confidential secretary to the

Director of Public Works is located in City Hall on the second floor. The Police Chief's confidential secretary is located in the separate police department building. The secretary to the fire department (Ann Switalski) is located in the Fire Department which is in a separate building.

6. The Police and Fire Departments are in separate buildings next door to each other, approximately 200 feet apart, and about one and three-fourths miles from City Hall, where two confidential employees are located.

7. Until about April of 1989, there was a position called Dispatcher/Secretary in the Fire Department. The position was included in the bargaining unit represented by AFSCME, Local 2. On September 11, 1989, the 911 emergency services program was put into effect in the City, with the result that the position of Dispatcher/Secretary was no longer required in the Fire Department.

While a shift officer performed dispatching work in the Fire Department at the time of the hearing into this matter, it was anticipated that by January 2, 1990, the Police Department would take over all dispatching duties and there would be no more dispatching duties done in the Fire Department. The incumbent Dispatcher/Secretary was offered the position of Confidential Secretary - Fire Department but declined and no longer works for the City. The following is the job description for the position of Dispatcher/Secretary:

FIRE DISPATCHER/SECRETARY

QUALIFICATIONS

Essential Knowledges and Abilities: Advanced knowledge of modern office practices and procedures and skill in their application; good knowledge of business English, spelling and composition; knowledge of the subject matter, terms, practices and routine of work of the position to be filled; ability to take notes from rapid dictation and to transcribe them rapidly and accurately on the typewriter; ability to type neatly, rapidly and correctly from clean copy; ability to set up and type complex tabular matter; special ability to meet and deal with people; ability to establish and maintain effective working relationships with staff members and public officials; skills in meeting difficult and complex office situations; good appearance; initiative; clear, impediment-free speech; resourcefulness and good judgment. Ability to type 50 wpm and to take shorthand at 80 wpm.

Desirable Training and Experience: Graduation from high school supplemented by a course in stenography and typing.

DUTIES

Under general supervision, to do exceptionally difficult and responsible office work involving a considerable degree of independent judgment and initiative; to take notes from dictation and transcribe them on the typewriter; to handle public inquiries, and to perform related work as required. Operate advanced radio console, telephone switchboard, and from time to time perform other related duties including typing, filing, and other clerical work as assigned.

SALARY & BENEFITS

Wages and benefits are determined by the current union labor contract in effect. Such benefits as Wisconsin Retirement Fund, health and life insurance, sick days, holidays, vacations, overtime pay and other fringe benefits generally appear in such contracts.

8. The following is the job description for the position in dispute:

CONFIDENTIAL SECRETARY - FIRE DEPARTMENT

QUALIFICATIONS

Essential Knowledges and Abilities: Advanced knowledge of modern office practices and procedures and skill in their application; good knowledge of business English, spelling and composition; knowledge of the subject matter, terms, practices and routine of work of the position to be filled; ability to take notes from rapid dictation and to transcribe them rapidly and accurately on the typewriter; ability to type neatly, rapidly and correctly from clean copy; ability to set up and type complex tabular matter; special ability to meet and deal with people; ability to establish and maintain effective working relationships with staff members and public officials; skills in meeting difficult and complex office situations; good appearance, initiative, clear impediment-free speech, resourcefulness and good judgment; ability to type 50 wpm and to take shorthand at 70 wpm; and ability to operate computer and work processor.

Desirable Training and Experience: Graduation from high school supplemented by a course in stenography and typing.

Duties: This confidential administrative secretary shall be responsible for the general administration of office operations necessary to conduct a business office, calling for the necessary individual judgment, initiative and specialized knowledge in carrying out the established procedures in applying the rules and regulations of the Fire Department.

Besides being a confidential administrative secretary for preparation of annual reports; monthly reports; labor negotiations (including preparation of data, proposals and responses for surveys); union grievances, typing/preparation of disciplinary matter; assisting with budget preparations; correspondence to the Mayor, Common Council and Police and Fire Commission; and preparation of confidential reports on medical reports as to confidential paramedic medical information, Section 164.81-83, Wis. Stats., this position is also responsible for the operation of the complete filing system within the office which includes Fire Department project files, an index card system and correspondence files.

This confidential administrative secretary acts as confidential administrative secretary for the Greenfield Police and Fire Commission, Greenfield Fire Chief, and Greenfield Assistant Fire Chief in all meetings and is responsible for the preparation and distribution of minutes and agendas.

This confidential administrative secretary is also responsible for preparation of other types of correspondence reports and legal documents as may be required.

SALARY & BENEFITS

Wages and benefits are determined by the current non-represented City Ordinance in effect. Such benefits as Wisconsin Retirement Fund, health and life insurance, sick days, holidays, vacations, overtime pay and other fringe benefits generally appear in City Ordinances.

9. The position of Confidential Secretary - Fire Chief was created because of the change to the 911 central dispatching system. Switalski has not performed any dispatching duties and will not perform any such duties. Switalski reports directly to the Fire Chief. At the time of the hearing, Robert Makurat was the Acting Fire Chief and Switalski reported to him. During

the seven weeks she has held the disputed position, Switalski typed: a written reprimand for Makurat; Makurat's responses to a grievance filed by the firefighters' union; a letter for Makurat to the Mulcahy and Wherry law firm regarding a potential grievance notifying Attorney Mulcahy that no grievance was filed; and a memorandum from Makurat to a member of the firefighters' union regarding a matter that had not yet become a grievance. The firefighters' union would have access to the final copies of the foregoing (except for the letter to Attorney Mulcahy) but not to any drafts of said letters.

10. The firefighters' union reached an agreement for a three year collective bargaining agreement before Switalski started working as Confidential Secretary - Fire Department. Switalski proofread the contract, corrected errors and checked the wage rates for accuracy. Makurat was involved in the develop-ment of City bargaining proposals for the three year contract and advised Mulcahy and Wherry of changes he wanted to see in the contract. Switalski's duties include the typing of potential bargaining proposals on behalf of the Fire Chief during future negotiations. Prior to Switalski's employment, all labor relations matters in the Fire Department were typed by personnel employed by Mulcahy and Wherry.

11. While personnel files for the Fire Department are presently in the Chief's desk, the City plans to move them into a filing cabinet which will have a lock. Switalski, Makurat and the Assistant Fire Chief will have access to that file. Another City employe, Kathy Kasza -- who is a bookkeeper and Union steward -- has access to all City employes' personnel files with permission of the City Treasurer. The Police and Fire Commission had held one meeting since Switalski was hired and she did not act as secretary to the Commission during said meeting. A clerk typist in the City Clerk's office, who is a bargaining unit member, currently transcribes those minutes. Makurat has informed the President of the Police and Fire Commission that part of Switalski's duties is to type the Commission minutes. Makurat anticipates that Switalski will be typing the Fire Department's budget in the future. Kasza sits at budget hearings, calculates the fringe benefit, pension and salary cost for each department's employes, and inserts those numbers into the budget.

12. Switalski answers non-emergency telephone calls. She types "run" reports -- monthly reports of a log of all fire runs, inspections, corrections violations, rescue runs and service calls. During the seven weeks she has held the disputed position, about 80 percent of Switalski's time has been spent answering telephones and typing the run reports. The other 20 percent of her time has been spent typing and proofreading matters for Makurat, with the majority of that 20 percent being spent proofreading the firefighters' labor contract.

13. Switalski does have sufficient access to, knowledge of and involvement in confidential matters relating to labor relations so as to render her a confidential employe.

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

CONCLUSION OF LAW

That the occupant of the position of Confidential Secretary - Fire Department is a confidential employe and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Confidential Secretary - Fire Department in the City of Greenfield is hereby excluded from the bargaining unit by the Union.

Given under our hands and seal at the City of
Madison, Wisconsin this 16th day of April,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(Footnote 1/ continued on page six)

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227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CITY OF GREENFIELD

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

BACKGROUND

The only issue in this dispute is whether the position of Confidential Secretary - Fire Department is held by a confidential employee. This position was created when the City started using the 911 emergency dispatching service and decided it no longer needed a Dispatcher/Secretary in the Fire Department.

The former Dispatcher/Secretary, who was a member of the bargaining unit, chose not to take the position of Confidential Secretary - Fire Department. The incumbent of the position in dispute, Ann Switalski, had been employed only seven weeks at the time of the hearing into this matter.

THE PARTIES' POSITIONS

The Union contends that Switalski's position is not confidential, as her only involvement in labor relations matters has been limited to typing matters to which the Union or employees have access. The only evidence of a duty performed by her that arguably falls within the confidential category is a letter to the City's labor attorney, which probably took five minutes to type.

The Union argues that since any confidential duties performed by Switalski are minimal at best, they could be handled by the Confidential Secretary to the Police Chief, who works next door to the Fire Department.

The Union notes that pursuant to City of Greenfield, Dec. No. 14529 (WERC, 1976), the Dispatcher/Secretary position was found to be appropriately part of the bargaining unit represented by AFSCME, Local 2. The only difference between that position and the one in dispute now is the absence of dispatching duties.

The City asserts that Switalski's position is confidential, as shown by the fact that in only seven weeks on the job, she has performed confidential labor relations duties such as preparing correspondence in a disciplinary matter, acting as liaison for discussions with Mulcahy and Wherry attorneys regarding potential labor disputes, proofreading and costing transactions involving a union contract, as well as other duties. It is expected that she will maintain all Fire Department personnel records, assist in budget preparation, and prepare minutes of the Police and Fire Commission meetings, including executive sessions which will include discussion of confidential matters.

The City further submits that there are only four confidential employees (including Switalski) for 200-225 employees, and there are six different unions and no other confidential secretary in the Fire Department. The Fire Chief is actively involved in all aspects of labor relations and the essence of confidentiality is measure by the relationship of the contested position to the employer. The City argues that Switalski's confidential duties are not de minimis where she spends 20 percent of her time on confidential labor relations matters, which is substantially more time than found sufficient by the Commission when another recent City employee's position was found confidential in City of Greenfield, Dec. No. 25646 (WERC, 1988).

DISCUSSION

It is well-settled that for an employee to be held confidential, such employee must have access to, knowledge of, or participation in confidential matters relating to labor relations. 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. 2/

While a de minimis exposure to confidential material is insufficient grounds for exclusion of an employee from a bargaining unit, 3/ 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. 4/ Thus, notwithstanding the actual amount of confidential work performed, but assuming good faith on the part of the employer, an employee may be found to be

2/ Dane County, Dec. No. 22976-C (WERC, 9/88); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

3/ Boulder Junction Joint School District, Dec. No. 24982 (WERC, 11/87).

4/ Cooperative Educational Service Agency No. 9, Dec. No. 23863-A (WERC, 12/86).

confidential where the person in question is the only one available to perform legitimate confidential work; 5/ similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, unless the confidential work can be assigned to another employe without undue disruption of the employer's organization. 6/

Here, the record demonstrates that the Fire Chief has significant labor relations responsibilities and that the City has decided to have the confidential clerical work generated by the Chief performed by the Confidential Secretary. 7/ Although at the time hearing was conducted, Switalski had only held her position for seven weeks, she had nonetheless already performed more than a de minimis amount of confidential work for the Chief and there is no evidence that Switalski would cease performing such work in the future. Lastly, even if the amount of confidential work were ultimately to drop to a de minimis level, we are satisfied that it would be unduly disruptive for the confidential work of the Fire Chief to be performed by the Police Chief's secretary who is located in a separate building 200 feet away.

Therefore, on the basis of the record before us, we conclude that the Confidential Secretary - Fire Department performs sufficient confidential labor relations work to render her a confidential employe. Accordingly, we exclude her position from the bargaining unit represented by the Union.

Dated at Madison, Wisconsin this 16th day of April, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

5/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85).

6/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).

7/ Previously such work was performed by Mulcahy and Wherry law firm staff.