

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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NORTHWEST UNITED EDUCATORS :
  
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Involving Certain Employes of : Case 32
  
: No. 45270 ME-3101
  
BARRON SCHOOL DISTRICT : Decision No. 26987
  
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Appearances:

Mr. Michael J. Burke, Executive Director, Northwest United Educators,  
16 W. John Street, Rice Lake, Wisconsin 54868, appearing on behalf  
of the Petitioner.  
Weld, Riley, Prenn & Ricci, Attorneys, by Mr. Stephen Weld and Mr. William G. T

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On February 7, 1991, Northwest United Educators filed a petition with the Wisconsin Employment Relations Commission to conduct an election in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time non-professional employes of the Barron School District, including custodians, aides, cooks, and secretaries but excluding supervisory, confidential, and casual employes, to determine whether said employes desire to be represented for the purposes of collective bargaining by Northwest United Educators. A hearing on said petition was held on May 30, 1991 in Barron, Wisconsin before Examiner Christopher Honeyman, a member of the Commission's staff. A transcript of the hearing was prepared, and the parties completed the filing of post-hearing briefs by July 5, 1991. The Commission has considered the evidence and the arguments of the parties, and being fully advised in the premises makes and issues the following

FINDINGS OF FACT

1. Northwest United Educators, herein referred to as the Union, is a labor organization having its offices at 16 West John Street, Rice Lake, Wisconsin 54868.
2. Barron School District, herein referred to as the District, is a municipal employer having its offices at Barron High School, Barron, Wisconsin 54812.
3. The parties at the hearing conducted on May 30, 1991 agreed to the following appropriate bargaining unit:  
All regular full-time and regular part-time non-professional employes of the District, including custodians, aides, cooks and secretaries, but excluding supervisory, confidential and casual employes, managerial employes, and employes in an existing bargaining unit.

The parties also agreed inter alia to exclude the District Administrator's Secretary as a confidential employe and to exclude the Bookkeeper as a managerial employe.

4. The only position in dispute before the Commission is the Payroll Secretary, currently occupied by Janet Burhop, which the District argues should be excluded from the bargaining unit on the basis of confidential status.

5. Janet Burhop has been employed by the District in its main office since November, 1977. Initially, she was employed as a substitute Bookkeeper because of the Bookkeeper's leave of absence. Shortly thereafter, Burhop became Payroll Secretary and has occupied that position since. For some years her duties included being Secretary to the District's Business Manager, but in recent years the District has not employed a Business Manager. Since then Burhop has performed relatively few clerical duties. During collective bargaining with the two existing bargaining units of District employes, Burhop provides the Bookkeeper with data concerning salary and fringe benefit costs. The Bookkeeper then uses the data to cost various bargaining proposals. Burhop updates and files personnel records and payroll records, briefs new hires on benefits, pays health and dental premiums, reports teachers and other employes retirement amounts, pays premiums for LTE insurance, pays social security taxes, updates and files various payroll forms, and handles lunch and milk monies for all schools. When the District Administrator's Secretary or the Bookkeeper are absent, Burhop also performs certain work generally assigned to those employes. Burhop does not sit in on meetings of management, or board meetings, concerning bargaining proposals or grievance handling, and rarely types any documents resulting from such discussions.

6. Burhop does not have sufficient access to, knowledge of, or participation in confidential labor relations matters to render her a confidential employe.

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

#### CONCLUSIONS OF LAW

1. The bargaining unit set forth in Finding of Fact 3 above constitutes an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. The occupant of the position of Payroll Secretary, currently Janet Burhop, is not a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is included in the bargaining unit set forth in Finding of Fact 3.

3. That a question concerning representation exists as to the municipal employes in the collective bargaining unit set forth in Finding of Fact 3.

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

#### DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all full-time and regular part-time non-professional employes of Barron School District including custodians, aides, cooks and secretaries, but excluding supervisory, confidential, managerial and casual employes and employes in other bargaining units, who were employed by Barron School District on August 22, 1991, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes, who vote in the election, desire to be represented by Northwest

United Educators, for purposes of collective bargaining with Barron School District, concerning wages, hours and conditions of employment or desire not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of August, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

BARRON SCHOOL DISTRICT

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

The sole issue is the confidential status of the position of Payroll Secretary.

POSITION OF THE UNION:

The Union contends that Burhop has de minimis responsibilities which bring her into contact with any confidential material, because there is little evidence of any typing of confidential labor relations documents and no evidence of involvement in employe grievances, or strategy sessions, relating to collective bargaining or contract administration. The Union argues that the Commission decided in West Salem School District 1/ that an employer could not be allowed to exclude an inordinately large number of employes by spreading confidential work among such employes or giving them occasional tasks of a confidential nature, and that physical proximity of confidential and non-confidential employes was not sufficient to establish confidential status. The Union contends that here, two office employes have been excluded in a relatively small school district on the basis of their confidential and managerial status, and that the sole basis on which Burhop is argued by the District to be confidential is her participation in some pooling of work with the other two employes. The Union contends that the quantity of work involved is far from sufficient to justify Burhop's exclusion.

POSITION OF THE DISTRICT:

The District contends that the Payroll Secretary deals on a frequent basis with information related to the employer's strategy or position in collective bargaining, which information is not available to the bargaining representative. The District contends that this involves data used for purposes of costing and developing collective bargaining strategy, and that Burhop is primarily designated as handling payroll functions and thus assists the District's Administrator and school board in the budget planning process. The District also contends that Burhop's responsibilities as recordkeeper of personnel files require her to handle confidential information in those files.

The District further argues that in the absence of the District Administrator's Secretary, Burhop assumes typing duties normally assigned that position, including the typing of grievance replies and similar documents. The District cites a number of cases, including Cadott School District, 2/ in which the position of central office secretary and bookkeeper was held to be confidential. The District contends that the Cadott position was quite similar to Burhop's position here. The District contends that Burhop's confidential functions are not de minimis because five to ten percent of her time is involved in preparing costing data for negotiating purposes, and because her remaining job responsibilities all fall within the confidential category.

DISCUSSION:

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1/ Decision No. 22514-A, (WERC, 8/89).

2/ Decision No. 22880, (WERC, 9/85).

It is well settled that for an employe to be considered confidential, the employe 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. 3/

The payroll and filing functions associated with a Payroll Clerk are not confidential in the labor relations sense. Such responsibilities do not give Burhop access to strategic information or to information which is unavailable to employes or their bargaining representatives. Furthermore, the data Burhop prepares for the Bookkeeper's use during collective bargaining is available to the Union upon request, and does not expose Burhop to District bargaining strategy. Meanwhile, the fact that Burhop sometimes performs work more commonly considered confidential in a labor relations sense is less significant than in the Village of Saukville case cited below, because here this de minimis quantum of work is performed as part of the occasional pooling of office work or when she substitutes for the District Administrator's Secretary, a confidential employe, or the Bookkeeper. In Village of Saukville, a clerical employe doing minor quantities of confidential labor relations work was deemed confidential because that employe was the only one available to perform confidential work. Further, as noted in West Salem, supra, Burhop's physical proximity to other employes who perform significant confidential work does provide a valid basis to exclude her.

The Cadott case cited by the District involved facts similar to those herein, except that in Cadott the confidential work performed was more substantial. Here, Burhop does not have any significant involvement with the District's handling of grievances, development of bargaining positions/strategy, or typing minutes of District strategy sessions.

Lastly, we are satisfied that the de minimis amount of confidential work performed by Burhop can be reassigned to the two other office employes who have been excluded without undue disruption to the District's operation.

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3/ City of Greenfield, Dec. No. 26423, (WERC, 4/90); Village of Saukville, Dec. No. 26170 (WERC, 9/90).

Given the foregoing, we do not find Burhop to be a confidential employe.

Dated at Madison, Wisconsin this 22nd day of August, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner