

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 953**

Involving Certain Employees of

**FRANCIS L. SIMEK MEMORIAL LIBRARY**

Case 32  
No. 62477  
ME-3922

**Decision No. 30690-A**

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**Appearances:**

**Mr. Michael Priem**, Assistant Business Manager Organizer, IBEW Local 953, 2206 Highland Avenue, P.O. Box 3005, Eau Claire, WI 54702-3005, appearing on behalf of International Brotherhood of Electrical Workers Local 953.

**Mr. Jeffrey T. Jones**, Ruder Ware, Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, WI 54402-8050, appearing on behalf of Francis L. Simek Memorial Library.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On September 2, 2003, the Wisconsin Employment Relations Commission conducted an election to determine whether the six regular full-time and regular part-time non-professional employees of the Francis L. Simek Memorial Library wished to be represented for the purposes of collective bargaining by the International Brotherhood of Electrical Workers Local 953. Two employees voted for representation by Local 953, two employees voted against such representation and one employee left the ballot blank. By agreement of the parties, the ballot of the sixth voter (Linda Rundquist) was challenged and not counted on September 2, 2003, because of the parties' unresolved dispute as to whether Rundquist should be excluded from the potential bargaining unit as a confidential employee.

Because the status of Rundquist's ballot needs to be resolved to establish an election outcome, hearing regarding Rundquist's alleged confidential status was held by Commission Examiner Peter Davis on October 14, 2003 in Medford, Wisconsin. The parties filed post-hearing written argument, the last of which was received November 20, 2003.

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

### **FINDINGS OF FACT**

1. Francis L. Simek Memorial Library, herein the Library, is a municipal employer having its offices in Medford, Wisconsin.

2. International Brotherhood of Electrical Workers Local 953, herein the Union, is a labor organization having its offices in Eau Claire, Wisconsin.

3. The Library employs a Director, three regular full-time non-professional employees (35-40 hours per week), three regular part-time non-professional employees (7.5-11 hours per week), and two part-time student employees.

At present, there are no bargaining units of Library employees and no employee functions primarily as a secretary, clerical assistant, or bookkeeper for the Library.

4. If the Union were selected as the collective bargaining representative of the Library's employees, the Library concluded that it would assign one of its current employees, Linda Rundquist, to provide labor relations clerical and data gathering/costing assistance to the Director and the Library Board during bargaining and administration of the collective bargaining agreement.

5. Ms. Rundquist is a full-time employee who holds the position of Technical Services Specialist. Her duties in that position, according to a position description dated April 14, 2003, do not include any personnel-related duties nor any functions in the nature of secretary or clerical assistant to the Library Director. Her skills and background do not include substantial word processing, secretarial, personnel, bookkeeping or contract-costing skills.

6. The Library's operation will not be unduly disrupted if confidential labor relations duties are performed by the Library Director and/or other non-unit individuals.

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

### **CONCLUSIONS OF LAW**

1. Rundquist is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

2. Rundquist is eligible to vote in the representation election.

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

**ORDER**

1. Rundquist's ballot will be opened and counted on January 22, 2004 in the Commission's Madison offices.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**MEMORANDUM ACCOMPANYING**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The issue in this case is whether the Library has demonstrated that its operations will be unduly disrupted if it cannot assign future confidential labor relations duties to Ms. Rundquist such that she should lose her status as an “employee” within the ambit of Chapter 111.70 and her eligibility to vote in the election. Under the circumstances present here, we cannot reach that conclusion.

The parties do not dispute that a Union victory in the election is likely to generate additional confidential labor relations work. However, they do dispute the likely amount of that work and whether it can be absorbed by other excluded personnel.

With judicial approval, the Commission has generally been sensitive to an employer's need to have confidential labor relations support tasks, such as typing drafts of labor relations documents and costing collective bargaining proposals, performed by individuals whose interests are aligned with those of management. *MINERAL POINT UNIFIED SCHOOL DISTRICT V. WERC*, 251 WIS.2D 325, 337-338 (CT. APP. 2002). Thus the Commission has often stated,

notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, and similarly, where a management employe has significant labor relations responsibility, the clerical employe 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 employe without undue disruption of the employer's organization.

MINERAL POINT, at 338.

However, the Commission has also carefully scrutinized assertions about the future deployment of staff because of their inherently speculative nature. *WAUKESHA JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 10823-A (WERC, 3/81)*.

When previously confronted with situations in which the alleged confidential status of an employee was based on future duties, the Commission has excluded employees based upon persuasive evidence that, though they currently performed no confidential work, their future duties would include such work. We find it significant that in none of those cases has an employer sought to designate an employee as confidential where the employer has not previously utilized any employee, let alone the designated employee, for clerical and/or

bookkeeping tasks of any kind, whether or not related to personnel issues. For example, in VILLAGE OF HALES CORNERS (LIBRARY), DEC. No. 27604 (WERC, 11/93), where the union sought to represent all library employees, the library director had personally performed most of the clerical duties associated with personnel work. However, unlike the instant case, the director in Hales Corners already employed a "Secretary and Bookkeeper" who provided clerical and bookkeeping support for the director. There the Commission had little difficulty accepting the employer's prospective assertions that the library director would utilize her existing clerical support person to perform the additional clerical and bookkeeping duties associated with collective bargaining. Similarly, in VILLAGE OF EAST TROY, DEC. No. 26553, (WERC, 7/90), the Commission excluded the Deputy Clerk/Treasurer from a bargaining unit of clerical workers, even though the evidence showed that she had not previously performed confidential clerical duties and that her supervisor, the Clerk/Treasurer, had done most of his own clerical work regarding confidential labor relations matters. The Commission noted in its findings that the Village had recently installed a new computer system, that the Village had plans to train all clerical employees including the Deputy Clerk/Treasurer in the use of the system, and that as an ancillary matter the Clerk/Treasurer had been planning to transfer the confidential clerical duties he had been performing to the Deputy Clerk/Treasurer. The Commission found these assertions persuasive, observing in addition that the Deputy Treasurer already performed payroll, bookkeeping and some personnel functions, that the Village already had three existing collective bargaining units and hence generated substantial confidential clerical and bookkeeping work, and that there were no other excluded confidential employees.

While it is reasonable to conclude in the present case that the onset of a collective bargaining relationship will add some measure of confidential labor relations work, the question becomes whether the circumstances make it likely that those who currently perform the administrative support work, i.e., the Library Director (and to a limited extent the Library Board) will be able to continue to perform this type of work. That is, under the principles reflected in HALES CORNERS and EAST TROY, would it be unduly disruptive of the Library's organizational structure to assume that those individuals can continue to perform the administrative support work, including the additional confidential work?

In answering this question, we cannot avoid a measure of speculation, since we are considering a situation that does not presently exist. However, we are mindful that a conclusion excluding Rundquist as a confidential employee would deprive her of rights and protection under Chapter 111.70. MARSHFIELD JOINT SCHOOL DISTRICT No. 1, DEC. No. 14575-A (WERC, 7/76). Hence we have a duty to examine the situation closely to ensure that the purposes of the law are not frustrated. We consider the following to be relevant considerations:

- With only one bargaining unit comprising only 5 or 6 employees, the amount of confidential work will likely be significantly less than would be true for multiple units and or larger numbers of employees.

- The Director (with some assistance from citizen members of the Library Board) currently performs all of the confidential clerical work related to personnel matters and does not currently have an employee assigned to her who functions as her secretary.
- The "General Duties/Examples of Work" portion of Director's job description includes the following entry:
  4. Researches, negotiates and oversees the implementation of contracts in accordance with procedures established by the Library Board.
- The "EQUIPMENT USED" portion of the Director's job description states the following:

Typewriter, calculator, copy machine, computer terminal, telephone, CD-ROM computer/printer, fiche reader, audio-visual equipment, Microcomputer and software programs.
- The confidential work the Library contemplates assigning to someone other than the Director includes work such as costing bargaining proposals, a skill in which Rundquist has no background.
- Neither the Director nor Rundquist has demonstrable word processing skills.
- The Director's primary duties managing the Library keep her busy.

Considering all of the foregoing, we conclude that it would not be unduly disruptive to assume that the Director (with whatever assistance continues to be provided by the Library Board itself) can continue to perform whatever confidential labor relations work may be engendered by this election. In reaching this conclusion, we are primarily influenced by the fact that the Director currently does not have a secretary or a bookkeeper and manages to perform existing clerical work despite her busy schedule and limited skills, and by the probability that the small size of the only potential unit will not produce a substantial amount of additional work.

Given all of the foregoing, we conclude that Rundquist is not a confidential employee and thus we will open her ballot.

Should the Union win the election and it prove to be the case that the Library Director and other excluded individuals cannot perform the confidential work generated by the collective bargaining relationship, the Library may file a unit clarification petition seeking exclusion of a confidential employee.

Dated at Madison, Wisconsin, this 15th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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