

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GILLETT SCHOOL DISTRICT

Involving Certain Employees of
GILLETT SCHOOL DISTRICT

Case 30
No. 62373
ME-1073

Decision No. 30754

In the Matter of the Petition of
GILLETT COUNCIL OF AUXILIARY PERSONNEL

Involving Certain Employees of
GILLETT SCHOOL DISTRICT

Case 31
No. 62600
ME-1077

Decision No. 30755

Appearances:

Dennis W. Rader, Attorney, Davis & Kuelthau S.C., P.O. Box 1534, Green Bay, Wisconsin 54305-1534, appearing on behalf of Gillett School District.

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Dec. No. 30754
Dec. No. 30755

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

On May 6, 2003, the Gillett School District filed a unit clarification petition with the Wisconsin Employment Relations Commission seeking to exclude the Bookkeeper from an existing bargaining unit of District employees represented by the Gillett Council of Auxiliary Personnel. On July 25, 2003, the Council of Auxiliary Personnel filed a petition with the Commission seeking to clarify the same bargaining unit by including the Network Technician.

Examiner Susan J.M. Bauman, a member of the Commission, conducted a hearing on both petitions on August 19, 2003, in Gillett, Wisconsin. The District contended that the Bookkeeper is a confidential and managerial employee and that the Network Technician is a confidential employee, requiring that both be excluded from the bargaining unit. The Commission received initial briefs by October 6, 2003, and reply briefs by October 21, 2003, at which time the record was closed.

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

FINDINGS OF FACT

1. Gillett School District, hereinafter District, is a municipal employer with offices at 208 West Main Street, Gillett, Wisconsin. The District provides educational services to citizens within its boundaries.

2. Gillett Council of Auxiliary Personnel, hereinafter Union, is a labor organization with offices located at 1136 N. Military Avenue, Green Bay, Wisconsin 54303. The Union serves as the collective bargaining representative for approximately 20 non-professional employees of the District.

3. There are only two bargaining units of District employees: the Union unit and a professional unit of approximately 60 employees represented by the Gillett Education Association.

4. The District's central administration office consists of three employees: the District Administrator; the Bookkeeper (Boucher); and the Administrative Assistant/Assistant Bookkeeper (Wasmund). Boucher and Wasmund work side by side. Wasmund is excluded from the bargaining unit represented by the Union as a confidential employee. The Bookkeeper has always been included in the Union bargaining unit.

Wasmund is the District Administrator's secretary and her confidential labor relations work primarily consists of typing and processing confidential labor relations communications from the Administrator to school board members and the District's labor attorney.

Wasmund's job description provides as follows:

Qualifications: Knowledge of basic secretarial skills with proficiencies in word processing, business machines, and computers. Must have knowledge of bookkeeping/payroll procedures. Must demonstrate warm, supportive interpersonal skills to work with a variety of people. Must have ability to carry out complex oral and written directions with minimal direction, handle deadlines, disruptions and stressful situations.

Reports to: District Administrator/Bookkeeper

Summary of Position: To assist administrative staff in the performance of their duties and reporting to include acting as confidant for sensitive and confidential matters. To assist bookkeeper in the performance of bookkeeping and payroll procedures. To perform general secretarial and clerical work.

Primary Duties & Responsibilities:

1. District Office Operation
 - a. Type and distribute memos, correspondence, newsletters, annual reports for administrative staff
 - b. Answer incoming phone calls, take messages, return calls on behalf of district administrator
 - c. Prepare outgoing and receive incoming mail for district office
 - d. Maintain district office and confidential personnel files
 - e. Compile and complete Membership Count reports to Department of Public Instruction
 - f. Compile and complete annual School Performance Report to Department of Public Instruction
 - g. Compile and complete annual Fall Staff and Enrollment report to Department of Public Instruction
 - h. Receive and maintain Open Enrollment applications, tuition waivers, home schooling and reports from students, Department of Public Instruction and other school districts
 - i. Prepare school board agenda notices, information packets, record meeting minutes, prepare, distribute and collect information on school board elections
 - j. Type revisions and proposals of labor contracts
 - k. Maintain and update Board Policy books

2. Bookkeeping Operation
 - a. Assist Bookkeeper in maintaining accurate information on all employees for payroll and personnel matters
 - b. Collect, review, and calculate all time cards and sheets for support staff and substitutes.
 - c. Complete bi-weekly payroll and distribute payroll
 - d. Prepare monthly, quarterly, and yearly reports associated with payroll
 - e. Maintain sick leave and personal leave reports for employees
 - f. Assist Bookkeeper in receipting all district monies and make daily deposits for general and activity accounts
 - g. Type district wide purchase orders
 - h. Assist bookkeeper in preparing and inputting monthly invoices
3. Other
 - a. Assist in compilation of reports and information for auditor
 - b. Assist in budgetary operations in the absence of the bookkeeper
 - c. Maintain office supply inventory
 - d. Assist in preparation of benefit information to employees, enroll employees, and assist in the reporting of terminated employees.

The above statements are intended to describe the general nature and level of work being performed by employees assigned to this classification. They are not to be construed as an all inclusive list of all duties performed by personnel so classified. Other duties may be assigned by the District Administrator.

Amended: January 16, 2003

5. For the past two years and four months, Boucher has been the Bookkeeper.

The job description for the Bookkeeper states the following:

Qualifications: Knowledge of modern bookkeeping procedures and practices.
Knowledge of computerized bookkeeping systems.

Reports to: District Administrator

Summary of Position: To assist administrative staff in the performance of their duties and reporting to include acting as confidant for sensitive and confidential matters. Is responsible for conducting and performing a variety of bookkeeping activities to include assisting with the bi-weekly payroll, maintain

all district financial records and reports, prepare the monthly financial statements and listing of bills for the School Board, prepare checks for board approval. Assist in preparing the district budget. Prepares all financial reports for the Department of Public Instruction.

Primary Duties and Responsibilities:

1. Payables:
 - a. Checks accuracy of all incoming invoices for approval of District Administrator.
 - b. Enters invoices into Skyward software for payment for the board meeting.
 - c. Prepares monthly report of payables for payment for the board meeting.
 - d. Oversees assistant bookkeeper/secretaries in the preparation of Purchase Orders
 - e. Maintain district financial records of accounts payables.
2. Receivables:
 - a. Account for and deposit all district revenues
 - b. Receipts all grant, federal, state, CESA, taxes and scholarship money
 - c. Oversees the assistant bookkeeper in the receipting of district monies.
 - d. Maintain financial records of accounts receivables.
3. Payroll:
 - a. Oversees the assistant bookkeeper with payroll preparation records, payroll reports, and W-2 preparation.
 - b. Wires money for state and federal withholding taxes, social security and social security Medicare.
 - c. Prepares district personnel benefits reports for appropriate agencies to include, but not limited to health, dental, disability, life and long term care, union dues, and tax sheltered annuities.
 - d. Issue application forms to all eligible employees for payroll deductions and fringe benefits.
 - e. Enroll new employees in benefit programs and assist retiring or terminating employees with the necessary forms.
 - f. Know the payroll system to be able to trouble shoot and be able to do all aspects of payroll if necessary.
 - g. Maintain district financial records of payroll.
 - h. Able to use discretion and integrity with employee payroll information and data in a confidential and professional manner.

4. Budget and Finance:
 - a. Reconcile all monthly bank statements to district ledger balance.
 - b. Prepares all financial reports for board meetings and elector's annual meeting.
 - c. Maintain file on all grants. File claims forms for grant money.
 - d. Handle short term borrowing program by making deposits and transfers of monies to and from investments as needed.
 - e. Assists District Administrator with the development and revisions of annual budget and input budget into computer.
 - f. Assist District Administrator in negotiations, creation of proposals and analysis of implications for budget.
 - g. Able to conduct surveys, and develop detailed studies and reports, i.e. labor costing, utility costing, etc.
5. DPI and State Required Reports:
 - a. Assist auditors in preparing annual audit report
 - b. Complete the financial portions of the Annual and Fall Budget Reports.
 - c. Apply for Federal Program Revenues.
 - d. Prepare tax levy certifications for department of revenue and municipal clerks
6. Student Activity/Scholarship Accounts:
 - a. Reconcile Student Activity and Scholarship Accounts.
 - b. Deposit Student Activity and Scholarship revenues.
 - c. Obtain proper signatures of reimbursement sheets for student activity account.
 - d. Maintains a summary of all student activity account balances
 - e. Prepare activity checks for district administrator's signature after getting written authorization for the guidance counselor.
 - f. Maintain a written account summary of all scholarships.
7. Other:
 - a. Assist in district office operations in the absence of Administrative Assistant, i.e. prepare outgoing and receive mail, answering phone, taking messages, receiving employee and visitors, type and distribute memos and correspondence to staff, record school board meeting minutes and maintain district office and personnel files.
 - b. Oversee and supervise employees in the financial aspect of hot lunch programs and athletic admissions.
 - c. Perform other duties as may be required to maintain district financial records.
 - d. Perform other duties as directed by the District Administrator

The above statements are intended to describe the general nature and level of work being performed by employees assigned to this classification. They are not to be construed as an all inclusive list of all duties performed by personnel so classified. Other duties may be assigned by the District Administrator.

6. Boucher works with staff of the District's labor attorney to determine the wage and fringe benefit costs of bargaining proposals the District may make to the Union and professional employee bargaining units. The District has provided Boucher with training as to how to cost bargaining proposals.

Through conversations with the District Administrator and because she works side by side with Wasmund, Boucher also becomes aware of the content of the bargaining proposals the District has decided it will make.

Boucher has access to the safe in which the District keeps confidential labor relations files.

When the District was preparing its response to a grievance, Boucher assisted by assembling documents from the affected employee's personnel file.

Boucher substitutes for Wasmund when she is ill or on vacation.

Boucher created an Administrative Handbook for Business Procedures containing procedures for matters such as receipt of activity/general account money; payment for expenses/invoice/reimbursement; purchase requisition and purchase orders; course reimbursement/ request for salary schedule adjustment requests; employee travel and expense reimbursements; payroll procedures; reimbursement of personal days; worker's compensation practices; and substitute teacher reporting. She is responsible for providing information to new employees with respect to wages and benefits. Boucher oversees the payroll/bookkeeping work performed by Wasmund.

7. The confidential labor relations work Wasmund does is primarily clerical in nature and the confidential labor relations work Boucher performs is primarily financial in nature. The amount of time that either Wasmund or Boucher expends on confidential labor relations work is small.

8. Wasmund is not capable of performing Boucher's financial roles relating to costing potential bargaining proposals in the context of the District's overall financial status.

9. Due to her work on the costing of bargaining proposals, Boucher has sufficient access to, knowledge of or participation in confidential labor relations matters to be a confidential employee.

10. The District employs Timothy Ryseweyk as a Network Technician. The position description for the Network Technician includes the following:

Qualifications: A high school diploma is required with post-secondary training and/or experience in computer systems operation, repair and procedures. Effective communication skills are needed, as well as the ability to work with others and provide training to other staff members as needed.

Reports to: K-12 Technology Coordinator

Job Goal: The incumbent will serve as the primary advisor and technical resource in the development and maintenance of the computer/technology systems for the Gillett School District.

Job Responsibilities:

1. Establish and maintain user passwords and log-in procedures for staff and students.
2. Resolve local trouble-shooting issues.
3. Install new hardware, software, and system programs.
4. Make necessary equipment repairs.
5. Oversee the security of communications systems.
6. Recommend to the administration program and system adjustments that enhance system performance and maintenance.
7. Working in conjunction with the Technology Coordinator, maintain required documentation for communications systems.
8. Make recommendations on the number of licenses needed.
9. Maintain an inventory of all computer hardware, peripherals, and software.
10. Stay current on technical workings.
11. Perform wiring duties as needed.
12. Train students as needed.
13. Serve as a TRITON site facilitator.
14. Be proficient in the use of software used in and by the district.
15. Perform other duties as assigned by the Technology Coordinator.

11. Although the Network Technician is able to access all files and records on the District's computer network, he does not do so in the ordinary course of his employment. He has never accessed any confidential labor relations files and has never been asked to do so. His job responsibilities do not require that he read the content of any confidential labor relations file.

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

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

CONCLUSIONS OF LAW

1. The Bookkeeper 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.

2. The Network Technician 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.

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

ORDER CLARIFYING BARGAINING UNIT

The Bookkeeper shall be excluded from and the Network Technician shall be included in the Union bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of December, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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

POSITIONS OF THE PARTIES

The District

The District asserts that the Bookkeeper and Network Technician are not municipal employees and should be excluded from the bargaining unit.

As to the Bookkeeper, Janice Boucher, her duties and responsibilities require that she be excluded from the bargaining unit because she is both a confidential and a managerial employee. Boucher has unlimited access to information in the safe in the District office where negotiations files are kept and from which she retrieves them upon request of the District Administrator. She has access to all financial data in the District and has been privy to District strategy in negotiations with teachers and support staff, including documents from legal counsel regarding the refinancing of ETF unfunded liability, comparable data on wages and benefits and total package options for the Union unit. She has also been privy to the District's position on a grievance filed by a Union member, and helped research information to formulate that position.

Boucher has attended workshops for school business managers on topics such as costing, school district negotiations strategies and the like. Her job description calls upon her to do confidential labor relations work that cannot be performed by other employees such as determining the impact of proposals on the District budget and costing bargaining proposals.

While the amount of confidential labor relations work that Boucher performs is *de minimis*, there is no other person available to perform these tasks. There is ample WERC precedent for excluding both a bookkeeper and a clerical employee in a district the size of Gillett, especially where, as here, there is no evidence that the clerical employee is capable of performing the confidential financial work performed by Boucher. WINTER SCHOOL DISTRICT, DEC. NO. 28464-B (WERC, 6/96), SCHOOL DISTRICT OF WEBSTER, DEC. NO. 22399-A (WERC, 11/92).

The physical proximity of Boucher's work area to that of confidential Administrative Assistant Wasmund also argues for Boucher being a confidential employee. The Administrator engages in discussion of confidential matters with Wasmund in close proximity to Boucher. Thus, in addition to her work assignments that make her privy to confidential labor relations information, Boucher is exposed to confidential labor relations information as a result of the physical structure of the office.

Boucher is also a managerial employee who is directly and independently involved in the formulation and determination of management policy as evidenced by her drafting of a significant part of the Administrative Handbook for Business Procedures which established written policies and procedures for matters such as receipt of activity/general account monies and payment of expenses/invoices/reimbursements. She implements management policy when she determines whether employees qualify for reimbursement, meets with new employees and explains their wages and fringe benefits, and provides the District's interpretation of the collective bargaining agreements.

Boucher also effectively recommends the allocation of the employer's resources, particularly with respect to borrowing. Boucher's role is important in the day-to-day monitoring of monies as they impact the budget, a role that differs from the processing of expenses and payments. She is the only person in the District that the Administrator can rely on for effective advice in the area of budgetary allocation.

Boucher does not share a community of interest with the support staff unit and should not be part of it. There is a distinct difference of duties between Boucher and other support staff. Her wages are significantly higher than that of the others. She is directly supervised by the Administrator.

The Network Technician, Timothy Ryseweyk, should continue to be excluded from the bargaining unit. He is a confidential employee in that he can access all District personnel and financial files. He can change anyone's password, retrieve e-mail, and access confidential labor relations information exchanged between the Bookkeeper and the District's legal counsel. In the event of a violation of the District's acceptable technology use policy, the Network Technician would be the point person to find out from whom and to whom the unacceptable material was sent. In so doing, he would violate the "time honored union maxim – never assist management in the discipline of a union brother or sister." In light of the position's access to confidential materials, and to avoid such an obvious conflict for a bargaining unit member, the Network Technician should continue to be excluded from the bargaining unit.

The Union

The Union argues that the Bookkeeper is neither a confidential nor managerial employee and should continue to be included in the bargaining unit.

The record does not justify the need for a District business office comprised entirely of non-bargaining unit employees. Only three of the 39 job duties listed in Boucher's job description even appear to have the potential to expose Boucher to confidential labor relations information. Any confidential labor relations work that Boucher performs is *de minimis* and insufficient to merit exclusion. The work that she performs could be reassigned to the Administrative Assistant/Assistant Bookkeeper without undue disruption to the employer.

Boucher's limited exposure to confidential labor relations information occurs because the District has chosen to use her as a sounding board – an insufficient reason for confidential exclusion. Further, the Bookkeeper's exposure to confidential information because of her physical proximity to the confidential Administrative Assistant is *de minimis* and can be prevented, in its entirety, without undue hardship to the District if the Administrator refrained from discussing confidential matters with Wasmund in Boucher's presence.

Boucher is also not a managerial employee. She does not have significant participation in the formulation, determination and implementation of management policy. She checks the accuracy of other support staff in their completion of purchase orders. She oversees the hot lunch program, but she was not involved in developing it. She explains benefits to new hires and retirees, but she is merely directing them to the relevant contract sections. There is no evidence of her involvement in the interpretation of policy. A review of the Handbook shows that it is a compilation of existing policy, forms, and procedures for completing those forms. Boucher makes sure that signatures are on the appropriate forms and that they are completed correctly. She does not decide what courses will be approved for reimbursement or what are appropriate reimbursements that should be made to staff.

Further, Boucher does not have authority to commit the District's resources. The District Administrator, Rivard, must approve expenditures. Boucher has never entered into a contract on behalf of the District, she needs approval to expend funds, and she cannot move monies from one line item to another without approvals. If she discovers that cash flow is short, she suggests action to Rivard. The ultimate decision, however, is his.

There is no question that the position of Bookkeeper has a community of interest with the bargaining unit represented by the Union. Historically, the position has been in the unit and the Association has bargained wages and benefits for the position which are similar to those of others within the unit. Her duties are primarily clerical in nature and involve skills similar, if not identical, to those required of secretaries. There is nothing in this record that would support a claim that the Bookkeeper does not share a community of interest with the other members of the Gillett Council of Auxiliary Personnel.

There is no basis for excluding Timothy Ryseweyk, Network Technician, as a confidential employee. Ryseweyk is responsible for maintaining the network, installing hardware and software and repairing equipment. Although he has access to all of the files on the computer network, he has never had any reason to access negotiations files and no one from the District has ever asked him to do so. While he may be asked to locate a confidential file, it is not his job to read it. He could be asked to monitor Internet usage, and was asked to monitor an employee's use of e-mail. He was, however, in no way involved in any discipline. He has never developed bargaining proposals, attended closed session school board meetings, or participated in any grievance on behalf of the District. The record is devoid of any basis for excluding this position, and it should be included in the bargaining unit.

DISCUSSION

There are two positions at issue in this matter. The District seeks to exclude the currently included position of Bookkeeper from the bargaining unit because it is held by a confidential and managerial employee. The Union seeks to include the position of Network Technician in the bargaining unit, over the District's objection that the position is held by a confidential employee.

The Bookkeeper

Section 111.70(1)(i), Stats., provides:

"Municipal employee" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee.

The District alleges that the Bookkeeper is not a municipal employee because Boucher is both a confidential and managerial employee. We turn first to the question of whether Boucher is a confidential employee.

The parties are in agreement that the legal standard to be used in determining confidential status is as set forth by the Commission in MINERAL POINT SCHOOL DISTRICT, DEC. NO. 22284-C (WERC, 9/00), and affirmed by the Court of Appeals in MINERAL POINT UNIFIED SCHOOL DISTRICT v. WERC, 251 Wis.2d 325, 337-338 (2002):

We have held that for an employee to be held confidential, the employee must have sufficient access to, knowledge of or participation in confidential matters relating to labor relations. For information to be confidential, it must (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. . . .

While a *de minimus* exposure to confidential materials 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, where the confidential work cannot be assigned to another employee without undue disruption to the employer's organization. . . . (Citations omitted)

We begin by identifying the extent of Boucher's access to, knowledge of and participation in confidential labor relations matters.

Part of Boucher's knowledge of confidential labor relations information comes from certain conversations the District Administrator elects to have with her (or correspondence the Administrator choose to share with her) as well as conversations Boucher hears the Administrator having with Wasmund. This type of access is not a sufficient basis for concluding that Boucher is a confidential employee. We have consistently held that knowledge of confidential labor relations matter that comes from use of an employee as a "sounding board" is not sufficient to confer confidential status. SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 5/02); MOSINEE SCHOOL DISTRICT, DEC. NO. 20479-F (WERC, 8/02).

Nor does knowledge gained by Boucher as a consequence of her close physical proximity to Wasmund suffice to establish confidential status. We have consistently held that "physical proximity of confidential and non-confidential employees or the effect of a finding of a confidential status or a non-confidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employees are confidential employees." MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76), WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89). The District Administrator could discuss confidential labor relations matters with Wasmund in the privacy of his office rather than at Wasmund's desk in close proximity to Boucher.

The District also cites Boucher's access to confidential labor relations information kept in a safe. However, it is clear that Wasmund, rather than Boucher, could be asked to access that information without any undue disruption of the District's operations.

The District points to Boucher's retrieval of certain information from an employee's personnel file when the District was responding to a grievance. The exposure to District strategy that would come from such retrieval is minimal at best and it is again clear that Wasmund could perform this task.

Given the foregoing, only Boucher's work costing bargaining proposals provides a potentially persuasive basis for excluding her as a confidential employee.

The Union correctly notes that the raw wage and benefit data that Boucher accesses when costing bargaining proposals would be available to the Union upon request and thus, in and of itself, is not confidential labor relations information. However, as the District correctly points out, it is Boucher's knowledge of how the District is using or may use the wage and benefit information and the timing of that knowledge which exposes Boucher to confidential labor relations information, i.e., the District's strategy in bargaining or administering collective bargaining agreements. NEENAH JOINT SCHOOL DISTRICT, DEC. NO. 24393-A (WERC, 4/02).

The Union also correctly argues that the impact of evidence regarding Boucher's costing duties is diminished by the fact that some of the costing work is performed by staff of the District's outside labor attorney. If Boucher's role was limited to providing outside counsel's staff with raw data (and then being the conduit between outside counsel and the Administrator for the resulting costing work product) her exposure to confidential labor relations information would not be sufficient to warrant her exclusion. However, the record also establishes that in reliance on and as consequence of Boucher's overall knowledge of the District's budget and finances, Boucher has also performed independent costing work directly for the Administrator. It is this independent work that ultimately provides a persuasive basis for excluding Boucher as a confidential employee.

In reaching this conclusion, we reject the Union argument that Boucher should continue to be included in the bargaining unit because Administrative Assistant/Assistant Bookkeeper Wasmund could do that small amount of confidential work Boucher performs without undue disruption to District.

Given the *de minimus* amount of time it takes Boucher to perform her confidential labor relations work, we do not doubt that Wasmund would have the time to perform the work in question. However, even if we assume that Wasmund has sufficient accounting skills to interact with the Administrator for costing purposes, it is clear that Wasmund's duties would not give her the familiarity Boucher has with the District's overall financial status. Boucher's duties place her in a unique position to assist and advise the Administrator not only as to the basic cost of a proposal, but its impact on the District's finances and bargaining strategy.

Having concluded that the Bookkeeper is a confidential employee to be excluded from the bargaining unit, it is not necessary to address the District's contention that the Bookkeeper is also a managerial employee.

The Network Technician

The Network Technician serves as the primary advisor and technical resource in the development and maintenance of the computer/technology systems for the District. It is undisputed that he has full access to all information in those systems including confidential

labor relations information. It is also undisputed that in order to fulfill his job duties, he need not and has not read any confidential labor relations information.

The District contends that the Network Technician should be excluded from the bargaining unit as a confidential employee because he could read confidential labor relations materials. The Association argues, correctly, that under MINERAL POINT SCHOOL DISTRICT, SUPRA, potential access does not warrant confidential status.

Like the Lab Technician in MINERAL POINT, Network Technician Ryseweyk has never had any reason to review the content of confidential labor relations files. No representative of the District has even asked him to access such files. Though he may be asked to assist in locating such a file in the future, it is not his job to review the contents.

Given the foregoing, it is clear that Ryseweyk's work responsibilities do not acquaint him with the District's strategy or position in collective bargaining or contract administration. Although there is a potential that Ryseweyk could abuse his position, that is no more a reason to exclude his position from the bargaining unit than was true for excluding the Lab Technician in MINERAL POINT. We declined to find confidential status in MINERAL POINT on the basis of potential employee misconduct and we decline to do so here. 1/

1/ The District also notes that Ryseweyk has been asked to monitor an employee's email usage. The gathering of data that could be used to discipline employees is not a sufficient basis to find an employee confidential. MINERAL POINT, SUPRA; MILWAUKEE COUNTY, DEC. No. 22519 (WERC, 4/85); CITY OF MANITOWOC, DEC. No. 20696 (WERC, 5/83).

Dated at Madison, Wisconsin, this 15th day of December, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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