

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
Involving Certain Employees of
MANITOWOC PUBLIC SCHOOL DISTRICT

Case 48
No. 58107
ME-3744

Decision No. 29771-C

Appearances:

Mr. Michael J. Wilson, Representative, Wisconsin Council 40, Suite B, 8033 Excelsior Drive, Madison, Wisconsin 53717-1903, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Davis & Kuelthau, S.C., by **Mr. William G. Bracken**, Employment Relations Services Coordinator, 219 Washington Avenue, Oshkosh, Wisconsin 54903-1278, appearing on behalf of the Manitowoc School District.

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

On February 21, 2000, Wisconsin Council 40, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a newly certified Council 40 bargaining unit of clerical employees of the Manitowoc Public School District by the inclusion therein of ten positions. By letter dated February 23, 2000, the District moved to dismiss the petition, arguing that the parties had previously agreed these ten positions were held by managerial or confidential employees. On July 19, 2000, the Commission (Chair Meier dissenting) denied the District's motion to dismiss.

No. 29771-C

Hearing in the matter was held in Manitowoc, Wisconsin on October 24, 2000, before Examiner Stuart Levitan, a member of the Commission's staff. The parties filed written argument, the last of which was received on January 22, 2001. In its written argument, AFSCME conceded that the Head Payroll/Benefits Secretary and the Head Bookkeeper were confidential employees.

The positions/incumbent employees that remain in dispute and the District's asserted basis for their exclusion from the bargaining unit are as follows:

1. Substitute Services Secretary – Jean LeBeau – Managerial/Supervisor
2. Secretary to the Director of Student Learning – Mary Wagner – Confidential/Managerial/Professional.
3. Administrative Assistant – Leslie Meyer – Managerial/Professional
4. Secretary to the CWD Programs – Cheryl Janssen – Managerial/Professional
5. Accounts Payable Secretary – Mary Peterik – Confidential
6. Assistant Payroll Secretary – Leanne Walters – Confidential
7. Secretary to the Director of Business Services and Purchasing Secretary – Patricia Olson – Confidential/Supervisor

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

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein AFSCME, is a labor organization with its offices located at Wisconsin Council 40, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903.

2. The Manitowoc Public School District, herein the District, is a municipal employer with its offices located at 1010 Huron Street, Manitowoc, Wisconsin 54420. The District provides educational services to approximately 8,000 students. The District employs 409 teachers, 48 clerical employees, 53 custodial employees, 154 teacher aides and 25 administrators. The District has a collective bargaining relationship with four bargaining units of its employees – teachers, clericals, custodians and teacher aides.

The District has five confidential employees who are not at issue in this proceeding – the Secretary to the Superintendent of Schools, the Secretary to the Director of Human Resources, the Assistant Secretary to the Director of Human Resources, the Head Payroll/Benefits Secretary, and the Head Bookkeeper.

3. In MANITOWOC SCHOOL DISTRICT, Dec. No. 29771-A (WERC, 1/2000), the Wisconsin Employment Relations Commission certified AFSCME as the exclusive bargaining representative of a bargaining unit defined as:

All regular full-time and regular part-time employees of the Manitowoc School District, excluding supervisory, managerial, confidential, professional and building and grounds employees and teacher aides.

4. The incumbent in the position of Substitute Services Secretary is Jean LeBeau. Working at home, LeBeau spends between three and five hours per day, 196 days per year, administering the system by which substitute teachers are provided to schools in the District and otherwise performing all of the duties included in the September 22, 2000 job description (App. A), which describes this position as “highly specialized,” requiring “considerable independent judgment based upon knowledge gained through experience in the performance of assigned duties.” LeBeau collects employee absentee data from building principals, compiles that data, and communicates with substitute employees who then fill vacancies, short and long term, caused by employee absences. She is also responsible for ensuring that not more than five teachers are absent from the District on any given day due to attendance at conferences.

LeBeau communicates to Human Resources Director Robert Huston any concerns that the various school principals raise with her regarding the performance of particular substitutes, but she does not conduct independent investigations regarding employee performance issues so raised. LeBeau does not have the authority to effectively recommend discipline or discharge of any employees. LeBeau does not participate in the hiring process. LeBeau does not have any budget preparation responsibilities.

LeBeau does not participate to a sufficient degree in the formulation, determination and implementation of management policy or possess sufficient authority to commit the employer’s resources to be a managerial employee.

LeBeau does not have supervisory responsibilities in sufficient combination and degree to be a supervisor.

5. The incumbent in the position of Secretary to the Director of Student Learning is Mary Wagner. A 13-years incumbent in the position, Wagner is supervised by Steve Gibson, Director of Student Learning. The job description (App. B), which Wagner assisted

in preparing, is dated September 22, 2000, lists “Post high school education or related experiences” as a preferred qualification and defines the position as a “highly specialized managerial salaried position” that is “allowed greater independence in managing the budget, transferring funds, and managing the office,” and which “assists in the formulation of management policy and commits District resources from the budget of the Office of Student Learning by allocating funds for different program purposes.”

Wagner proofreads the minutes prepared by the Secretary to the Superintendent of the approximately 12 executive sessions held by the District’s Board of Education each year. The minutes Wagner proofreads sometimes contain confidential information about the District’s position in collective bargaining with the teacher, custodial, clerical and aide bargaining units. When proofing the minutes, Wagner may also learn of employee discipline and labor relations litigation in which the District is involved.

Wagner shares an office space with Administrative Assistant Leslie Meyer, the Director of School Forest, and Director of Student Learning Gibson. Wagner’s office is adjacent to the office of the Superintendent’s Secretary and the Director of Building and Grounds. A door does not divide the offices. Due to the close proximity of Wagner to the Superintendent’s Secretary’s office, she overhears conversations that may from time to time involve confidential labor relations matters.

Wagner answers the telephone for the Student Learning office and Gibson, and keeps Gibson’s calendar. Wagner answers the Superintendent’s telephone and opens his mail (which may include matters relating to confidential labor relations) when the Superintendent’s Secretary is unavailable due to absence or if the phone line is occupied. The Superintendent’s Secretary takes 25 days of vacation annually, in addition to any illness time.

Wagner has significant administrative responsibilities concerning the federal Title VI grant, including compiling private and public school budget requests, receiving the Title VI grant allocation letter, balancing the private and public school expenditures monthly, and monitoring the Title VI budget. Wagner assists Gibson in reviewing purchase requests for compliance with Title VI compliance. Wagner does not have the authority to allocate Title VI funds or to perform Title VI transfers without the approval of Gibson.

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

Wagner does not participate to a sufficient degree in the formulation, determination and implementation of management policy or possess sufficient authority to commit the employer’s resources to be a managerial employee.

The job duties of the Secretary to the Director of Student Learning do not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

6. The position of Administrative Assistant was created approximately two years ago when the District eliminated a position of Assistant Superintendent. The position has been filled since that time by Leslie Meyer. The job description (App. C) which Leslie Meyer assisted in preparing is dated September 12, 2000, lists "Post high school education or related experiences" as a preferred qualification, and defines the position as a "highly specialized managerial salaried position" which "assists in the formulation of management policy and monitors and recommends the allocation of District resources from the budget of the Office of Student Learning by allocating funds for different program purposes."

Meyer monitors and balances eight departmental budgets. In so doing, she does not transfer funds; rather she recommends to the departments that they make transfers. After the District receives its allocation for the so-called Eisenhower grant, Meyer determines the allocation for the private and public schools based on enrollment, informs the schools of their allocation, and maintains a running balance for the account. Meyer responds to inquiries from private schools regarding eligibility criteria for Eisenhower grant staff development funds. She informs her supervisor of available funding or makes recommendations regarding funding to her supervisor who then allocates the funds.

Meyer organizes and makes available to staff the opportunity for them to receive flu shots, cholesterol screening, CPR training, and hepatitis B shots. She is responsible for logging field trip requests. She prepared a crisis intervention handbook for review and her supervisor, Director of Student Learning Gibson, made changes. She maintains the textbook inventory and makes recommendations to purchase additional textbooks based on enrollment. Meyer prepares enrollment projections based on the Cohort Survival Ratio Model.

Meyer conducts research and analyzes data for administrative staff; research areas include post secondary school options, at risk students and the Wisconsin Student Assessment System. Meyer prepares a statistical report on the results of the third grade reading test, reviews ACT and SAT test scores, obtains the curriculum for the students that tested, compares the test scores with the curriculum of the particular student, and prepares reports for the administrative personnel to evaluate.

Meyer has a bachelor's degree in Spanish and German, and has varied work experiences including program director at the University of Chicago Graduate School of Business, associate director (office manager) for the International Business Exchange Program and academic counselor at Lakeland College.

Meyer does not participate to a sufficient degree in the formulation, determination and implementation of management policy or possess sufficient authority to commit the employer's resources to be a managerial employee.

The job duties of Administrative Assistant do not require knowledge of an advanced type in a field of science or a learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

7. The incumbent in the position of Secretary to the Coordinator of Children with Disabilities (CWD) Program is Cheryl Janssen. Janssen has held this position for two years. The job description (App. D) dated September 22, 2000 lists "Post high school education or related experiences" as a preferred qualification, and defines this position as a "highly specialized managerial salaried position" which "assists in the formulation of the CWD budget and the allocation of funds for different program purposes."

Janssen implements projects of the Coordinator of CWD Programs. After the Coordinator determines a project need be completed, Janssen is responsible for collecting data and setting up the project. Janssen and the Coordinator then discuss the status of the project and the Coordinator may make changes.

Janssen compiles budget request materials and projects expenditures for field trips, teacher travel, supplies, and materials. She also monitors individual program budgets monthly and has the authority to transfer funds between line items should an individual line be in deficit, subject to approval by the Coordinator of CWD Program. Janssen does not make independent decisions to purchase materials.

Janssen developed the District's paper management system consistent with the guidelines provided by the State. Janssen trained and assisted District staff with the paper management system on their computer.

Janssen does not participate to a sufficient degree in the formulation, determination and implementation of management policy or possess sufficient authority to commit the employer's resources to be a managerial employee.

The job duties of the Secretary to the Coordinator of Children With Disabilities Program do not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

8. The incumbents in the positions of Head Bookkeeper, Accounts Payable Secretary, Head Payroll Secretary, Assistant Payroll Secretary and the Secretary to the Director of Business Services have desks in an open area of the District's Business Office. The Director of Business Services has an office connected by a doorway with a door to this open office area. The desk for the Secretary to the Director of Business Services is adjacent to the entrance door to the Director of Business Services.

9. The incumbent in the position of Accounts Payable Secretary is Mary Peterik. Peterik has held this position for nine years. The September 12, 2000 job description for the Accounts Payable Secretary (App. E) defines this position as a "highly specialized position" which requires significant "independence in the application of more complex accounts payable techniques," and which involves "considerable independent judgment based upon knowledge gained through experience in the performances of assigned duties."

Peterik types support payments and garnishments and processes District legal bills for payment, which bills may allude to actions being taken against District employees.

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

10. Leanne Walters is the incumbent Assistant Payroll Secretary. She was recently hired to the position. The job description dated September 22, 2000 (App. F) defines the position as performing "specialized clerical work including confidential work involving collective bargaining information and labor relations information which is not available to bargaining representatives or its agents," and which involve "duties requiring knowledge of professional accounting principles and practices." Walters' duties include compiling information regarding fringe benefits and absenteeism which may be used by the District to formulate bargaining proposals or take personnel action.

Walters has access to employee personnel files including employee garnishments, employee reviews and employee medical records.

Walters receives and approves requests for up to two days personal leave from professional teaching staff members when she monitors personal leave usage to ensure that no more than two staff members are taking personal leave on a given date, but does not evaluate the appropriateness of the request for leave. Requests for greater than two days are discussed and approved by Bob Huston, Director of Personnel.

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

11. The incumbent Secretary to the Director of Business Services and Purchasing Secretary is Patricia Olson. According to the September 15, 2000 job description for this position (App. G), prepared with the assistance of Olson, the position “serves as the confidential secretary to the Director of Business Services and performs and/or reviews specialized clerical work including confidential work involving collective bargaining information and labor relations information which is not available to bargaining representatives or its agents.”

Olson does not supervise or direct the work of any District employee. She was part of the District team that effectively recommended the hiring of Accounts Payable Secretary Peterik.

Olson’s supervisor, Director of Business Services Ken Mischler, is a member of the District’s bargaining team that negotiates with the four District employee bargaining units. As Mischler’s secretary, Olson opens and skim reads his mail which from time to time includes confidential labor relations material such as correspondence from the District’s outside labor representative. As Mischler’s secretary, Olson occasionally types or proofreads confidential labor relations material that Mischler is sending to others – including financial information related to collective bargaining. From time to time, Mischler will use Olson as a sounding board when he is deciding how to respond to employee grievances.

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

Olson does not have supervisory responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSIONS OF LAW

1. The incumbents in the positions of Substitute Services Secretary, Secretary to the Director of Student Learning, Administrative Assistant, and Secretary to the Coordinator of Children with Disabilities Programs are not managerial employees within the meaning of Sec. 111.70(1)(i), Stats.

2. The incumbents in the positions of Substitute Services Secretary and Secretary to the Director of Business Services and Purchasing Secretary are not supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.

3. The incumbents in the positions of Secretary to the Director of Student Learning, Accounts Payable Secretary, Assistant Payroll Secretary, and Secretary to the Director of Business Services and Purchasing Secretary are not confidential employees within the meaning of Sec. 111.70(1)(i), Stats.

4. The incumbents in the positions of Secretary to the Director of Student Learning, Administrative Assistant, and Secretary to the Coordinator of Children with Disabilities Programs are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

5. The incumbents in the positions of Substitute Services Secretary, Secretary to the Director of Student Learning, Administrative Assistant, Secretary to the Coordinator of Children with Disabilities Programs, Secretary to the Director of Business Services and Purchasing Secretary, Accounts Payable Secretary, and Assistant Payroll Secretary are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Substitute Services Secretary, Secretary to the Director of Student Learning, Administrative Assistant, Secretary to the Coordinator of Children with Disabilities Programs, Accounts Payable Secretary, Assistant Payroll Secretary, and Secretary to the Director of

Business Services and Purchasing Secretary are included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of July, 2001.

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

MANITOWOC PUBLIC SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The District

The District asserts that the disputed employees should be excluded from the clerical bargaining unit because they are supervisors or confidential, managerial, or professional employees.

With regard to the Substitute Services Secretary LeBeau, the District contends that she is a managerial employee and a supervisor. The District asserts LeBeau is managerial because she commits the District's resources when scheduling substitute teachers and she is a supervisor because she informs the Director of Human Resources of substitute teachers with performance problems.

The District asserts the Secretary to the Director of Student Learning Wagner is a confidential, managerial and professional employee. The District contends Wagner is a confidential employee because she is exposed to confidential labor relations information when she reviews the contents of executive session minutes of the Board of Education, handles the telephone and mail for the Superintendent of Schools in the absence of the Superintendent's Secretary and provides clerical support for the Director of Student Learning. The District argues that Wagner is a managerial employee because she has sufficient authority in allocating the resources of the District through her involvement in the preparation and administration of the budget for the Director of Student Learning and her responsibilities with federal grant mandates and regulations. The District additionally contends that Wagner is a professional employee since her position requires post high school education or related experience, is salaried, and has independence in budget management and formulation of management policy.

The District asserts that Administrative Assistant Meyer is a managerial and professional employee, and notes that the position was created when an Assistant Superintendent position resigned. The District contends Meyer is managerial given the budget management responsibility that she performs for eight secondary departments and the Eisenhower Grant, her responsibility for District programs including staff flu shots, cholesterol screening, CPR, and Hepatitis B, her development of the Crisis Intervention Handbook, and her performance of independent duties regarding student retention, ACT/SAT results, ESL and enrollment projections. As to Meyer's professional status, the District cites her academic qualifications, the preferred qualification in her job description of "Post high school education or related experiences" and her job responsibilities.

The District asserts Secretary to the Coordinator of Children with Disabilities Program Janssen is a managerial and professional employee. The District argues that Janssen's involvement in the budget process, which includes budget worksheet distribution, allocation of money to programs, monthly budget review and Janssen's authority to change line items indicates she has sufficiently affected the allocation of District resources to properly be a managerial employee. The District asserts additionally that Janssen is a professional employee because her position has a preferred job qualification of "Post high school education or related experiences", she is salaried and she is allowed great independence in managing the budget, transferring funds, and managing the office.

The District asserts Accounts Payable Secretary Peterik is a confidential employee because she has access to child support payments, garnishments, and District legal bills which inform the incumbent of confidential labor relations actions being taken against District employees.

The District contends Assistant Payroll Secretary Walters is a confidential employee due to her involvement in costing District proposals. The District asserts that Walters' preparation of reports on employee absences, her access to personal files and the fact that she shares an open space office with other employees in the Business Office support her exclusion from the bargaining unit as a confidential employee.

The District argues Secretary to the Director of Business Services and Purchasing Secretary Olson is a supervisor and confidential employee. The District asserts that Olson is a supervisor because she participated in the hiring of the Accounts Payable Secretary. The District contends the confidential status is appropriate due to Olson's viewing of the Director of Business Services' mail which includes collective bargaining, grievance, and labor relations information and her proofreading of the Director's bargaining proposals.

AFSCME

AFSCME asserts that the Substitute Services Secretary LeBeau is not a managerial employee or a supervisor. As to her managerial status, AFSCME argues that although she assists her department head, she does not have independent authority to determine District policy or allocate funds. AFSCME notes LeBeau's testimony wherein she admitted she did not have a role in employee discipline, discharge, or hire and therefore contends she is not a supervisor.

AFSCME argues Secretary to the Director of Student Learning Wagner has no role in labor relations, has secondary exposure to confidential information and spends no more than "five (5) hours tops" on executive session meeting minutes. AFSCME contends that she has *de minimis* exposure to confidential information and is not a confidential employee. AFSCME

believes the job description for the Director of Student Learning overstates her managerial authority. It points to Wagner's authority to rearrange furniture and concludes that Wagner neither has independent authority to formulate policy nor to allocate resources. Lastly, AFSCME asserts that it is Wagner's work – not her level of pay – that determines whether she is a professional employee, and AFSCME argues her work does not meet the statutory definition of a professional.

AFSCME asserts Administrative Assistant Meyer's work with statistics and data and monitoring a budget is not managerial work. AFSCME contends that it is the Director of Student Learning who determines what services the District needs and how the District's resources will be allocated. AFSCME recognizes the impressive resume of the Administrative Assistant conceding that she has sufficient personal credentials to be considered a professional, but argues that the job responsibilities of the Administrative Assistant do not meet the statutory criteria for a professional employee.

With regard to Secretary to the Coordinator of Children with Disabilities Program Janssen, AFSCME relies upon the testimony of the Coordinator of Special Education who indicated that Janssen is required to obtain the Coordinator's signature or approval "on each and every request" which confirms that Janssen does not have independent authority to formulate policy or allocate funds. Thus, Janssen is not a managerial employee. AFSCME further asserts that Janssen's duties do not meet the statutory criteria for a professional employee.

Concerning Assistant Payroll Secretary Walters and Accounts Payable Secretary Peterik, AFSCME contends the confidential duties of these positions are *de minimis* and should be consolidated and assigned to the Head Bookkeeper and Head Payroll/Benefits Secretary.

AFSCME asserts that the confidential duties of Secretary to the Director of Business Services and Purchasing Secretary Olson are *de minimis* and could be reassigned to other Business Office staff. AFSCME argues that since Olson has no supervisory authority or responsibility and does not direct the work of any employee, she is not a supervisor.

DISCUSSION

The procedural history of this case is summarized in the preface to our Findings of Fact. AFSCME represents a bargaining unit of:

All regular full-time and regular part-time employees of the Manitowoc School District, excluding supervisory, managerial, confidential, professional and building and grounds employees and teacher aides.

The dispute presently before us is whether certain employees presently excluded for the clerical bargaining unit should remain excluded because they are “supervisory, managerial, confidential” or “professional” employees. We begin our resolution of this dispute by reciting the definitions of a supervisor and of confidential, managerial and professional employees that we will apply to the facts in the record.

Supervisor

Section 111.70(1)(o)1, Stats. defines a supervisor as an individual who:

...has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in the connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

Under this statutory language, the Commission considers the following factors when determining whether an individual is or is not a supervisor:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

We have consistently held that not all of the above-quoted factors need to reflect supervisory status in order for us to find that an individual is a supervisor. CITY OF LAKE GENEVA, DEC. NO. 18507 (WERC, 3/81), LODI JT. SCHOOL DISTRICT NO. 1, DEC. NO. 16667 (WERC, 11/78). Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an individual to be a supervisor. CITY OF TWO RIVERS, DEC. NO. 21959-A (WERC, 2/91).

Managerial Employee

With respect to managerial employees, we said in MENOMONEE COUNTY, DEC. NO. 26983-B (WERC, 4/95):

Managerial employees are excluded from the definition of municipal employees pursuant to Sec. 111.70(1)(i), Stats. The Commission has developed a definition of managerial status through case law in the absence of a statutory definition of a "managerial" employee. In determining whether a position is managerial, the Commission considers the degree to which the incumbent of the position actually participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer's resources. See, e.g., Milwaukee VTAE, Dec. No. 8736-B (WERC, 6/79); Northwood School District, Dec. No. 20022 (WERC, 10/82); Marinette County (Pineview Health Care Center), Dec. No. 26154-B (WERC, 3/92), and cases cited therein. The necessary level of managerial responsibility must be "at a relatively high level". As we stated in Marinette County (Pineview Health Care Center), Dec. No. 26154-B (WERC, 3/92):

To confer managerial status, an individual's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capitol improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. (Footnotes omitted).

Confidential Employee

To be a confidential employee, the employee must participate in matters involving the consideration of confidential information relating to labor relations, or have access to or knowledge of confidential information relating to labor relations. With regard to whether the

information is considered confidential, the information must meet a two-pronged test. First, the information must deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations between the bargaining representative and the employer. The second prong requires that the information be unavailable to the bargaining representative. GREEN BAY SCHOOL DISTRICT, DEC. NO. 17706-B (WERC, 1/2000). See also CRAWFORD COUNTY, DEC. NO. 16931-B (WERC, 9/89); NICOLET AREA TECHNICAL COLLEGE, DEC. NO. 23366-C (WERC, 3/93).

The Commission has found that a *de minimis* exposure to confidential matters is generally insufficient grounds for excluding an employee from a bargaining unit. BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87). Yet the Commission recognizes when making determinations regarding confidential status, the rights of employees to engage in concerted activity must be balanced against the need of the employer to conduct labor relations with employees whose alliance is to management. Thus, in VILLAGE OF SAUKVILLE, DEC. NO. 26170 (WERC, 9/89) we stated:

While a *de minimis* exposure to confidential matters is generally insufficient grounds for exclusion of an employee from a bargaining unit, we have also sought to protect an employer's right to conduct its labor relations through employees whose interests are aligned with those of management. Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employee may be found to be confidential where the person in question is the only one available to perform legitimate confidential work and similarly, where a management employee has significant labor relations responsibility, the clerical employee assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, unless the confidential work can be assigned to another employee without undue disruption of the employer's organization (footnotes omitted).

Professional Employee

A professional employee is defined by Sec. 111.70 (1)(L). Stats., as:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;

- c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employee who:
- a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;
 - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

As to Sec. 111.70(1)(L)1.d., Stats., we hold that:

...the statute does not require that the incumbent of a position hold a college degree for the position to be found professional. This is true because the statute defines a professional position as one that cannot be performed without knowledge of certain kind, i.e., that which is usually acquired through “a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.” In other words, the course of study is a definition of the required knowledge which is the criterion, but is not the criterion itself.”

CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97)

We now turn to consideration of the subject positions.

Substitute Services Secretary

The District asserts that Substitute Services Secretary LeBeau is a managerial employee and a supervisor. The evidence does not support either conclusion.

As to her alleged status as a supervisor, LeBeau does assign substitute teachers work, and refers job performance complaints about substitutes from the school principals to the Director of Human Resources. However, these are her only attributes of supervisory status and they are insufficient to make her a supervisor.

LeBeau does implement management policy and commit resources by assigning teachers work, compiling absenteeism data and monitoring of teacher absences for the purpose of conference attendance. However, these duties do not significantly affect the nature and direction of the employer's operation and are not at a level of significance sufficient to establish managerial status.

Secretary to the Director of Student Learning

Mary Wagner, a long time employee of the District, is the incumbent secretary to the Director of Student Learning. The District contends she is a confidential, managerial, and professional employee.

As to her alleged confidential status, the record indicates that Wagner may view confidential labor relations information at least 12 times per year for a maximum of five hours per year when she proofreads the minutes from the Board of Education executive sessions. The record further establishes that the opportunity for Wagner to view confidential labor relations information arises at least 25 additional days per year when the Superintendent's Secretary is absent and Wagner is opening the mail or answering the telephone for the Superintendent. In addition, Wagner can overhear conversations in the Superintendent's office due to the close proximity between her desk and the desk of the Superintendent's Secretary. The conversations she overhears may from time to time contain confidential labor relations information.

We find Wagner's exposure to confidential labor relations information to be *de minimis* and thus conclude that she is not a confidential employee.

Although filling in for the Superintendent's Secretary and proofreading minutes have the potential to expose Wagner to confidential labor relations information, the record does not establish that this potential is often realized. Given the availability of other confidential employees in the Business Office, the District has the ability to reassign these tasks if it is concerned about Wagner's exposure to confidential labor relations information. Further, the possibility that she may never hear confidential labor relations information is not sufficient to warrant her exclusion as a confidential employee. MARSHFIELD SCHOOLS, DEC. NO. 14575-A (WERC, 7/76).

As to her alleged managerial status, Wagner has administrative responsibility for the Title VI grant, subject to the approval of her supervisor. Wagner assists her supervisor in grant disbursement, balancing the grant budget and recommending transfers. However, these duties do not significantly affect the nature and direction of the employer's operation and are not at a level of significance sufficient to establish she is a managerial employee.

The job description for the Secretary to the Director of Student Learning position prefers but does not require "Post high school education or related experiences". From our review of the record, we are satisfied that the work Wagner performs does not require knowledge of an advanced type customarily acquired through a prolonged course of specialized instruction and study in an institution of higher education. Because her work does not satisfy the last element of the Sec. 111.70(1)(L)1. Stats. definition of a professional employee, Wagner is not a professional employee.

Administrative Assistant

The District asserts that Administrative Assistant Leslie Meyer is excluded from the bargaining unit on the basis of her managerial and professional status.

Meyer has authority to organize and coordinate various District programs including flu shots, cholesterol screening, CPR training and hepatitis B shots. Meyer monitors departmental budgets and the Eisenhower grant, but does not have the authority to transfer funds. These duties do not significantly affect the nature and direction of the employer's operation and are not at a level of significance sufficient to establish that she is a managerial employee.

Turning to the matter of whether Meyer is a professional employee, the statutory definition of a "professional employee" specifies that Meyer's work must require "knowledge of an advanced type in a field of science or learning customarily acquired through a prolonged course of specialized intellectual instruction and study in an institution of higher learning. . ." See Sec. 111.70(1)(L)1.d., Stats. We conclude that her work does not require such knowledge and thus she is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

While Meyer performs important functions for the District – some of which were previously performed by an assistant superintendent of schools – we are satisfied that her work does not require knowledge customarily acquired through attainment of a four-year degree in a specialized field. Her job description indicates, "Post high school education or related experiences" is a preferred but not required qualification. Thus, even the District's own preferred qualification does not mandate post high school education and the post high school education mentioned does not reference attainment of a four-year degree.

Given the foregoing, Meyer is not a professional employee.

Secretary to the Coordinator of Children with Disabilities (CWD) Programs

The District argues that Secretary to the Coordinator of CWD Programs Janssen is a managerial and professional employee.

Janssen's involvement in the budgeting process is to compile information and monitor expenditures. She obtains Sinor's approval for all transfers. Janssen implements projects at the direction of Sinor. While Janssen obviously provides valuable assistance to Sinar, her duties do not involve her sufficiently in the allocation of resources or policy implementation to establish managerial status.

We further conclude that Janssen is not a professional employee as defined by the Sec. 111.70(1)(L), Stats. Like Administrative Assistant Meyer, her work does not require "knowledge of an advanced type customarily acquired through a prolonged course of specialized intellectual instruction. . ." Like Meyer, the preferred qualification for her position is limited to "Post high school education or related experiences."

Accounts Payable Secretary

The District asserts that Accounts Payable Secretary Peterik is properly excluded from the bargaining unit as a confidential employee.

Peterik has access to child support payments, garnishments, and District legal bills. Although her review of District legal bills may expose her to confidential information, we deem this to be *de minimis* exposure to confidential information and thus conclude she is not a confidential employee.

Assistant Payroll Secretary

The District argues that Walters performs confidential labor relations work when she compiles information regarding fringe benefits or absenteeism for potential use in bargaining proposals or personnel actions, maintains personnel files and grants personal leave requests.

As to the compilation of information, the record does not persuade us that the information in question is confidential. Employees and/or AFSCME could access the same information. Given the absence of evidence that Walters is asked to compile information that would reveal a specific contemplated personnel action or that relates to a specific bargaining proposal (i.e. that would give her access to District contract administration or bargaining strategy) and the absence of evidence that the Head Payroll Secretary would be unavailable to perform such work, Walters' compilation duties do not warrant her exclusion as a confidential employee. CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84).

Maintenance of personnel files is not confidential labor relations work if the information in the files is accessible to the affected employee or the union. OUTAGAMIE COUNTY, DEC. NO. 14062 (WERC, 10/75). Here, there is no reason to conclude that the information in the personnel files is confidential in the labor relations sense. Thus, while the information in personnel files is private, access to the files does not warrant a confidential exclusion.

The granting and denying of personal leave requests does not involve the exercise of any discretion by Walters. If employees have not used the two-day contractual entitlement, their request is approved. Thus, Walters serves as a record-keeper – not a management decision-maker.

Given all of the foregoing, there is no persuasive basis for excluding Walters as a confidential employee.

Secretary to the Director of Business Services/Purchasing Secretary

The District asserts that Secretary to the Director of Business Services and Purchasing Secretary Olson is a confidential employee and a supervisor and as such is properly excluded from the bargaining unit.

We conclude Olson's confidential duties are *de minimis* and can be performed by other employees without undue disruption.

Olson provides the clerical support for a District employee who has ongoing labor relations responsibilities as a member of the District's bargaining team. However, the record establishes that those responsibilities do not produce a significant amount of confidential work for Olson. Nonetheless, we have held that even where the amount of confidential work is *de minimis*, the employee providing clerical support for an employee with ongoing labor responsibilities will be excluded as a confidential employee unless the confidential work can be reassigned without undue disruption. VILLAGE OF SAUKVILLE, SUPRA. Here, although it is a close question, we are satisfied that such reassignment can be made without undue disruption because there are two other confidential clerical employees in the Business Office area where Olson works to whom the Director of Business Services can turn for confidential support. The

easy availability of confidential clerical alternatives distinguishes this case from those cited by the District in support of its position.

As to Olson's alleged supervisory status, Olson does not direct or supervise the work of any employees. The only evidence supporting supervisory status is the role she played in the hiring of employee Peterik. That involvement as part of a District hiring team is not sufficient to establish supervisory status.

Summary

Given the foregoing, we have concluded that all seven disputed employees/positions should be included in the AFSCME-represented bargaining unit, and we have ordered their inclusion.

Dated at Madison, Wisconsin this 11th day of July, 2001.

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

