

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ELCHO EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION

Involving Certain Employees of

ELCHO SCHOOL DISTRICT

Case 21

No. 54433 ME-851

Decision No. 27640-C

Appearances:

Ms. Dee Simmons, Director, Northern Tier UniServ-East, 200A South Lake Avenue,
P.O. Box 9, Crandon, Wisconsin 54520-0009, appearing on behalf of the
Association.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Mr. Ronald J. Rutlin, P.O.
Box 8050, Wausau, Wisconsin 54401-8050, appearing on behalf of the District.

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

On September 12, 1996, the Elcho Educational Support Personnel Association filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of Elcho School District employees by the inclusion therein of the "District Bookkeeper". The District opposed the petition on the grounds that the position was confidential and/or managerial. Hearing in the matter was held before Examiner Stuart Levitan, a member of the Commission's staff, on October 21, 1996, in Elcho, Wisconsin. A transcript of the hearing was prepared by November 15, 1996. The parties filed written arguments on January 27, 1997. The Commission, being fully advised in the premises, hereby issues the following

FINDINGS OF FACT

1. Elcho Educational Support Personnel Association, herein the Association, is a labor organization with offices at Box 9, Crandon, Wisconsin.

2. The Elcho School District, herein the District, is a municipal employer with offices at Box 800, Elcho, Wisconsin. The District operates a K-12 school system in one building, employing approximately 40 teachers represented by the Elcho Professional Education

No. 27640-C

Association, approximately seventeen support staff represented by the Elcho Educational Support Personnel Association and four unrepresented employees: the District Administrator, the K-12 Principal, the Executive Secretary and the Financial Assistant. The Administrator, Secretary and Financial Assistant occupy private offices within the same office area, with the Principal's Office located approximately 40 feet away.

3. On June 3, 1993, employees in a voting group defined as "all regular full-time and regular part-time employees of the Elcho School District, excluding all professional, supervisory, confidential and managerial employees", voted 14-3 in favor of representation for the purposes of collective bargaining by the Association. Among those voting, without challenge, was Betty Pizl, then employed as the District Financial Assistant, with the following job description:

JOB DESCRIPTION
ELCHO SCHOOL DISTRICT

Direct Supervisor: Elcho School District Administrator

Position Title: District Financial Assistant

This position is an integral part of the district administrative team consisting of the following personnel:

District Administrator
School Principal
District Financial Assistant
District Secretary

Position Location:

The vast majority of position responsibilities requires physical presence within the administrative office complex. Staff communication shall be accomplished by use of the intercom or written correspondence placed in staff mailboxes.

Qualifications Preferred:

- * College degree or VTAE (Associate degree or diploma) in school business management, business administration, accounting, bookkeeping, or office management.
- * Experience as a school business manager, accountant, bookkeeper, or office manager.

- * A working knowledge of bookkeeping, recordkeeping, and general office procedures.
- * Must be proficient in the use of the typewriter, computer, calculator and other office machines.
- * The ability to communicate effectively; work with others; organize and maintain appropriate records that meet all district, state and federal requirements; requires confidentiality in all areas.

General Responsibilities:

- * Shall be responsible for maintaining all financial records of the school district.
- * Shall be responsible for maintaining personnel employment records related to payroll, certification, and any other conditions or provisions of employment outlined by policy or master contract.

Specific Responsibilities:

- * Shall be responsible for preparing and keeping an accurate file on all purchase orders for the School District of Elcho.
- * Shall be responsible for all payroll transactions and keep adequate records of said transactions.
- * Shall be responsible for keeping adequate records on all accounts receivable and payable and prepare and submit vouchers prior to each regularly scheduled board meeting.
- * Shall be responsible for processing all vouchers approved for payment.
- * Shall be responsible for maintaining a current inventory of all school district property.
- * Shall provide input to the District Administrator relative to all business matters in the interest of improving the system

and general operation of the business office.

- * Shall be responsible for maintaining individual budget records for each teacher and department and advise the administrator on the status of each.
- * Shall be responsible for preparing monthly receipt and expenditure reports (status reports) and distributing them to the School Board at least five days prior to each regular board meeting.
- * Shall be responsible for maintaining personnel files and keeping comprehensive employee work records.
- * Shall be responsible for processing all Chapter One, EEN, block grant, Driver Ed., Food Service, and any other program or project financial claim forms.
- * Shall assist the District Administrator with preparation of the annual budget.
- * Shall prepare the annual report and fall budget report.
- * Shall upon request assist the District Administrator with any other program related tasks.

4. On June 23, 1993, the Wisconsin Employment Relations Commission certified the Association as the exclusive representative for collective bargaining of a unit consisting of "all regular full-time and regular part-time employees of the Elcho School District, excluding all professional, supervisory, confidential and managerial employees...."

5. On July 16, 1993, the District filed with the Wisconsin Employment Relations Commission a petition to clarify the bargaining unit by excluding the position of District Financial Assistant, on the grounds that, "this position is an integral part of the District Administrative Team". On July 26, 1993, the Association informed Douglas Knudson, a member of the Commission staff, that it agreed to the exclusion of the position. On July 30, 1993, the Commission therefore dismissed the District's petition.

6. Pizl was intimately involved in the financial aspects of collective bargaining, including performing costing of various proposals for the District, generating economic forecasts and budget projections, and developing other financial data both directly for the District bargaining team and for outside consultants. During a period of fiscal hardship for the District, Pizl made

recommendations to the Administrator and School Board about teacher layoffs and other areas of budget reductions. Pizl was aware of internal Board information and strategies, including bargaining proposals considered but not necessarily made pertaining to both bargaining units and the Board's "bottom line" for settlement.

7. Following Pizl's decision to retire, the District, on September 28, 1995 advertised for the position of District Financial Assistant (Bookkeeper). The advertisement stated that the position qualifications included college or VTAE degree in school business management, accounting or related field, that the District preferred experience as a school business manager/bookkeeper, and that salary would be commensurate with education/experience. In November, 1995, the District hired Andrea Guth, who at the time was a member of the bargaining unit as the K-12 building secretary. Guth's job description at the time of her hire was, in all material and substantive aspects, identical to that under which Pizl operated. Since becoming Financial Assistant, Guth has not been involved in a complete round of negotiations for either unit. The District expects that the Financial Assistant would prepare costings and other negotiation-related data for both units, and would be aware of the amount of money the Board had allocated for wages and benefits.

8. The District is a member of the Wisconsin Association of School Boards (WASB), which provides assistance and representation in collective bargaining. January 25, 1996, Greg Oltmanns, Membership Consultant for the WASB, sent to Sharon Gallagher of the Commission staff a copy of the District's proposal for a 1995-1997 collective bargaining agreement with the Elcho Teachers Association, including a copy of the costing of the District's minimum qualified economic offer (QEO). The parties being unsuccessful in reaching a voluntary agreement at the mediation stage, on February 27, 1996, Oltmanns, on behalf of the District, filed with the Commission a petition to initiate interest arbitration and a preliminary final offer which asserted that the District had made a qualified economic offer. On April 22, 1996, Gallagher wrote to Dee Simmons, the Executive Director of the Northern Tier Uniserv representing the Elcho Professional Educational Association, and Mike McCarthy, Membership Consultant for the WASB, confirming her understanding that McCarthy would promptly send Simmons the salary schedules to be used by the District in imposing the minimum QEO and a listing of what each employee could expect to receive thereunder; and that, the parties being at deadlock and having no non-economic issues they sought to arbitrate, the District could proceed to implement its minimum QEO "as soon as Mr. McCarthy provides Ms. Simmons with the salary schedule to be used under the QEO and the list of employee pay rates...." On June 18, 1996, McCarthy sent to Elcho District Administrator Gary Twining an updated costing of the minimum QEO and an employee scattergram, as prepared by the WASB. Guth was not privy to District strategy for this negotiation, but did provide raw financial data and did review McCarthy's costings and the QEO.

9. In the late fall or early winter of 1994, when Guth was K-12 building secretary and in the support staff unit, she performed some support staff unit costing for the District at the request of the District Administrator. The parties ratified that collective bargaining agreement on July 19,

1994. Guth performed similar duties during the negotiations between the District and the support staff unit in the late winter of 1995, after she had assumed her current position. The parties reached a tentative agreement on March 13, 1996, for the period July, 1995 to June, 1997. At the time of this hearing, the parties had not begun negotiations for a successor agreement.

10. The incumbent Executive Secretary, Susan D. Schuster, is responsible for maintaining all non-financial records of the District, including correspondence relating to confidential labor relations matters. Neither by training nor job description is she qualified to assume, or responsible for assuming, the budgetary or other financial duties of the Financial Assistant. Guth and Schuster relieve each other on breaks. Guth has operative access to Schuster's computer including correspondence relating to confidential labor relations matters thereon, but Schuster cannot access the financial data or programs on Guth's computer. Both Guth and Schuster have complete access to employee personnel files.

11. The Financial Assistant, Elcho School District, has sufficient access to and knowledge of confidential matters relating to labor relations to be deemed a confidential employee.

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

CONCLUSION OF LAW

The Financial Assistant, Elcho School District, is a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee 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 hereby makes and issues the following

ORDER 1/

The Financial Assistant shall continue to be excluded from the bargaining unit set forth in Finding of Fact 4.

Given under our hands and seal at the City of Madison, Wisconsin,
this 25th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

(Footnote 1/ appears on the next page.)

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- 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.

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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

(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.

ELCHO SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

In support of its petition, the Association asserts and avers as follows:

The subject position is clearly not managerial. The District Administrator makes all decisions on the budget, subject to the ultimate authority of the School Board; the Financial Assistant purely provides back-up data and resources rather than making any independent decisions. The Financial Assistant has no authority to commit the employer's resources, and does not participate in any meaningful way in the formulation, determination and implementation of management policy. Accordingly, the position is not managerial. 2/

Nor is the position confidential, in that the incumbent neither participates in strategy meetings relating to bargaining with District employe unions, nor sits at the bargaining table, nor has the power to make budgetary or bargaining decisions. Further, the budget materials that the incumbent does have access to are all public records. Nor does the incumbent prepare or review any correspondence relating to discipline or other confidential matters. The incumbent's input in the bargaining process is limited. The Commission has already ruled that a de minimis exposure to confidential materials is generally insufficient grounds for excluding an employe from representation.

The Financial Assistant is not made confidential by the proximity of her computer and office with that of the District's Confidential Secretary. It is not uncommon for union and non-union employees to share the same office, and employees frequently have the ability to run a co-worker's computer. If, as the District claims, networking of computers is sufficient grounds for determining an employe to be

2/ In response to the Association's petition, and at hearing, the District contended the position was also managerial. It did not renew this argument in its written brief, and is thus deemed to have yielded on that point.

confidential, then a building which is networked would have all employees doing confidential work. There was no demonstration by the employer that any of the information that the incumbent handles, inputs or accesses off the computer is unavailable to bargaining representatives under the Open Meeting Law.

The Commission has already ruled that it is the knowledge of management proposals, not access to raw payroll data, which makes an employee confidential. This position has never done any costing of bargaining proposals; did not participate in strategy sessions; has no access to material not already available to the union; and has, and always will, only input and access straight data for budget preparation and costing without any knowledge of the strategy or the reasons for such a proposals.

Accordingly, the Commission should grant the petition and accrete the position of Financial Assistant to the bargaining unit.

In support of its position that the petition should be dismissed, the District asserts and avers as follows:

The Association's petition is barred by the parties' prior agreement to exclude the district financial assistant from the bargaining unit. It is well-established that the Commission will not authorize the expansion of an existing unit to include positions the parties mutually agreed to exclude from the unit, as was the case here. The position existed when the Association was first certified; the parties voluntarily agreed to its exclusion; the District opposes the expansion; there is no evidence the initial exclusion was based upon statutory grounds rather than the parties' agreement; the initial agreement to exclude was not repugnant to the Municipal Employment Relations Act, and the Association has failed to demonstrate any intervening event materially affecting the subject position or its status. The Commission's criteria for dismissal of such petitions being present, the Commission should dismiss this petition.

The District Financial Assistant should not be included in the bargaining unit because the position is confidential. The position has not only been heavily involved in the presentation of District proposals to the Association, but also had knowledge of proposals which the employer considered but did not present. The previous

incumbent also knew the District's "bottom line" in negotiations.

While the current incumbent has not been involved in a complete round of negotiations, she has done some costing for the District and the District intends to use her in upcoming negotiations. The Commission has previously found such duties to be sufficient to exclude a position from the unit.

Preparation in the formulation of the District's strategy is not a requirement for confidential status; what matters is access to and knowledge of confidential information. The incumbent is clearly exposed to confidential matters, and her exposure cannot be eliminated without severe disruption of the District's operations. In the four-member administrative team, she is the only one available to perform confidential labor relations work related to budgeting and costing. The Administrator should not be required to develop the computer skills nor be expected to perform the duties of a financial assistant.

Because the Financial Assistant is involved in confidential personnel and labor relations matters that cannot be assigned to other personnel without disrupting the District's organization, and because the parties voluntarily agreed to its initial exclusion with no intervening material changes in the position, the Association's petition should be dismissed and the position continued outside the bargaining unit.

DISCUSSION

Before considering the positions of the parties on their merits, we must first address the District's argument that the Association's petition should be dismissed out of hand for violating the concept of "a deal is a deal". We have considered the District's argument, and reject it.

In a series of cases, we have stated that we will not modify a voluntarily agreed-upon unit where the parties have agreed to include or exclude certain positions from the bargaining unit, unless:

1. The positions in dispute did not exist at the time of the agreement; or
2. The positions in dispute were voluntarily included or excluded from the unit because the parties agreed that the positions were or were not supervisory, confidential etc.; or

3. The positions in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act. 3/

Here, the District fails to satisfy criterion number two, for it is clear from the record that the position was voluntarily removed from the unit because the parties agreed it was confidential. The District's July, 1993 unit clarification petition referred to the position being "an integral part of the District Administrative Team". While the Association's response was verbal and thus not memorialized comprehensively, it is apparent that the District asserted, and the Association acquiesced, that the position was confidential.

We turn now to consider the merits of the parties' arguments on the status -- municipal employe or confidential employe -- of the subject position.

It is well-settled that for an employe to be held confidential, such 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. 4/

While a de minimis exposure to confidential matters is generally insufficient grounds for exclusion of an employe from a bargaining unit, 5/ we have also sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management. 6/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 7/ and,

3/ City of Sheboygan, Dec. No. 7378-A (WERC, 5/89); Manitowoc County, Dec. No. 7116-C (WERC, 11/91); Forest County (Sheriff's Department), Dec. No. 27552 (WERC, 2/93). See, generally, Milwaukee Board of School Directors, Dec. No. 16405-C (WERC, 1/76), and City of Cudahy, Dec. No. 12897 (WERC, 9/74).

4/ Dane County, Dec. No. 22796-C (WERC, 9/88)

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

6/ CESA Agency No. 9, Dec. No. 23863-A (WERC, 12/86)

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

similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employee without undue disruption of the employer's organization. 8/

The Commission has held that, "the physical proximity of confidential and non-confidential employees or the effect of a finding of a confidential status or a non-confidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employees are confidential employees." Marshfield Joint School District No. 1, Dec. No. 14575-A (WERC, 7/76), cited in West Salem School District, Dec. No. 22514-A (WERC, 8/89).

In evaluating the facts of this case against the standards cited above, it is useful to recall previous Commission cases involving other financial or bookkeeper positions especially in the setting of a school administrative office.

In Shawano County (Maple Lane Health Care Center), Dec. No. 7197-D (WERC, 8/94), we granted a union petition to accrete into a bargaining unit the position of Bookkeeper-Accounting Clerk/Payroll, over the employer's objection that the position was confidential. The incumbent's duties included recording employee leave balances and insurance premium deductions, and her awareness of past practices relating to fringe benefit eligibility had led the County to twice call her as a witness in grievance arbitrations brought by the Union. The incumbent had neither attended any bargaining sessions nor costed bargaining proposals, duties handled by the Finance Department Chief.

In rejecting the County's arguments, we held that the incumbent's involvement with benefit recording did not provide her with access to confidential labor relations information because the past practices which affected benefit eligibility were either already common knowledge due to grievance arbitration proceedings or were matters as to which the union/employee was entitled to be aware. We also rejected the claim of confidentiality based on the incumbent's arbitration testimony, concluding that a cursory review with the employer's attorney of the expected questions did not constitute exposure to confidential labor relations information. As to costing, we found the record established that the incumbent provided management with accurate payroll information which management in turn used to calculate the cost of proposals, but that this information was not confidential. We said that the Union was entitled to the same payroll information and that the information itself was of no strategic value, and that it was knowledge of the proposals management is contemplating which is confidential, not the raw payroll data.

In School District of Webster, Dec. No. 22399-A (WERC, 11/92), we removed from the bargaining unit the position of Administrative Secretary and kept excluded from the unit the

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

position of Bookkeeper. We found that the Secretary typed confidential material, except that which the District Administrator typed; typed minutes of executive sessions of the School Board held to discuss Board strategies for bargaining, discipline and grievances; and, due to the close physical arrangements of the office, became privy to discussions of confidential matters. We found that the Bookkeeper, the District's sole financial affairs staff, had costed various Board packages, not all of which were ultimately offered to the labor organizations. We noted the District employed outside legal counsel for labor matters.

We held that the Bookkeeper, through her role in budget preparation and costing, had access to and knowledge of information dealing with the employer's strategy in collective bargaining, which information was not available to the Union. We added:

Although the amount of time (the bookkeeper) spends performing confidential work is de minimis, she is the only employee aside from the District Administrator who can perform the work. Her inclusion in the unit would constitute undue disruption of the District's organization.

In Oregon School District, Dec. No. 28110-C (WERC, 4/96), we denied the employer's petition to remove from a secretarial bargaining unit a Payroll Specialist whose duties included processing the payroll, reviewing time sheets, and setting up individual employment contracts. The employer presented evidence that District managers at times refrained from querying the incumbent because a matter dealt with negotiation strategies, and that the District planned for the future use of the incumbent to provide payroll information in preparation for budget and negotiations. Noting that there were other employees in the Finance Department available to provide this data, we said the current and projected workload of confidential matters was de minimis, and that we were "not persuaded that it will unduly disrupt the District's operations to have other District employees continue to perform this work."

In Winter School District, Dec. No. 28464-B (WERC, 6/96), we dismissed a Northwest United Educators petition to include in a bargaining unit the position of Bookkeeper. We found that the incumbent, the only employee with access to the District's computerized financial data, had been involved in costing package proposals the employer was considering offering to its three represented groups, such that she was aware of the specific range of salary offers the employer was considering. The incumbent also had direct communications with the outside counsel which assisted the employer in costing and preparing packages, and had close and frequent discussions with the District Administrator on the budgetary impacts of various options concerning possible staffing changes through such actions as layoffs, transfer or reduced hours. We held that the "costing of alternative economic proposals, even if such costing is only to verify the computations of the law firm in some instances, gives (the bookkeeper) advance notice of the range of options which the District is considering", and that the discussions with the Administrator concerning the impact on the budget of staffing changes was "also of a confidential nature." We added that even

"if the amount of time the incumbent spent performing confidential work was de minimis," her inclusion in the unit would require the District to train an administrative secretary to perform those duties or make some other transfer, "which would constitute undue disruption of the District's operation and organization."

In City of Lancaster, Dec. No. 27180 (WERC, 2/92), we granted a Union petition to include in a bargaining unit the position of Deputy Clerk-Treasurer over the employer's objection that the position was confidential. The incumbent provided the Personnel Committee with information it used in collective bargaining, but herself neither was involved in developing or costing any of the City's bargaining proposals nor attended bargaining sessions, nor the typing of any confidential labor relations material involving contract administration or collective bargaining. The incumbent did not attend closed sessions of the Personnel Committee, but had occasionally taken minutes of closed sessions of the Common Council. We held that it was not evident that the incumbent had any knowledge of how the information she provided was used to develop strategy or positions relating to confidential labor relations matters, and that her access to, knowledge of or participation in confidential matters relating to labor relations was de minimis.

In Eau Claire School District, Dec. No. 17124-B (WERC, 6/95), we rejected the labor organization's attempt to bring into an existing unit the positions of two Executive Assistants, to the Assistant Superintendent for Personnel (Staff Records) and to the Deputy Superintendent. We found that the Executive Assistant to the Deputy Superintendent was aware of disciplinary matters which would not be shared with the Union, and would occasionally be at meetings at which managerial personnel would discuss negotiation strategies. We found that the Executive Assistant to the Assistant Superintendent for Personnel (Staff Records) read her supervisors e-mail, typed preliminary and final drafts of disciplinary letters, on one occasion typed, and other times made copies of, proposals and counter-proposals used in negotiations and grievances, handled confidential correspondence concerning discipline, and was privy to information on staffing decisions so the District could meet its budget or control costs. We found that the Assistant Superintendent for Personnel was responsible for the negotiation and administration of collective bargaining contracts, and that his Executive Assistant had been asked to type bargaining proposals and counter-proposals, grievance responses and possible disciplinary actions, making us satisfied that the confidential duties performed by the incumbent were substantial and warrant her continued exclusion from the unit. We further found that the Executive Assistant to the Deputy Superintendent would have access to and knowledge of confidential matters relating to labor relations similar to that of her predecessor, who was excluded on confidential status. While we noted that the time spent performing her confidential duties may be de minimis, she was the only clerical in the Deputy Superintendent's office and we were satisfied her confidential labor relations work could not be reassigned without undue disruption of the District's organization.

We now apply the facts of this proceeding to these precedents, and conclude that the subject position is appropriately confidential.

We do not find persuasive that part of the District's argument relating to Guth's access to material on Schuster's computer. If Guth were a municipal employe rather than a confidential one, the District could still direct her to avoid accessing any confidential material she would otherwise have nominal access to via a shared computer, such that her disobedience of that directive would appropriately subject her to discipline. We will not designate an otherwise municipal employe as confidential solely on the grounds that the incumbent could have unauthorized access to confidential material relating to labor relations. When we speak of knowledge of or access to such material, we mean knowledge which is authorized and intentional, not surreptitious or secret.

Nor are we persuaded by that part of the District's argument relating to the closeness of the quarters. While Guth's office is in the same office area as that of the Administrator and the Secretary, the layout is not such as to prevent confidential discussions in either of their offices from remaining unknown to Guth.

We are persuaded by the details in the record establishing the prior incumbent's intimate involvement in confidential matters, and the testimony as to the District's reasonable expectations that the position will continue to perform such duties. While the incumbent thus far has had only intermittent confidential duties, her predecessor had direct and extensive involvement, including not only knowledge of and access to such information, but actual involvement in decision-making. While the heavy involvement of the WASB in the most recent round of negotiations affecting the teacher unit shows the Financial Assistant to have been only slightly involved, we find credible the District's testimony that this was more a reflection of her relative newness to the position rather than an indication of a lasting change in the position's duties.

An employer is entitled to confidential clerical and support staff needed to operate without undue disruption. The role of outside consultants such as the WASB in negotiations does not mean that the District has no need for staff personnel to also prepare and implement confidential documents and data. A school district needs at least one support employe who can perform the financial duties related to collective bargaining and contract administration. In the Elcho School District, that employe is the Financial Assistant.

Accordingly, we have ordered that the Financial Assistant shall continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin this 25th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner