

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
NORTHWEST UNITED EDUCATORS
Involving Certain Employees of
WINTER SCHOOL DISTRICT

Case 34
No. 53000 ME-789
Decision No. 28464-B

Appearances:

Mr. Alan D. Manson, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of the Union.
Weld, Riley, Prenn & Ricci, Attorneys at Law, by Mr. Richard J. Ricci, 4330 Golf Terrace, Suite 205, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the District.

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

Northwest United Educators filed a petition on September 5, 1995, requesting that the Wisconsin Employment Relations Commission clarify a bargaining unit of certain employees of the Winter School District by including the position of bookkeeper. Hearing in the matter was held on February 7, 1996, in Winter, Wisconsin, before Examiner Douglas V. Knudson, a member of the Commission's staff. A transcript of the proceedings was received on February 16, 1996. The parties submitted post-hearing briefs, the last of which was received on March 18, 1996. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Northwest United Educators, herein the Union, is a labor organization and has its offices at 16 West John Street, Rice Lake, Wisconsin.
2. Winter School District, herein the District, is a municipal employer and has its offices at Main Street, Winter, Wisconsin.

3. The Union is the certified bargaining representative of the District employees in the following unit:

all regular full-time and regular part-time teacher aides, study hall monitors, and secretarial and clerical employees of the Winter School District, excluding the administrative secretary and all supervisory, managerial and confidential employees.

4. On September 5, 1995, the Union filed a petition to include the position of bookkeeper in the bargaining unit. The District contends that said position is occupied by a confidential employee.

5. The District operates a K-12 school system and has approximately 83 employees, of whom 46 are teachers, 32 are support staff employees and 5 are non-union administrative staff. The District negotiates with three separate bargaining units: a teachers unit, a clerical/teacher aide unit and a custodial/food service/bus drivers unit. The employees located in the District's administrative office area are the district administrator, (James Schuchardt), the high school principal (Ed Sheridan), the receptionist/secretary (Randi Bodo), the administrative secretary (Eppy Sundberg) and the bookkeeper (Madeline Smith). A fourth office staff employee, the elementary/special education secretary, is located in a separate building. The bookkeeper's office is between the office of the district administrator and an office shared by Bodo and Sundberg.

The parties previously agreed to include in the unit the positions of receptionist/secretary and elementary/special education secretary and to exclude from the unit the position of administrative secretary. The District does not have a business manager.

6. In her position as bookkeeper, Smith performs the following functions:

- 1) processes accounts receivable and accounts payable;
- 2) maintains District financial accounts, including a checking account and investments;
- 3) prepares financial statements, including bank reconciliation, cash flow statements, and balance sheets;
- 4) prepares payroll and vouchers and maintains requisite financial and employee records for each;
- 5) prepares and maintains employment-related financial reports, including unemployment compensation, worker's compensation, state wage and tax statements, and state retirement system reports;

- 6) assumes responsibility for annual audit preparation;

- 7) maintains records of employee sick leave, vacation and absenteeism;
- 8) assesses the District's data processing equipment and software needs;
- 9) types the minutes of the closed meetings of the board of education; and,
- 10) together with Schuchardt, prepares the District's annual budget.

7. Smith is the only employee who currently has access to the District's computerized financial data. She also has access to the word processing systems of other office personnel, including that of the administrative secretary who is a confidential employee, although said other office personnel do not have access to Smith's word processing system. Besides district administrator Schuchardt, Smith is the only employee with a key to his office where employee personnel files are located.

Smith has been involved in developing the costs of various options for salaries and fringe benefits for consideration by the District's committee in negotiations with the representatives of its organized employees. In bargaining, the District does not present to a union all of the alternative proposals which are considered by the District's committee. Although Smith may not know which alternative proposal will be given to a union in the contract negotiations, she does know the range in cost and the contents of those proposals. For example, during the negotiations between the District and the union for the current teachers' contract, Smith knew that the four QEO options being considered by the District contained salary offers ranging from .36% per cell to 1.06% per cell. Smith also has direct communications with the law firm which assists the District in preparing and costing possible packages for use in contract negotiations with the unions representing the District's employees. Smith receives copies of each of the costing alternatives produced by the law firm and checks the accuracy of the cost of those alternatives. Smith has frequent telephone contacts with the law firm regarding costing information and methodology, especially for the teacher negotiations.

During the process of preparing the annual budget, Smith frequently is involved in discussions with Schuchardt regarding the amounts of money available for employee salaries and fringe benefits and the possible options for distribution of those funds. Schuchardt also discusses with Smith the budget impact of various options concerning possible changes in staffing through such actions as layoffs, transfers, or reduced hours and Smith does the costing of those various options. Not all of those options are included in the final draft of the budget which is submitted to the Board of Education.

8. Smith does have sufficient access to, knowledge of, or participation in confidential labor relations matters to render her a confidential employee.

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

CONCLUSION OF LAW

Madeline Smith, the bookkeeper, is a confidential employe within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The position of bookkeeper shall remain excluded from the unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin,
this 12th day of June, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

A. Henry Hempe /s/

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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.

(footnote continued on Page 5)

A. Henry Hempe, Commissioner

1/ (footnote continued from Page 4)

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

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

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(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.

WINTER SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Union argues that the position of bookkeeper should be included in the bargaining unit. The administrative secretary is excluded from the unit as a confidential position. It seems clear that the District's limited confidential communications duties could be assigned to the administrative secretary. Smith's role in costing various proposals for contract negotiations is primarily to make sure that the correct figures and data are used. All of the data handled by Smith is available to the Union, upon request. Smith's exposure to potential proposals for negotiations is controllable by the District and is unnecessary in view of the District's use of a law firm for legal advice in labor matters. Smith does not attend any meetings of the Board of Education, nor any bargaining sessions. The typing of minutes of closed Board meetings could be done by the administrative secretary.

The District contends that Smith should continue to be excluded from the bargaining unit as a confidential employee because she regularly deals with and has knowledge of confidential labor relations matters to which the Union is not privy. Smith is the only employee available to perform the confidential costing and budgeting functions, since the administrative secretary has not been trained to perform those functions. During the budgeting process, Smith frequently is involved in discussions concerning possible staff changes and the amounts of money available for employee salaries and benefits, which information is not available to the unions representing District employees until the budget is approved by the Board. Smith checks the accuracy of the costing of alternative proposals for contract negotiations, not all of which proposals are presented to the unions, and knows the range of the proposals being considered by the District. Thus, Smith is involved in costing options, rather than in merely the gathering of costing data. The administrative secretary has neither the training nor the time to perform the confidential work performed by Smith. The amount of confidential labor relations work performed by Smith is more than de minimis.

DISCUSSION

The Commission has consistently held that for an employee to be considered a confidential employee, such employee must have access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must:

- 1) 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

- 2) be information which is not available to the bargaining representative or its agents. 2/

It is clear that Smith, through her role in budget preparation and costing bargaining proposals, has access to and knowledge of information dealing with the District's strategy in contract negotiations, not all of which information is available to the unions, or is available only at a later time. The costing of alternative economic proposals, even if such costing is only to verify the computations of the law firm in some instances, 3/ gives Smith advance notice of the range of options which the District is considering. 4/ Her discussions with Schuchardt concerning the impact on the budget of staffing changes also are of a confidential nature.

Even if the amount of time Smith spends performing confidential work is de minimis, she is also the only employee who currently can access the District's computerized financial data. Her inclusion in the unit would require the District to train administrative secretary Sundberg to perform those duties and to transfer some of Sundberg's current duties to Smith or another employee, which would constitute undue disruption of the District's operation and organization. 5/

Given the foregoing, we find Smith to be a confidential employee.

Dated at Madison, Wisconsin, this 12th day of June, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

2/ Eau Claire School District, Dec. No. 17124-B (WERC, 6/95).

3/ Smith alone costs the possible District proposals for the custodial/food service/bus drivers unit.

4/ Beecher-Dunbar-Pembine School District, Dec. No. 16902-D (WERC, 11/92).

5/ School District of Webster, Dec. No. 22399-A (WERC, 11/92); Laona School District, Dec. No. 22825 (WERC, 8/85).

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

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