

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
NORTHERN TIER UNISERV-EAST
Involving Certain Employees of
WHITE LAKE SCHOOL DISTRICT

Case 17
No. 55666
ME-3632

Decision No. 29491

Appearances:

Ms. Carol J. Nelson, Executive Director, Northern Tier UniServ-East, 200A South Lake Avenue, P.O. Box 9, Crandon, Wisconsin 54520-0009, appearing on behalf of the Northern Tier UniServ-East.

Godfrey & Kahn, S.C., by **Attorney Robert W. Burns**, 333 Main Street, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, appearing on behalf of the White Lake School District.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION**

On October 9, 1997, Northern Tier UniServ-East filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election among the non-professional employees of the White Lake School District to determine whether a majority of these employees desire to be represented by Northern Tier UniServ-East for the purposes of collective bargaining. On April 8, 1998, a hearing in the matter was held in White Lake, Wisconsin, before Examiner Coleen A. Burns, a member of the Commission's staff. The record was closed on July 16, 1998, upon receipt of the parties' post-hearing written argument.

No. 29491

The Commission, having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Northern Tier UniServ-East, herein the Association, is a labor organization which has its offices located at 200A South Lake Avenue, P.O. Box 9, Crandon, Wisconsin 54520-0009.

2. The White Lake School District, herein the District, is a municipal employer which has its principal offices located at 405 Bissell Street, White Lake, Wisconsin 54491.

3. On October 9, 1997, the Association filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among the support staff of the District to determine whether a majority of these employees desire to be represented by the Association for the purposes of collective bargaining. The District and the Association agree that the following positions are appropriately included in the collective bargaining unit that the Association seeks to represent:

<u>Incumbent</u>	<u>Position</u>
Heather Baker	Aide
Marie Maas	Head Custodian
Eilene Murray	Head Cook
Sharon Steckbauer	Aide
Barb Bordeau	Library Aide
Barb Kryka	Instructional Aide
Mike Igl	Instructional Aide
Cathy Lundgren	Instructional Aide
Carol Lynch	Food Service
Leon Mabry	Head Maintenance
Lorene Ramlow	Assistant Cook

The parties agree that the position of District Bookkeeper/District Secretary/Office Manager, currently occupied by Linda Perry, is appropriately excluded from the collective bargaining unit that the Association seeks to represent on the basis that the position is confidential. The Association seeks to include the position of Elementary and High School Secretary, currently occupied by Georgia Heistad, in the proposed collective bargaining unit. The District opposes such inclusion on the basis that the employee occupying the position is confidential.

4. Georgia Heistad has occupied the position of District Elementary and High School Secretary since August of 1989. Heistad's job description lists the following performance responsibilities:

1. _____ TYPE DISTRICT CORRESPONDENCE
2. _____ TYPE ALL GENERAL ADMINISTRATION (PRINCIPAL'S) CORRESPONDENCE
3. _____ TYPE AND POST ALL BOARD AGENDAS AND SPECIAL SCHOOL BOARD MEETINGS
4. _____ TYPE, ORGANIZE AND DISTRIBUTE POSTAL PATRON
5. _____ TYPE, ORGANIZE AND DISTRIBUTE DISTRICT NEWSLETTER
6. _____ TYPE PURCHASE ORDERS AND MAIL
7. _____ CHECK IN MATERIALS AND INSURE PROPER DISTRIBUTION
8. _____ PICK UP AND SORT MAIL EACH DAY
9. _____ RETYPE BOARD MINUTES
10. _____ SCHEDULE UNDER THE DIRECTION OF THE ASSISTANT PRINCIPAL AND KEEP TRACK OF CLASS ACTIVITIES.
11. _____ ANSWER IN COMING CALLS CHEERFULLY AND PROJECT,
MAINTAIN A POSITIVE ATMOSPHERE IN THE OFFICE.

12. _____ CONTACT PARENTS ON STUDENTS LEAVING THE SCHOOL BUILDING FOR HEALTH OR PERSONAL REASONS
13. _____ CONTACT BUS DRIVERS ON CHANGES ON STUDENT DROP OFFS
14. _____ GET ALL PERTINENT INFORMATION ON ALL NEW INCOMING STUDENTS.
15. _____ TYPE MASTER SCHEDULE, INDIVIDUAL STUDENT CLASS SCHEDULES AND KEEP THEM UP TO DATE.
16. _____ TYPE AND UPDATE ALL CLASS LISTS
17. _____ TYPE AND MAINTAIN REGISTRATION RECORDS
18. _____ ACCURATELY MAINTAIN DAILY ATTENDANCE RECORDS
19. _____ ASSIST IN 3RD FRIDAY COUNTS FOR D.P.I. RECORDS
20. _____ MAINTAIN ACCURATE SCHOOL CENSUS
21. _____ MONITOR STUDENT AND ADULT USE OF SCHOOL PHONES AND COPIER.
22. _____ WELCOME AND AID ALL VISITORS TO SCHOOL
23. _____ MAINTAIN BUSINESS-LIKE AND ORDERLY ATMOSPHERE IN THE OFFICE
24. _____ ORGANIZE AND DISTRIBUTE STUDENT PROGRESS REPORTS
25. _____ TYPE AND DISTRIBUTE ALL MEMOS TO STAFF
26. _____ PREPARE, TYPE AND MAIL HOT LUNCH REPORTS
27. _____ SEND OUT TRANSCRIPTS ON REQUEST AND SUPERVISE MAILING

28. _____ HANDLE STAFF REQUESTS ON CORRESPONDENCE,
ETC.
29. _____ RECORD CLASS GRADES ON PERMANENT FILES FOR
GRADES 7-12 UNDER THE DIRECT SUPERVISION OF THE
GUIDANCE DIRECTOR.
30. _____ MONITOR HOURLY CLASS ATTENDANCE AND REPORT
ANY DISCREPANCIES TO THE ASSISTANT PRINCIPAL
31. _____ SUPERVISE STUDENT WORK IN THE FRONT OFFICE
AND TRAIN THEM TO HANDLE PROBLEMS IN
CHEERFUL MANNER.
32. _____ DO MOST OF THE COPY WORK FOR THE PRINCIPAL'S
AND GUIDANCE DIRECTOR.
33. _____ TYPE LUNCH MENUS, WEEKLY CALENDAR, AND
MORNING ANNOUNCEMENTS.
34. _____ KEEP TRACK OF ATHLETIC SCHEDULING, DO
CORRESPONDENCE, RECEIVE PHONE CALLS, AND
DELIVER MESSAGES AS ATHLETIC SECRETARY.
35. _____ ASSIGN STUDENT LOCKERS, INTAKE COMBINATIONS
OF ALL PRIVATE LOCKS AND MAINTAIN A MAST
LIST.
36. _____ MAKE SURE ELIGIBILITY CARDS ARE COMPLETE AND
MAKE UP ELIGIBILITY LISTS FOR ALL W.I.A.A. SPORTS.
37. _____ TYPE AND MAIL OUT ALL SPORTS ROSTERS AND MAKE
UP ALL SPORTS PROGRAMS
38. _____ KEEP INVENTORY AND SELL SCHOOL SUPPLIES.
39. _____ BE RESPONSIBLE FOR OFFICE CASH BOX.
40. _____ HELP WITH COORDINATION OF THE SCHOOL YEAR-
BOOK.
41. _____ TYPE AND MAIL NECESSARY STATE REPORTS,
APPLICATIONS FOR THE SUPERINTENDENT

- 42. _____ SCHEDULE APPOINTMENTS
- 43. _____ TYPE REPORT CARDS, 7-12 AND LIST ATTENDANCE RECORDS ON THEM EACH QUARTER
- 44. _____ TYPE OUT HONOR ROLL UNDER THE DIRECT SUPERVISION OF THE GUIDANCE DIRECTOR.
- 45. _____ SEND FOR RECORDS ON ALL NEW STUDENTS TO THE DISTRICT.
- 46. _____ MAIL ALL SCHOLARSHIP APPLICATIONS BY CERTIFIED MAIL.
- 47. _____ MAINTAIN UP TO DATE ROLODEX.
- 48. _____ ASSIST WITH IN SCHOOL MATERIAL AND HELP IN TYPING AND PUTTING TOGETHER THE COMMUNITY SCHOOL NEWSLETTER AND INSURE ITS MAILING.
- 49. _____ MAINTAIN A SCHOOL AND COMMUNITY CALENDAR OF ACTIVITIES INCLUDING TIME AND PLACE OF THE EVENT.
- 50. _____ KEEP TRACK OF PURCHASE ORDERS BY FUNCTION ACCOUNT.
- 51. _____ RECEIVE AND RELAY MESSAGE INA (SIC) TIMELY MANNER TO A VARIETY OF PEOPLE INCLUDING ADMINISTRATIONS (SIC), STAFF, STUDENTS, AND SUPPORT STAFF.
- 52. _____ RESPONSIBILITY FOR MAILING STUDENT TRANSCRIPTS UPON REQUEST.
- 53. _____ PREPARE REPORT CARDS AND FOLLOW THROUGH ON THEIR DISTRIBUTION FOR ELEMENTARY AND HIGH SCHOOL.
- 54. _____ TYPES AND DISTRIBUTES QUARTER AND SEMESTER FAILURE LISTS.
- 55. _____ ASSIST IN STUDENT CONTROL WHEN NECESSARY.

- 56. _____ MAINTAIN SCHOOL SUPPLY INVENTORY AND STORAGE.
- 57. _____ RESPONSIBILITY FOR NAINTAING (SIC) MEDICAL RECORDS.
- 58. _____ SUMMER SCHOOL SECRETARY.
- 59. _____ TYPE AND DISTRIBUTE MEMOS AND NOTICES TO ALL STAFF AS NEEDED.
- 60. _____ PROCESS IN COMING SCHOOL ORDERS FROM COMPANIES, CHECK TO MAKE SURE WE RECEIVED ITEMS, AND ROUTE TO PROPER PERSON.
- 61. _____ TAKE CARE OF MINOR FIRST AID AND OTHER MINOR STUDENT PROBLEMS AS MAY BE NECESSARY.
- 62. _____ ORDER INVENTORY CARDS FOR ALL NEW BOOKS AND DISTRIBUTE TO STAFF.
- 63. _____ MAIL SPORTS ROSTERS TO COMPETING SCHOOLS AS NEEDED AN (SIC) INTAKE INFORMATION AND PREPARE THE PROGRAMS FOR THE CONTESTS.
- 64. _____ DISTRIBUTE SEASON TICKETS TO SENIORS AS NEEDED.
- 65. _____ ORGANIZE BUS LIST FOR AWAY GAMES, SELL TICKETS AND DEPOSIT MONEY WITH THE BOOKKEEPER.
- 66. _____ RESPONSIBLE FOR TEACHER CHECK-OUT AT THE END OF THE YEAR.
- 67. _____ KEEP THE PRINCIPAL INFORMED OF POTENTIAL PROBLEMS THAT MAY NEGATIVELY AFFECT THE LEARNING ENVIRONMENT AND THE SCHOOL DISTRICT.
- 68. _____ RESPONSIBLE FOR THE LUNCH COUNT DURING THE AUDIT YEAR AND RESPONSIBLE FOR LUNCH COUNT REPORT EACH MONTH THAT IS SENT TO THE STATE.
- 69. _____ CONTACT PARENTS WHEN STUDENTS ARE ILL.

- 70. ____ ARRANGE BUS TRANSPORTATION FOR FIELD TRIPS.
- 71. ____ DOES HER JOB IN A CHEERFUL, COOPERATIVE MANNER, AND WORKS HARD TO MAINTAIN A COOPERATIVE WORKING RELATIONSHIP WITH ALL THOSE IN THE BUILDING.
- 72. ____ IS COMPLETELY LOYAL TO THOSE SHE WORKS WITH DEMONSTRATING A STRONG SENSITIVITY TO THE CHAIN OF COMMAND.
- 73. ____ PERFORMS SUCH OTHER TASKS AND ASSUME SUCH OTHER RESPONSIBILITIES AS THE ADMINISTRATOR, GUIDANCE DIRECTOR, AND ATHLETIC DIRECTOR MAY ASSIGN.

Heistad performs all of these responsibilities, except Item 9, which is performed by Librarian Debbie Stone. Heistad's duties do not require access to employe payroll or personnel files.

The School Superintendent relies upon Heistad to type correspondence, including grievance responses; employe evaluations; performance expectations; offers of employment; letters to the District's attorney; and disciplinary letters to District employes. Heistad may type more than one draft of this correspondence. Heistad receives and sorts District mail, but does not open mail that is addressed to a specific individual. Heistad does not schedule the School Superintendent's calendar. The School Superintendent prepares, and Heistad types, the rough and final drafts of teacher schedules for the succeeding year. These schedules are not released to the teachers until they are approved by the Board of Education. The School Superintendent prepares, and Heistad types, various grant proposals and reports to governmental agencies, which may contain information that impacts upon District staffing. Heistad does not attend Board of Education meetings. Heistad types agendas and public notices. At times, these notices and agendas reference sensitive labor relations material, such as distance learning.

Not all of the material typed by Heistad is available to bargaining representatives, or their agents. Heistad types materials that, if prematurely released to the public, could adversely impact the District's labor relations position.

At times, the School Superintendent requests Heistad to intercept faxes from the District's attorney regarding confidential labor relations matters involving grievances and labor contract negotiations. The fax machine is located in the open area of the central office and is accessible to any individual who is in the central office.

Heistad performs duties which require her to leave the central office, such as delivering messages to students and staff; assisting students who are ill; escorting kindergarten students to lunch; and gathering attendance slips.

5. Linda Perry has occupied the position of the District's Bookkeeper/District Secretary/Office Manager for two years. During her tenure with the District, Perry has had the following job description:

WHITE LAKE COMMUNITY SCHOOL
JOB DESCRIPTION AND RESPONSIBILITIES

DISTRICT BOOKKEEPER/DISTRICT SECRETARY/OFFICE MANAGER
REPORTS TO: SUPERINTENDENT

PERFORMANCE RESPONSIBILITIES

- _____ 1. Perform all duties relative to district bookkeeping responsibilities.
- _____ 2. Perform all duties relative to budget requirements.
- _____ 3. Be accountable for money transactions in the school district.
- _____ 4. Process all district bills.
- _____ 5. Prepare check register on a timely basis for school board meetings.
- _____ 6. Process the payroll on the computer.
- _____ 7. Mail and file checks.
- _____ 8. Process check requests.
- _____ 9. Prepare vendor numbers.
- _____ 10. Correspond as necessary with vendors.
- _____ 11. Process packing slips with the proper purchase orders.
- _____ 12. Keep accounts payable current.
- _____ 13. Process purchase orders with proper invoices.

- _____ 14. Keep accurate accounting of the student activity account.
- _____ 15. Assists in keeping track of the district budget on a monthly basis.
- _____ 16. Handle all monies that enter or leave accounts at the Elementary, Junior, and Senior High School.
- _____ 17. Act as receptionist when necessary.
- _____ 18. Responsibility for substitute staff.
- _____ 19. Assist and/or prepare all necessary State, Federal, and Local reports.
- _____ 20. Deposit payroll deductions on a timely basis.
- _____ 21. Prepare district personnel benefit reports.
- _____ 22. Maintain and update all employee records.
- _____ 23. Receives and computes all payrolls, making deductions for income tax, retirement, health and medical insurances, life insurance, teacher dues, credit union, annuities, etc.
- _____ 24. Prepares necessary arbitration papers.
- _____ 25. Prepares reports and checks for proper agencies covering all deductions.
- _____ 26. Maintains records covering all deductions.
- _____ 27. Prepares all tax forms relating to payroll matters, Federal State, U.C., Social Security, STRS, etc.
- _____ 28. Keeps record of staff leaves and absences.
- _____ 29. Mails all checks and or distributes as Master Contract calls for.
- _____ 30. Prepares monthly, quarterly, and annual financial and other budget reports.
- _____ 31. Prepares, enters, and records all disbursements/receipts of district funds.

- _____ 32. Sets up chart of accounts.
- _____ 33. Codes all disbursements and receipts, and assigns vendor numbers.
- _____ 34. Prepares Annual and Budget Reports for DPI.
- _____ 35. Operates computer according to the WESSAS Accounting Code.
- _____ 36. Process Workmen's Compensation claims.
- _____ 37. Process all district and student insurance claims.
- _____ 38. Personally verifies all bank accounts monthly.
- _____ 39. Cooperates with auditors and provides information to them as requested.
- _____ 40. Records all monies due the Board members.
- _____ 41. Follows auditors direction on all separate accounts including Community School, Chapters I & II, 94-142, Food Service, etc.
- _____ 42. Prepares to be published once a month all expenditures from the General Fund approved by the Board and prepares monthly statements for the Board.
- _____ 43. Helps compile salary and fringe information necessary for negotiations.
- _____ 44. Takes care of all student activity books for receipts and disbursements.
- _____ 45. Make all necessary bank deposits and get Superintendent approval on all withdrawals and transfers.
- _____ 46. Sell lunch tickets prior to school day as necessary.
- _____ 47. Deposit and issue all scholarship money.
- _____ 48. Transcribe and type Superintendent's correspondence as necessary.
- _____ 49. Helps in preparation for the Annual Meeting.

- _____ 50. Arranges for Board trips, Inservices, and accomodations (sic) when necessary.
- _____ 51. Orders supplies for district office.
- _____ 52. Handles publicity on school closings.
- _____ 53. Maintains a faculty directory.
- _____ 54. Does her job in a cheerful and pleasant manner, and works hard to maintain a cooperataive (sic) working relationship.
- _____ 55. Supervises all office activities with the Superintendent and all those on staff.
- _____ 56. Recognizes that the close working relationship with the Superintendent requires the highest degree of sensitivity toward confidentiality and loyalty and as a result, respects the chain of command.
- _____ 57. Performs such other tasks and assumes such other responsibilities as the Administrator may from time to time assign.

The performance evaluation shall be based on the above description with Bonus Points added to the employee's contributions to the District's yearly goals.

Approximately ninety percent of Perry's work time is devoted to bookkeeping duties. Perry attends the financial portion of the District's Board of Education meetings. District personnel files are housed in Perry's office and Perry maintains these files. Perry does not type employee evaluations, grievance responses, or employee reprimands. Normally, Perry works from 6:30 a.m. until 3:00 p.m. Perry is not an accomplished typist and the School Superintendent does not consider typing to be an efficient use of Perry's time. Perry does not have time to assume additional clerical duties.

6. Approximately three hundred (300) students attend the District schools. Harold Brennan occupies the following District positions: Elementary Physical Education teacher, Director of Special Education, Elementary Principal, High School Principal, School Superintendent, High School Principal, and history tutor. Brennan is out of the office between fifty and seventy percent of his work time. Brennan, the District's sole administrator, is the only District employee who has significant responsibility for collective bargaining, labor contract administration and the litigation of labor relations matters.

Brennan and Perry each occupy a private office in the District's central office. Brennan's office has two doors, one opens onto the open area of the central office and the other opens onto an outside corridor. Perry has one office door that opens onto the open area of the central office. When Perry leaves the central office area, she normally locks her office. Perry, but not Heistad, has a key to Brennan's office. Heistad has a key to Perry's office.

Heistad's desk is located in the open area of the central office, between Perry's office and the reception counter. Heistad's desk is adjacent to the doors to Perry's and Brennan's offices. Heistad types at a computer work station, which is approximately eight feet from her desk. When Brennan and Perry close their office doors, Heistad cannot overhear conversations in these offices unless voices are raised. When Heistad is in the open area of the central office, she is able to observe who enters the central office, but is not able to observe who enters or exits through the corridor door to Brennan's office.

Brennan, Perry and Heistad are the only District employees who normally work in the central office. When Perry is absent from work, Librarian Debbie Stone works in the central office from 6:30 to 7:00 a.m. for the purpose of contacting substitutes. Infrequently, and in the absence of Perry, Stone prepares payroll. At various times throughout the day, student office aides work in the central office. The student office aides have access to Heistad's computer terminal and use this terminal to enhance their computer skills. Perry and the School Superintendent do not have voice mail, or any other telephone-answering device. When Heistad is in the central office, she receives and relays telephone messages to the School Superintendent. When the School Superintendent is out of the office, he generally relays messages through Perry. In Perry's absence, the Superintendent relays messages through Heistad.

Once a month, Perry types the School Superintendent's background notes for future Board of Education meetings. These background notes may include confidential labor relations information. When Perry is not available to prepare these background notes, Heistad types the background notes. Perry and Heistad are twelve-month employees. Heistad, unlike Perry, works fewer hours during the summer months. Heistad works from 7:30 a.m. to 4:00 p.m. and Perry works from 6:30 a.m. to 3:00 p.m. Heistad and Perry do not have the same lunch period.

7. Approximately thirty District teachers are represented for the purposes of collective bargaining, including Debbie Stone. No other District employee is represented for the purposes of collective bargaining. The School Superintendent, members of the District's Board of Education, and the District's attorneys develop the District's collective bargaining strategy and represent the District for the purposes of collective bargaining. Heistad does not attend the meetings in which the District develops its collective bargaining strategy and positions.

8. The Elementary and High School Secretary performs duties which provide her with access to, knowledge of, or participation in confidential labor relations matters. The Elementary and High School Secretary does not devote a significant amount of time to the performance of confidential labor relations duties. The confidential labor relations duties performed by the Elementary and High School Secretary cannot be reassigned to the District Bookkeeper/District Secretary/Office Manager without undue disruption to the District's operations.

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

CONCLUSION OF LAW

1. A question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

All regular full-time and regular part-time employees of the White Lake School District, excluding supervisors and professional, confidential, managerial, or executive employees.

2. The Elementary and High School Secretary 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., and is not appropriately included in the proposed collective bargaining unit described in Conclusion of Law 1.

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

DIRECTION OF ELECTION

An election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction in the voting group consisting of all regular full-time and regular part-time employees of the White Lake School District, excluding supervisors and professional, confidential, managerial, or executive employees, who were employed on November 23, 1998, excluding such employees

as may prior to the election quit their employ or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by White Lake Education Support Personnel, Northern Tier UniServ-East, WEAC, NEA for the purpose of collective bargaining with the White Lake School District, or whether such employes desire not to be so represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

WHITE LAKE SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

White Lake Education Support Personnel, Northern Tier UniServ-East, WEAC, NEA is seeking to represent a collective bargaining unit consisting of all regular full-time and regular part-time employees of the White Lake School District, excluding professional, supervisory, managerial and confidential employees. The parties have agreed to the inclusion, or exclusion, of all positions except that of Elementary and High School Secretary, currently occupied by Georgia Heistad. The District, contrary to the Association, contends that this position should be excluded from the proposed collective bargaining unit on the basis that the position is occupied by a confidential employee.

The District argues that Heistad performs more than a de minimis amount of confidential labor relations work; that this work will increase if there is a second collective bargaining unit in the District; and that the confidential work performed by Heistad cannot be reassigned to the District Bookkeeper/District Secretary/Office Manager without undue disruption of District operations. The District maintains that the location of Heistad's work area permits Heistad to overhear the conversations of the School Superintendent, the employee responsible for all of the District's labor and personnel matters, and that it is virtually impossible to shield Heistad from being exposed to confidential labor relations information. The District asserts that Heistad must be deemed a confidential employee in order to protect management's right to conduct its labor relations through an employee whose interests are aligned with those of management.

The Association argues that Heistad performs no more than a de minimis amount of confidential labor relations duties. The Association further argues that any confidential labor relations duties performed by Heistad can be assigned to the District Bookkeeper/District Secretary/Office Manager, who the parties have agreed to exclude from the collective bargaining unit on the basis that the employee occupying the position is confidential.

DISCUSSION

The Commission has consistently held that in order for an employee to be held confidential, that employee must have access to, knowledge of, or participation in, confidential matters relating to labor relations. Confidential information is that which is not available to the bargaining representative or its agents, and which deals with the employer's strategy or position in collective

bargaining, contract administration, litigation or similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer. CITY OF RICHLAND CENTER, DEC. NO. 17950-A (WERC, 2/96); VILLAGE OF SAUKVILLE, DEC. NO. 26170 (WERC, 9/89). In making a determination as to confidential status, the Commission is mindful of the need to balance the statutory right of employees to engage in concerted activity with the right of employers to conduct labor relations through employees whose interests are aligned with management. CITY OF SEYMOUR, DEC. NO. 28112 (WERC, 7/94). In striking this balance, the Commission looks to, among other things, the amount of confidential work to be performed, the number of employees available to perform the work, and the degree of disruption that would be caused to the employer's operation if confidential work is reassigned. CITY OF SEYMOUR, SUPRA; CITY OF GREENFIELD, DEC. NO. 26423 (WERC, 4/90). Also, as we held in VILLAGE OF SAUKVILLE, SUPRA:

While a de minimis exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87) 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. COOPERATIVE EDUCATIONAL SERVICE AGENCY NO. 9, DEC. NO. 23863-A (WERC, 12/86). 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 TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85) and, 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, unless the confidential work can be assigned to another employee without undue disruption of the employer's organization. HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88).

An employer cannot exclude an inordinately large number of employees by spreading the work of a confidential nature among employees or assigning them occasional tasks of a confidential nature because, to do so, would deprive employees of their status as "employees" under the law. MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76).

We are persuaded that Heistad is the clerical employee who is responsible for typing various material prepared by the School Superintendent, including grievance responses; employee evaluations; employee performance expectations; offers of employment; letters to the District's attorney; and disciplinary letters to District employees. Not all of the material typed by Heistad

is available to the teacher labor organization, or its agents. Further, the premature release of information that is made available to the teacher labor organization, or its agents, could adversely impact upon the District's labor relations strategy and/or contract administration.

Heistad has access to information concerning the District's collective bargaining strategy and grievance handling when the School Superintendent requests Heistad to intercept faxes from the District's attorney. Although the fax machine is accessible to any District employee that may be in the central office, the fact that an employee may have unauthorized access to confidential material relating to labor relations does not mean that the material is not confidential.

Linda Perry bears the title of Bookkeeper/District Secretary/Office Manager, but she primarily performs bookkeeping functions. Perry is not a skilled typist and does not have time to assume additional clerical duties. Thus, we are satisfied that Heistad's confidential duties cannot be reassigned to Perry without unduly disrupting the District's operations.

Heistad is the clerical employee who is assigned to the only District employee with significant labor relations responsibility, i.e., the School Superintendent. Heistad is privy to confidential labor relations material that is not available to bargaining representatives, or their agents. While Heistad does not devote a significant amount of her time to confidential labor relations duties, her confidential duties cannot be reassigned to Perry without unduly disrupting the District's operations. Accordingly, we have ordered the position of Elementary and High School Secretary, currently occupied by Georgia Heistad, to be excluded from the proposed collective bargaining unit on the basis that the position is occupied by a confidential employee.

Dated at Madison, Wisconsin, this 23rd day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner