

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
OCONTO FALLS PUBLIC SCHOOLS
Involving Certain Employees of
OCONTO FALLS PUBLIC SCHOOLS

Case 11
No. 45023
ME(u/c)-3086

Decision No. 26815-B

Appearances:

Robert W. Burns, Davis & Kuelthau, S.C., Attorneys at Law, 200 South Washington Street, Green Bay, Wisconsin, appearing on behalf of Oconto Falls Public Schools.

Rebecca Ferber Osborn, Legal Counsel, Wisconsin Education Association Council, 13805 West Burleigh Road, Brookfield, Wisconsin and **James A. Blank**, Executive Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, Wisconsin, appearing on behalf of Oconto Falls Educational Support Personnel Association.

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

Oconto Falls Public Schools filed a unit clarification petition on December 6, 2002, with the Wisconsin Employment Relations Commission seeking to exclude the Bookkeeper/Payroll Coordinator, Secretary to Assistant Superintendent/Director of Instruction and Bookkeeper/Financial Accounting Coordinator from an existing bargaining unit of District employees represented by the Oconto Falls Educational Support Personnel Association.

Hearing in the matter was held in Oconto Falls, Wisconsin, on March 25, 2003, before Examiner Lauri A. Millot, a member of the Commission's staff.

The District, contrary to the Association, argues that the Bookkeeper/Payroll Coordinator and Secretary to Assistant Superintendent/Director of Instruction are confidential employees and that the Bookkeeper/Financial Accounting Coordinator is a confidential and managerial employee.

The parties filed post hearing briefs by May 30, 2003, and the record was closed on June 6, 2003, when the parties advised that reply briefs would not be filed.

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

FINDINGS OF FACT

1. Oconto Falls Educational Support Personnel Association, hereinafter Association, is a labor organization with its offices located at 1136 North Military Avenue, Green Bay, Wisconsin.

2. Oconto Falls Public Schools, hereinafter District, is a municipal employer with its offices located at 200 Farm Road, Oconto Falls, Wisconsin. The District provides educational services to the residents of the School District of Oconto Falls.

3. The District provides educational services to 2000 students in five main school buildings. There are two bargaining units: the professional employee unit composed of approximately 160 employees; and the Association support staff employee unit comprised of approximately 100 employees.

4. The District office is the work location for seven employees: the Superintendent, the Assistant Superintendent, the Administrative Assistant (a confidential employee), the Accountant (a confidential employee), the Bookkeeper/Payroll Coordinator, the Bookkeeper/Financial Accounting Coordinator and the Secretary to Assistant Superintendent/Director of Instruction. The District office is a 50 x 36 foot building which contains two private offices for the Superintendent and Assistant Superintendent, file area storage space, restroom facilities, printer, fax machine and copier work area, and an open office area. The private offices each have two doors which allow for entrance and exit. The three employees who are the subject of this proceeding and the Accountant share the open office area. The work area of the fifth employee, the Administrative Assistant, is adjacent to the Assistant Superintendent's office.

The desks of the Bookkeeper/Payroll Coordinator and Secretary to the Assistant Superintendent face one another and are within an arm's length of each other. The desks of the District Accountant and Bookkeeper/Financial Accounting Coordinator face one another

and are similarly within an arm's length. The desks of the Bookkeeper/Payroll Coordinator and Secretary to the Assistant Superintendent are located between a wall on one side and walkway space of between 6 and 10 feet, which separates the desks of the Accountant and Bookkeeper/Financial Accounting Coordinator and the desks of the Bookkeeper/Payroll Coordinator and the Secretary to the Assistant Superintendent. There are no dividers, modular walls or other physical separations between the desks. Behind the Accountant and within an arm's length of the Bookkeeper/Payroll Coordinator is the entrance to the printer/copier/fax work area. Behind the Bookkeeper/Financial Accounting Coordinator is an occasional use desk.

5. District Superintendent David Polashek approaches individuals in the District office three to four times per day at their desk locations to request information and talk about issues. Due to the close proximity of the desks of the Bookkeeper/Payroll Coordinator, Secretary to the Assistant Superintendent, Bookkeeper/Financial Accounting Coordinator and Accountant, Polashek's comments are generally overheard by the other employees in the area. It is not Polashek's practice to hold these conversation in his private office.

Polashek has a printer on his desk which he does not utilize due to technological "glitches". As a result, he uses the printer in the shared work area also used by the Bookkeeper/Payroll Coordinator, Secretary to Assistant Superintendent and Bookkeeper/Financial Accounting Coordinator. All facsimiles sent to the District are received in the shared work area and distributed by whomever picks up the fax. The copier in the shared work area is the only one located in the District office and is therefore shared by all employees.

6. The incumbent in the position of Bookkeeper/Payroll Coordinator is Eileen Schindel. Schindel has been employed by the District for 30 years, the last 20 of which have been in her current position. Schindel works a 40-hour workweek, Monday through Friday, from 7:30 a.m. to 4:00 p.m. and earns \$12.93 per hour. Schindel's supervisor is Superintendent Polashek.

Schindel's job responsibilities as contained in her job description, revised approximately 10 days before hearing, are as follows:

. . .

1. Manage and control entire payroll/personnel for district employees.
2. Provide training and support at in-services and throughout the year for staff on payroll/personnel issues.

3. Prepare contracts for all teachers and support staff in district based on personnel records and information supplied by the Superintendent.
4. Work closely with Superintendent in preparation of QEO costing materials for bargaining units.
5. Strategize with the District Accountant and Superintendent as to negotiation options and the impact each would have on the budget.
6. Verify employee time cards along with extra pay for advisors, coaches, extra duty, summer pay, etc.
7. Process and write all payroll checks and initiate direct deposits electronically.
8. Process applications, cancellations or changes for Group Insurance.
9. Process all payments for remitting payroll tax deposits.
10. Process monthly TSA, insurance and garnishments.
11. Reconcile wages, FICA, Federal and State taxes for W-2.
12. Manage the following reports:

A. Quarterly 941 reports	D. New Hire report
B. Wisconsin Retirement reports	E. DWD Quarterly contribution report
C. DPI Fall Staff report	F. Workmen's Comp 1 st Injury reports
13. Manage personnel files for district staff on W-4, annuity, insurance, dues authorization and other changes related to payroll/personnel.
14. Work with the Superintendent to implement new language in OFEA and OFESPA master contracts, which may have financial impact.
15. Maintain sick leave, personnel & emergency records for all staff.
16. Maintain personnel files for all retired and terminated employees.
17. Assist with General Liability, Work. Comp and financial audits with auditors.

18. Computer system manager-responsible for back-ups, upgrades, conversions and any related maintenance problems with the payroll/financial network and computer.
19. In the absence of contract language, which may apply to a personnel issue, work with the Superintendent to make a decision on the issue. When the issue results in a grievance, work with the Superintendent to prepare background data to support that decision.
20. Participate in cross training in order to assist in district office as needed when the individual responsible for duty is absent.

. . .

7. Schindel's primary duty is preparation of the District payroll.

Schindel is responsible for processing sick leave and personal leave requests and paying out sick leave upon employee retirement. Schindel receives copies of letters of suspension for disciplined employees for the purpose of reducing the employee's paycheck consistent with the suspension.

Schindel assists new employees complete District, State and Federal employment forms. Schindel prepares contracts for new employees.

Schindel prepares the data that is utilized by Superintendent Polashek when he calculates the cost of collective bargaining proposals.

During the last support staff unit bargain, Polashek advised Schindel of the percentage increase that the District intended to offer the support staff unit.

Schindel provides Polashek with leave, benefits and payroll data that he uses when responding to grievances. Schindel has reviewed grievance responses prepared by Polashek for accuracy. Schindel occasionally responds to questions from Polashek as to the District's past practice on a grievance issue. Schindel places copies of the grievance and grievance response in individual employee personnel files.

Schindel has provided data to the District for use when the District decided whether to discipline an employee.

Schindel had not been involved in layoff discussions or layoff decision making. At Polashek's direction, Schindel has calculated the cost of laying off a specific employee.

Schindel prepares census data and related health insurance information for release to insurance carriers when the District is evaluating and considering changing its insurance provider. Schindel does not contact potential insurance carriers and does not negotiate with the representatives from potential insurance providers. During June or July of 2002, before the matter was discussed with either labor organizations representing District employees, Schindel was privy to a conversation regarding the District health insurance program and options presented by the current insurance provider that would reduce the cost and benefits of the program changes to the District's health insurance plan. At Polashek's request she reviewed and provided an analysis of four insurance plans provided by the District's current provider as to family coverage, single coverage and the costs associated with each when compared to the District's current plan.

Schindel regularly picks up facsimiles that arrive at the office and then determines how the facsimiles should be routed. The District occasionally receives confidential labor relations materials by facsimile.

In Schindel's absence, the Accountant is responsible for the running of payroll.

Schindel prepares the union seniority lists as a part of her District employment responsibilities.

Schindel was a member of the bargaining team for the Association.

8. Schindel does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee.

9. The incumbent in the position of Secretary to Assistant Superintendent/Director of Instruction is Erika Bauer. Bauer was hired by the District September 14, 1999, as a classroom instructional aide and transferred to her current position February 25, 2002. Bauer's typical work schedule is Monday through Friday from 5:30 a.m. to 2:00 p.m. Bauer's hourly wage rate is \$10.08 per hour. Bauer's immediate supervisor is Candie Lehto, Assistant Superintendent.

The job description for the Secretary to the Assistant Superintendent/Director of Instruction reads as follows:

TITLE:	Secretary to – Assistant Superintendent/Director of Instruction; Title I Director; Reading Specialist. District Census Manager – District Public Relations Coordinator; Substitute Staff Coordinator
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QUALIFICATIONS: High School graduate with clerical background. Advanced knowledge and skills of office and school equipment. Advanced skills with Microsoft Publisher or comparable Desktop Publishing, Microsoft Excel, word processing.

REPORTS TO: Assistant Superintendent and Superintendent of Schools

JOB GOAL: To carry out secretarial and clerical duties under the direction of the Assistant Superintendent/Director of Instruction. To assist with secretarial and clerical duties for Superintendent, principals, teachers, reading specialist, Title I Coordinator in execution of their related tasks. To manage and oversee substitute for teachers, aides, clerical and AM custodial staff. To manage district summer school program, and coordinate District School Community Calendar.

PERFORMANCE RESPONSIBILITIES

Secretary to Assistant Superintendent/Director of Instruction

1. Type, file and maintain up-to-date district reports, records district communiqués and purchase orders as requested by the Director of Instruction.
2. Act as receptionist for Director of Instruction, taking and relaying messages, phone calls, and memos from district personnel.
3. Clerical duties related to district wide surveys, student instructional programs, textbook adoptions, district wide test results.
4. Type and prepare materials for various professional development activities. Document individual professional development activities for teachers and support staff.
5. Maintain personnel records related to Continuous Learning Plans.
6. File staff and employee records including disciplinary reports and observations of district staff.

7. Type and develop visuals, including graphs, charts, and overhead transparencies for school board presentations, and district staff meetings.
8. Type, collate, bind and distribute all K-12 program instructional curriculums.
9. Confirm appointments within and outside district for the Director of Instruction.
10. Compile and update teacher records including class lists and daily schedules for Director of Instruction.
11. Manage secretarial, clerical, and record keeping duties for summer school.

District Newsletter Coordinator

1. Gather material, edit, and create newsletter in electronic file format. Mail district newsletter to all district residents.
2. Assist in developing and producing other reports, summaries, and public communications as requested by the Superintendent.

School Community Calendar Coordinator

1. Contact all previous sponsors of the School Community Calendar for possible participation in the new edition.
2. Collect and type all school and community date information to be included in the calendar for graphic artist.
3. Contact graphic artist and make decisions regarding layout of calendar.
4. Assist graphic artist with photographing of all artwork to be published in the school community calendar.
5. Manage parental consent forms for all artwork scheduled to be published in school community calendar.
6. Collect all fees from calendar sponsors and submit to district account's payable coordinator.
7. Monitor delinquent accounts and submit all follow-up letters for payment requests to calendar sponsors.

Title I Secretary

1. Research student achievement data and copy materials needed by Title I Coordinator.
2. Type budget requests, purchase orders, and project proposals.
3. File and maintain records of reports, correspondence, orders and forms related to Chapter I program components.

Reading Specialist Secretary

1. Type, disseminate and file copies of all communiqués and purchase orders in regard to district's elementary reading program.
2. Copy and compile booklets and in-service materials as needed by district reading specialist.
3. Type, copy, and file individual diagnostic testing reports, results, and recommendations.

District Census Manager

1. Prepare materials for annual district census.
2. Recruit, hire, in-service and train census takers.
3. Manage census taking operation, including assignment of responsibilities.
4. Continually update computer census information.
5. File state census reports. (Mandated).

Substitute Staff Coordinator

1. Receive all sub calls for teachers, aides, clerical staff and A.M. custodians.
2. Keep in contact with principals about substitute performance in order to avoid hiring of subs who have been identified as low performing.
3. Hire and schedule subs for any approved reason.
4. Maintain accurate records of all leave taken and reason for the leave.
5. Prepare any reports as requested by the superintendent or assistant superintendent.
6. Recruit and maintain a current list of certified substitute teachers.

10. As Assistant Superintendent Lehto's secretary, Bauer answers telephone calls, relays messages and performs all filing for Lehto. Bauer has access to Lehto's computer password. Bauer prioritizes the communications received by Lehto for her review. Bauer opens and reviews Lehto's mail in her absence.

Bauer views and distributes documents received via facsimile. Bauer shares a printer with the Assistant Superintendent. Bauer has picked up between 20 and 25 copied e-mail communications of Lehto regarding teacher non-renewal or layoff between March, 2002, and March, 2003.

Bauer does not type any documents relating to layoffs, non-renewals or grievances. Bauer has overheard comments regarding employee performance.

Bauer files copies of teacher evaluations and teacher improvement plans in teacher personnel files. She also files copies of administrative and school board meeting minutes.

Before the matter was discussed with either of the labor organizations representing District employees, Bauer was involved in a conversation initiated by Polashek in June or July of 2002 that addressed the District health insurance program and options presented by the current insurance provider that would reduce the cost and benefits of the program.

Bauer is the contact person for individuals interested in substitute employment with the District. Bauer coordinates potential substitute employees' District employment paperwork and Wisconsin Department of Public Instruction materials and conducts a background check on the candidate.

Bauer receives telephone messages from District employees who will be absent from work and contacts a replacement for the employee. Bauer receives feedback from building administrators and, based on the feedback, determines whether the substitute employee will be called for future assignments.

Bauer is responsible for backing up the Administrative Assistant during the Assistant's lunch hour as well as when the Administrative Assistant is ill or on vacation. The Administrative Assistant takes approximately four weeks vacation per year.

Bauer occasionally will turn on District Superintendent Polashek's computer in the morning prior to his arrival. Bauer does not input Polashek's password.

11. Bauer does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee.

12. The incumbent in the position of Bookkeeper/Financial Accounting Coordinator is Norene Vorpahl. Vorpahl has held this position for 22 years. Vorpahl's work hours are 8:00 a.m. to 4:30 p.m. at the hourly wage rate of \$28.00. Vorpahl's supervisor is Superintendent Polashek.

13. The job description for the Bookkeeper/Financial Accounting Coordinator in relevant part reads as follows:

. . .

JOB GOAL: Manage purchasing and accounts payable departments.
Manage district activity account fund.
Manage Federal E-rate program.
Coordinate financial network management.

PERFORMANCE RESPONSIBILITIES:

1. Work closely with superintendent and accountant to manage the district budget.
2. Strategize with the District Accountant and the Superintendent to prepare the budget and prioritize needs.
3. Provide training and professional development at workshops and throughout the year for new teachers on all aspects of district financial information.
4. Provide training and support for teachers, secretaries, and principals on appropriate accounts to use for ordering and making payment for items, according to the WUFAR accounting system.
5. Verify accuracy of information on district purchase orders; determine whether there is sufficient money in the individual accounts, then process after approval by the superintendent.
6. Make decisions on purchase orders for which there is not sufficient money in the budget.
7. Follow-up on incomplete purchase orders with employee and company.
8. Order materials and supplies for the district office.
9. Process all requests for immediate payment throughout the month, after approval by the Superintendent.

10. Determine each month which company payments are justified and will be submitted to the Board of Education for approval, write all checks and process.
11. Provide accurate data for end of the month reports and financial records.
12. Provide activity account financial printouts to advisors and principals.
13. Analyze individual financial accounts for accuracy.
14. Manage all student activity account deposits and checks along with appropriate supporting paperwork.
15. Handle all activity fund bookkeeping including banking and transfers.
16. Disburse interest to each account by percentage of balance of total accounts.
17. Close out each financial year on accounts payable and activity fund and run reports for future reference.
18. Provide auditors with information and reports on purchasing, accounts payable, and activity fund.
19. Manage the Federal E-RATE fund by filing applications, receipts of service, and submitting requests for refunds; also keeping files on multiple open years of the program.
20. Present seminars through CESA #8 to other district bookkeepers on E-RATE program.
21. Coordinate computer backups, upgrades, conversions and deal with any problems that arise with the financial network and computers.
22. Participate in cross training in order to assist in the district office as needed when the individual responsible for particular duties is absent.

. . .

14. Vorpahl does not have access to bargaining proposals. Vorpahl does not prepare nor has she been involved in costing collective bargaining proposals.

Before the matter was discussed with either of the labor organizations representing District employees, Vorpahl was involved in a conversation initiated by Polashek in June or July of 2002 that addressed the District health insurance program and options presented by the current insurance provider that would reduce the cost and benefits of the program.

Vorpahl has informed Polashek of instances in which employees may have engaged in inappropriate budgetary practices. Polashek then decides how to proceed. Vorpahl does not have the authority to recommend discipline.

Vorpahl has access to employee personnel files.

Vorpahl is the Association grievance representative for the District office work location.

15. Vorpahl does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee.

16. Vorpahl is responsible for the payment of all bills incurred by the District. Vorpahl processes purchase orders by checking to ensure that funds are available from the requested line item, obtaining Polashek's signature, entering the purchase order into the computer, generating a report that is submitted to the School Board for approval, and then initiating payment to creditors. In the event that funds are insufficient to cover the expense or if the purchase order is incomplete, Vorpahl returns the order to the appropriate school principal.

Vorpahl, Schindel and Accountant Vicky Fischer share the server and are the only three individuals with access to the District financial system.

Vorpahl prepares and processes banking deposits, transfers and payments for approximately 110 District activity funds. Vorpahl prepares checks for Polashek's signature from activity accounts.

Vorpahl is the District contact person and completes the paperwork for the Federal E-RATE telecommunications discount program. Polashek signs the E-RATE documents. Vorpahl monitors whether the District receives all discounts to which it was entitled.

Vorpahl, in conjunction with Schindel, conducts an orientation presentation to all new teachers that introduces the teachers to the District expenditure processes and to all financial forms and explains how to correctly complete the forms and how to obtain professional training.

Vorpahl and the Schindel are the contacts for the financial computer software program, Sage. Vorpahl communicates with the company once every three weeks.

Vorpahl assists the Accountant and Polashek in preparation of the annual budget for the District office consistent with the budgeting guidelines established by Polashek. Vorpahl does not have the authority to transfer monies from one line item to another line item. Vorpahl does not receive bids nor does she enter into contracts on behalf of the District. Vorpahl has transferred money and responded to inquiries from the District's bank in the absence of the District Accountant.

Vorpahl reviews school budget requests to determine whether they are in compliance with budgetary guidelines as established by Polashek.

17. Vorpahl does not sufficiently participate in the formulation, determination or implementation of management policy nor does she have sufficient authority to commit the District's resources to be a managerial employee.

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

CONCLUSIONS OF LAW

1. The Bookkeeper/Payroll Coordinator and Secretary to the Assistant Superintendent/Director of Instruction are not confidential employees within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. The Bookkeeper/Financial Accounting Coordinator is not a confidential employee or a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Bookkeeper/Payroll Coordinator, Secretary to the Assistant Superintendent/Director of Instruction and Bookkeeper/Financial Accounting Coordinator remain included in the Association bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of May,
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

Oconto School District

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

POSITIONS OF THE PARTIES

The District

The District asserts that the Bookkeeper/Payroll Coordinator, Secretary to the Assistant Superintendent/Director of Instruction and Bookkeeper/Financial Accounting Coordinator are not municipal employees and should be excluded from the bargaining unit.

As to Bookkeeper/Payroll Coordinator Schindel, her duties and responsibilities require that she be excluded from the bargaining unit as a confidential employee. Schindel works closely with the Superintendent in strategizing negotiation options and their financial impact, prepares the QEO costing and is relied upon by the Superintendent when the District considers changes in the salaries and benefits of employees. Schindel is responsible for managing the employee personnel files, maintains files for all retired and terminated employees and maintains leave records for all staff. Schindel implements new contract language and is involved in grievance responses. Consistent with the Commission decisions in WINTER SCHOOL DISTRICT, DEC. NO. 28464-B (WERC, 6/96), EAU CLAIRE SCHOOL DISTRICT, DEC. NO. 17124-B (WERC, 6/95) and CITY OF MAUSTON, DEC. NO. 21424-E (WERC, 11/93), she is a confidential employee.

Secretary to Assistant Superintendent Bauer must also be excluded as a confidential employee. Bauer has access to Assistant Superintendent Lehto's communications, computer records and as such is involved in and has knowledge of District personnel matters including hiring, non-renewals, discipline and teacher qualifications. Bauer files confidential records, administrative and Board meeting minutes, and teacher improvement plans. Bauer was knowledgeable about the District's solicitation and review of multiple proposals from the insurance provider as to rates and deductibles and gave her opinion as to the proposals before they became known to the Association or the union that represents professional employees.

Bauer also performs substitute Payroll Coordinator duties which require that she identify excessive use of leave by individual employees and determine which substitute employees will be called to work based on their performance. Bauer further serves as a back-up to the confidential Administrative Assistant during the lunch hour and four vacation weeks per year which affords her access to confidential information when answering telephone calls and handling outgoing mail. Given Bauer's responsibilities, Commission precedent provides Bauer should be deemed a confidential employee. DUNN COUNTY DEC. NO. 8170-A (WERC, 10/91), CITY OF MAUSTON, DEC. NO. 21424-E (WERC, 11/93).

As to Bookkeeper/Financial Accounting Coordinator Vorpahl, she is both a confidential and a managerial employee and thus should be excluded from the bargaining unit. Vorpahl provides guidance to new employees as to the financial processes of the District and thereafter manages, monitors, and acts as gatekeeper to police District funds. Vorpahl manages the E-RATE fund and coordinates the technological matters of the financial system. Vorpahl has complete responsibility over the District activity funds. She has access to files containing disciplinary actions taken by the District and billing from legal counsel as to confidential labor relations matters. WINTER SCHOOL DISTRICT, SUPRA, and CITY OF MAUSTON, SUPRA, in addition to CITY OF WAUWATOSA, DEC. NO. 15565 (WERC, 1/73) and AMERY SCHOOL DISTRICT, DEC. NO. 15794-D (WERC, 8/89), support exclusion of this position.

The organizational structure of the District requires exclusion of the three employees. The District School Board created an organizational structure which dictates that the individuals in the District office are expected to work as a team with overlapping concentration in numerous areas and cross training, thus making it difficult if not impossible to fulfill the expectations and objectives of the Board should the positions in question remain bargaining unit employees.

Additionally, the office layout and close proximity of employees within the District office warrant a finding of non-bargaining unit status. Space is limited in the District office and although attempts have been made to remodel, individual employees are able to hear co-workers' conversations and see documents on the co-workers' desks and computer screens. Because of the close proximity of the individuals and the fact that there is no practical way that barriers could be created to limit the exchange of information, it is appropriate for the Commission to find these employees to be confidential. The District accepts that the Commission has previously held that physical proximity of confidential and non-confidential employees is not the sole consideration in determining whether employees are confidential, but in this instance the physical layout, lack of space and impossibility of constructing barriers justify and require a finding that all three employees should be excluded from the bargaining unit. Further, since all District office employees have access to and share the facsimile machine, the copier machine and printers, it would be unduly burdensome and nearly impossible to restrict certain employees from these channels of information.

The Association

The Association argues that Bookkeeper/Payroll Coordinator, Secretary to the Assistant Superintendent/Director of Instruction and Bookkeeper/Financial Accounting Coordinator are not confidential employees and that the Bookkeeper/Financial Accounting Coordinator is also not a managerial employee.

With regard to the Bookkeeper/Payroll Coordinator Schindel, although her job description contains some duties that appear to be confidential in nature, her testimony showed

that in practice her duties are not confidential. Schindel provides Polashek the data to do the District costing; she neither does the costing nor is involved in doing the costing. To the extent that Schindel was exposed to confidential information, it was because Polashek has used her as a “sounding board” and the Commission has found that this does not justify confidential status. See MANITOWOC PUBLIC SCHOOL DISTRICT, DEC. NO. 29711-C (WERC, 7/01); SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 8/02); MOSINEE SCHOOL DISTRICT, DEC. NO. 20479-F (WERC, 8/02). As to her involvement in grievances and layoffs, she is providing data which is ultimately available to the employee unions and thus is not confidential.

As Secretary to the Assistant Superintendent, Bauer’s primary role is to provide clerical support to Assistant Superintendent Lehto who has no involvement in District negotiations or grievances. Bauer does not perform any typing regarding layoffs, grievances or non-renewals; the confidential Administrative Assistant performs this work. Although Bauer files documents such as reprimands and improvement plans, these are available to the employee unions and thus do not justify confidential status. See LAFAYETTE COUNTY, DEC. NO. 29333 (WERC, 3/98). Bauer has no involvement in bargaining proposals or costing and her clerical support to Lehto does not expose her to confidential information.

As to Bookkeeper/Financial Accounting Coordinator Vorpahl, she is not required to perform confidential tasks. Her primary responsibility is to pay District bills, process purchase orders, enter them into the computer and prepare a Board report. This neither exposes her to District bargaining strategy nor to confidential labor relations information. Vorpahl’s budget involvement is limited to assisting in the preparation of the District office budget, consistent with guidelines established by Polashek. She does not perform costing, develop bargaining proposals, has not ever been involved in grievances and has no knowledge of where the bargaining files are housed. Given that she has no involvement in confidential labor relations nor is she exposed to the District’s strategy, she is not confidential. See SHEBOYGAN AREA SCHOOL DISTRICT, SUPRA.

It is clear that the job duties of the positions do not require that they be exposed to confidential labor relations even though all three testified that they had some access to, knowledge of or participation in confidential labor relations due to overhearing conversations or picking up documents. This *de minimis* exposure is insufficient to justify confidential exclusion and could be rectified without undue disruption or hardship to the District. The fact that the District has chosen to use the office space in an imprudent manner that occasioned the exposure of these employees to confidential matters does not warrant exclusion. See WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A, (WERC, 8/89); MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76).

With specific regard to the alleged exposure to confidential information regarding possible changes in insurance benefits, the Commission should discount this evidence because insurance bids are subject to release to the Association and this occurred only once. Most

importantly, Polashek chose to use the employees as a “sounding board” in this instance which, as previously argued, does not warrant exclusion and further, if found persuasive, would allow an employer to manufacture confidential employees at will by having sensitive discussions with them.

There are two confidential employees in the District office who can adequately perform the confidential labor relations work. The District has functioned adequately for 14 years with two confidential employees. For the District to now claim that it needs three more is not warranted.

With regard to the District’s assertion that the Bookkeeper/Financial Accounting Coordinator is a managerial employee, Vorpahl has minimal involvement in District policy and cannot commit the District’s resources. Vorpahl’s work with purchase orders and the expenditures is dictated by Board policy and she has no authority to change the policies. She has no involvement in establishing budgeting guidelines, but rather ensures that budgets submitted by schools are consistent with policy. This is not policy participation at “a relatively high level of responsibility.” See VERNON COUNTY COURTHOUSE, DEC. NO. 13805-I (WERC, 2/00). Vorpahl cannot commit District resources without Polashek’s approval. She does not receive bids or enter into contracts on behalf of the District. She does not move monies from one line item to another and when presented with an opportunity to move money from one line item to another to replace an unsafe machine, she had to take the matter to Polashek. As such, she is not a managerial employee.

DISCUSSION

This case asks us to determine whether the Bookkeeper/Payroll Coordinator, Secretary to the Assistant Superintendent/Director of Instruction and Bookkeeper/Financial Coordinator must be excluded from the bargaining unit because they are confidential employees and, additionally, whether the Bookkeeper/Financial Coordinator must be so excluded because she is a managerial employee.

Confidential Status

The following legal standard set forth by the Commission in MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), and affirmed by the Court of Appeals in MINERAL POINT SCHOOL DISTRICT V. WERC, 251 Wis.2d 325, 337-338 (2002) is used when determining whether an individual is a confidential employee:

We have held that for an employee to be held confidential, the employee must have sufficient 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. . . .

While a *de minimis* exposure to confidential materials is generally insufficient grounds for exclusion of an employee from a bargaining unit, . . . 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. . . . 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, . . . 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 to the employer's organization. . . . (Citations omitted.)

Bookkeeper/Payroll Coordinator Schindel

Bookkeeper/Payroll Coordinator Schindel does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be excluded from the unit as a confidential employee.

As noted above, the critical area of inquiry when we determine an employee's confidential status is the degree of exposure to the employer's strategy in collective bargaining and contract administration. Thus, for instance, the individual who determines the cost of the wage and fringe benefit proposals the employer may make to the union is typically found to be a confidential employee because that person is privy in a very significant way to strategic information which, if known to the union, would compromise the employer's interests at the bargaining table. WINTER, SUPRA. However, the payroll individual who supplies the raw data to the person doing the costing typically is not found to be a confidential employee because his or her exposure to the employer's bargaining strategy through the supply of data is minimal. Further, such individual's overall payroll responsibilities (which may also include managing personnel files and leave records) generally do not provide any substantial support for exclusion as a confidential employee because said responsibilities do not expose them to the employer's strategic interests. OUTAGAMIE COUNTY, DEC. NO. 14062 (WERC, 10/75).

Consistent with the foregoing, Schindel's responsibility for District payroll and maintenance of leave records and personnel files does not expose her in a significant way to confidential labor relations information. Nor does providing raw payroll data to Superintendent Polashek for his use when calculating the cost of a qualified economic offer or of the wage and fringe benefit packages the District may make in collective bargaining. CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84).

The District's contentions that Schindel plays a strategic role prior to the commencement of bargaining and when implementing the contract present a closer question. The record reflects that prior to bargaining, Polashek typically seeks input from staff with contract administration responsibilities regarding changes in contract language that might be desirable from the District's perspective. In this context, he asks Schindel whether there are changes in contract language that she thinks would make it easier to perform her payroll/leave accounting responsibilities. Similarly, if one of the two unions were to propose a change in a leave benefit, Polashek would rely on Schindel to provide him with the cost and administrative impacts. While this interaction exposes Schindel to the District's collective bargaining strategy to some degree, we have not generally found that such inquiries expose an employer's bargaining strategy in a meaningful way for purposes of determining confidential status. Such inquiries are more akin to the raw data or informational role that would not be sufficient to exclude payroll personnel from employee status. SEE, E.G., CITY OF NEW BERLIN, DEC. NO. 13173-I (WERC, 4/04).

However, the record also indicates that, in preparation for bargaining, Polashek at least on one occasion directed Schindel to prepare a cost/benefit analysis of the different insurance plans offered by the District's current insurance carrier, WEA Trust. In some circumstances, such a task could indicate the kind of exposure to District bargaining strategy that would be confidential. On this record, however, we cannot conclude that it did, chiefly because there is no indication that Schindel was privy to whether or not the District actually intended to change plans, as opposed to seeking background information of a more general nature – indeed, the kind of information that one would expect the unions also to explore in the current health insurance environment. There is no indication that Schindel was privy to the factors that would affect the District's decision (i.e., the District's strategy) about whether to change plans and about the plan the District actually would choose to propose. On this record, therefore, Schindel's comparison report appears to be basic, general background information rather than confidential with respect to District bargaining strategy.

The District also points to Schindel's role in implementing new contract language and resolving contractual grievances that relate to payroll and leave issues. In this regard, Schindel serves as a resource to Polashek regarding implementation options, relevant past practices, and the cost of settling a grievance. 1/ In this role, Schindel is again to some degree exposed to the District's strategy, but again the exposure is more in the nature of providing background information the District will use in making its decisions, rather than to the criteria that will

affect the District's decision and how the District will weigh those criteria. Her exposure to collective bargaining or grievance "strategy" is incidental to her primary role of information provider. To the extent she becomes privy to broader strategic information (such as the overall wage and fringe benefit package the District may offer), it is a consequence of Polashek using her as a "sounding board" rather than of her regular job responsibilities. As the Association correctly argues, we have typically discounted "sounding board" information when assessing confidential status. MOSINEE SCHOOL DISTRICT, DEC. No. 20479-F (WERC, 8/02).

1/ The record contains some ambiguous testimony about Schindel's role in analyzing the costs of one or more layoffs. The record is unclear whether this testimony refers to hypothetical event(s). Even if it referred to an actual event, the record does not reveal whether Schindel's role gave her knowledge of the layoff before the union and/or employee, whether Schindel's costing information was used to compare and select among candidates for layoff, or whether Schindel played any other kind of substantive role in the District's layoff strategy or decision-making. Hence, it is not sufficient to exclude her from municipal employee status as a confidential employee.

The Commission cases cited by the District in support of Schindel's exclusion are all distinguishable from the facts of this case. In WINTER, SUPRA, a bookkeeper was found to be confidential because her role in costing bargaining proposals (including independently costing proposals for one unit) gave her direct and necessary knowledge of the wage and fringe benefit options the employer was considering when bargaining with its three employee units. In addition, the bookkeeper was privy to strategic information because she played a central role in preparation of the annual budget -- including discussion of the budgetary impact of potential changes in staffing (i.e. layoffs, transfers, reductions in hours, etc.). Here, Schindel's budget option role appears much more incidental and limited in its scope, and she does not generally have a significant role in the costing of wage and fringe benefit packages. While we again acknowledge that her work on the insurance options exposed her somewhat to the District's strategic interests, on balance her exposure is far less substantial than was the bookkeeper's in WINTER.

In EAU CLAIRE, SUPRA, in the context of a school district with 1200 employees, the Commission concluded that two employees should continue to be excluded from the bargaining unit as confidential employees because they provided direct clerical support for two administrators with significant labor relations responsibilities. Schindel has no confidential clerical responsibilities.

In CITY OF MAUSTON, SUPRA, a deputy treasurer was found to be a confidential employee because she costed bargaining proposals, strategized as to and assisted in the drafting of responses to grievances, and was privy to strategic information through her central role in

budget preparation. As noted above in our discussion of the WINTER case, Schindel generally does not have a significant role in the costing of wage and fringe benefit packages and her budget role is limited. In addition, her grievance/contract administration role is predominately one for providing information as opposed to strategizing.

Given all of the foregoing, Schindel shall continue to be included in the bargaining unit.

Secretary to the Assistant Superintendent Bauer

As the District argues and as we noted in our earlier discussion of WINTER, SUPRA, the Commission has concluded that confidential status can be established based on the clerical/administrative support provided to a management employee with significant labor relations responsibilities. DUNN COUNTY, DEC. NO. 8170-A (WERC, 10/92); CITY OF MAUSTON, SURA. Much of the District's contention that Bauer is a confidential employee rests on the premise that the Assistant Superintendent has significant labor relations responsibilities. We do not find that premise to be supported by the record. Rather, it is clear that Polashek performs virtually all of the significant labor relations responsibilities for the District including bargaining and administering labor agreements. While the Assistant Superintendent plays a role in the District's personnel decisions, it is Polashek who is the administrative decision-maker. Thus, the clerical and administrative support Bauer provides to the Assistant Superintendent does not provide a persuasive basis for excluding her as a confidential employee.

The District also points to Bauer's filing of various documents as support for confidential status. The record satisfies us that most of these documents do not contain confidential labor relations information because they involve the hiring process or a union/employee has also received a copy. To the extent the documents do contain such information, they either do not significantly expose Bauer to the District's strategic interests or could be filed by the confidential Administrative Secretary without undue disruption.

Bauer also compiles records/information of various kinds for District use. Even where this information (such as leave usage) is subsequently used for personnel matters by the District, this duty does not expose her to the District's strategy in such matters. She provides the data and others decide how to proceed. Further, while Bauer was aware of the insurance proposals which we have earlier discussed as to Schindel, her knowledge was acquired in a "sounding board" context and thus does not provide support for her exclusion as a confidential employee.

To the extent the District relies on Bauer's role in the assignment of substitute employees as support for confidential status, we find this reliance unpersuasive. Her awareness of/participation in a decision not to assign a substitute due to job performance issues does not give her access to confidential labor relations information, because the substitutes are not represented for the purposes of collective bargaining.

Lastly, the District points to Bauer's service as the back-up for the confidential Administrative Secretary during lunch hours and vacation time. We have consistently held that such back-up responsibilities do not provide sufficient exposure to confidential labor relations information to establish confidential status. WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89). This is particularly true in the context of the relatively limited amount of confidential labor relations work which two moderate sized units will generate.

Given all of the foregoing, Bauer is not a confidential employee and shall remain in the bargaining unit.

Bookkeeper/Financial Accounting Coordinator Vorpahl

The District's contentions that Vorpahl is a confidential employee focus on her role administering the District's budget. However, the record persuades us that, unlike the employees found confidential in WINTER, SUPRA and CITY OF MAUSTON, SUPRA, her budgetary role does not expose her to the District's confidential labor relations strategy. Vorpahl's responsibilities focus on ensuring that the budget is properly administered once the strategic decisions are made. While her administrative role occasionally calls on her to bring potential misconduct to the attention of her superiors, others make the decision as to how then to proceed.

As was true for Bauer, Vorpahl's "back-up" responsibilities (to the confidential Accountant and Schindel) also do not provide a persuasive basis for her exclusion as a confidential employee.

Given the foregoing, we conclude that Vorpahl is not a confidential employee.

Confidential Status Based on Organizational Structure and Office Space

Even if the Commission rejects confidential status for these three employees on an individual basis, the District argues that the organization structure of the District, which encompasses a non-vertical structure and encourages teamwork and "a great deal of interplay" between the staff of the District office, establishes the need for all employees in the District office to be excluded from the bargaining unit. It further asserts that the available space, technological resources, and close proximity between and among employees support this need.

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.

With regard to the District's proximity argument, we stated in VILLAGE OF ASHWAUBENON, DEC. NO. 23746-C (WERC, 8/02) that when the existing office structure, if used prudently, allows for the maintenance of confidentiality, then proximity concerns do not warrant excluding employees from the bargaining unit. In this instance, the District has alternate methods of communication at its disposal such as the telephone, e-mail, written memorandum, limited access printers, and holding of conversations in the private offices of the Superintendent and Assistant Superintendent with the door shut-all of which will protect the confidentiality of information exchanged between non-bargaining unit employees in the context of the District's existing office space.

Managerial Status

A "managerial" employee is specifically excluded from the definition of "municipal employee" found in Sec. 111.70(1)(i), Stats. However, because there is no statutory definition of a "managerial" employee, that 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); KEWAUNEE COUNTY V. WERC, 141 Wis.2d 347 (Ct. App. 1987); MANITOWOC COUNTY V. LOCAL 986A, 170 Wis.2d 692 (Ct. App. 1992); COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 Wis.2d 298 (Ct. App. 1994). 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)

Vorpahl's primary responsibilities lie with purchase orders and accounts payable. She acts as a gatekeeper to ensure that teachers and administrators expend funds consistent with Board created policies. When she notices that a purchase order is incomplete, she returns it to

the individual to fill in the missing data. Similarly, her work with the activities accounts is ministerial. She deposits funds, verifies that monies are sufficient to expend funds when requested and signed for by the account advisor and prepares checks for Polashek's signature.

There is no doubt that Vorpahl's responsibilities are of importance to the District, but they do not involve the "high level" policy role or "significantly affects" distribution of resources role necessary to be deemed a managerial employee. AMERY SCHOOL DISTRICT, SUPRA, cited by the District, is distinguishable in that the excluded employees in that case were determining course content, and whether a course or program would be offered, thus making them responsible for determining the nature of the programs available to students.

Given the foregoing, Vorpahl is not a managerial employee and shall remain in the bargaining unit.

Dated at Madison, Wisconsin, this 18th day of May, 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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