

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS LOCAL 346
Involving Certain Employees of
BAYFIELD COUNTY (HIGHWAY DEPARTMENT)

Case 81
No. 63826
ME(u/c)-1110

Decision No. 31291

Appearances:

Thomas F. Andrew, Brown, Andrew & Signorelli, P.A., 300 Alworth Building, Duluth, Minnesota 55802-1803, appearing on behalf of Teamsters Local 346.

Kathryn J. Prenz, Weld, Riley, Prenz & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Bayfield County.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On July 1, 2004, Teamsters Local 346, filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission clarify an existing Teamster-represented bargaining unit of employees of the Bayfield County Highway Department, by including the Confidential Secretary/Office Supervisor. Hearing in the matter was held in Washburn, Wisconsin on November 22, 2004, before Commissioner Susan J.M. Bauman, serving as Hearing Examiner.

The County, contrary to the Teamsters, asserts that the incumbent in the disputed position of Confidential Secretary/Office Supervisor is a confidential employee and a supervisor who therefore cannot be included in the bargaining unit. The parties filed written argument and on February 9, 2005 advised that they would not be filing reply briefs. The record was then closed.

Dec. No. 31291

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

FINDINGS OF FACT

1. Teamsters Local 346, hereinafter Teamsters or Union, is a labor organization with mailing address P.O. Box 16208, Duluth, MN 55816-0208, and is the bargaining representative for a bargaining unit consisting of Bayfield County Highway Department employees.

2. Bayfield County, hereinafter County or Employer, is a municipal employer that maintains its principal offices at 117 East 5th Street, Washburn, Wisconsin 54891. The County operates a Highway Department which is located about six blocks from the County administrative offices and employs 25 persons.

3. The Teamsters and the County are parties to a collective bargaining agreement for the period January 1, 2004 through December 31, 2006 that establishes the wages, hours and conditions of employment for employees holding the positions of Office Manager, Account Clerk, Shop Foreman, Road Foreman, Lead Mechanic, Mechanic, Mechanic/Welder, Equipment Operator and Custodian/Operator in the Highway Department.

4. Prior to April 2004, there were the following two office employees in the Highway Department bargaining unit: Account Clerk Susan Butterfield and Office Manager Wanda Hyde. Butterfield reported to Hyde. Upon Hyde's retirement in April 2004, Butterfield became the interim Office Manager. The County then created the new position of Confidential Secretary/Office Supervisor as a non-represented position so that a Highway Department employee other than the Highway Commissioner or the Patrol Superintendent could supervise the one remaining office employee, type confidential labor relations documents for the Commissioner, and take minutes at closed sessions of Highway Committee meetings where confidential labor relations matters are sometimes discussed. Butterfield was the successful competitor for this position that she assumed on May 26, 2004. A new Account Clerk, Linda Ovaska, was then hired.

The January 1, 2005 six month hourly wage rate for Butterfield is \$17.49. The comparable hourly wage rate for Account Clerk Ovaska is \$15.77.

5. The position description of the Account Clerk, previously held by Butterfield and now held by Linda Ovaska, reads in pertinent part as follows:

Duties and responsibilities are as follows:

- 1) Have excellent accounting background, which will be the basis for carrying out the mandatory State Cost Account System. Accuracy with figures essential.
- 2) Have the ability to do statistical typing.
- 3) Be able to operate all office machines, including computer, electronic typewriters [sic], calculators, FAX and copy machines.
- 4) Be familiar with payrolls from wage computations to distribution through ledger accounts.
- 5) Be able to take charge of operation of equipment from posting of shop expense, material, labor, gas and oil, etc. through the State required "Analysis of Equipment Operation" on which State rental rates are based, this will include depreciation and overhead on equipment.
- 6) Be able to do all routine office work, such as filing, typing letters, coordinating machinery specs, filing insurance claims, checking and posting shop accounts and also charges to districts.

6. The Office Manager position filled by Hyde from May 1995 until her retirement in April 2004 had the following job description:

Duties and responsibilities are as follows:

- 1) Have excellent accounting background, which will be basis for carrying out the mandatory State Uniform Cost Accounting System. Accuracy with figures is essential.
- 2) Have the ability to do statistical typing.
- 3) Be able to operate all office machines, including computer, electronic typewriters, calculators, FAX and copy machines.
- 4) Oversee and be responsible for all work in the Highway Department office, and be able to promptly transfer at the proper time and in the proper form all payrolls, vouchers, journals and other information to the County Clerk's office.

- 5) Be able to assemble all information and on the proper forms to submit requisitions to the State of Wisconsin for reimbursement, and, in accordance with the State Uniform Cost Accounting System keep accurate records of the expense of each piece of equipment owned by the Highway Department on which State rental rates are based.
 - 6) Be able to report to Madison office all detailed accounts required for reimbursement on salt storage, GPL Insurance and radio equipment for State share reimbursement.
7. The job description for the new position of Confidential Secretary/Office Supervisor held by Butterfield, accurately reflects her duties and states as follows:
1. Department: Highway
 2. Employee Name: Susan M. Butterfield
 3. Position Title: Confidential Secretary/Office Supervisor
 4. Position Purpose:

Assist Highway Commissioner in carrying out day to day duties; supervises the clerical and accounting functions of the department and maintains the department's financial accounts and records.
 5. Qualifications:
 - A. Associate Degree in bookkeeping field (degree may be waived based on experience).
 - A. [sic] Demonstrated working knowledge of computers and computer software including word processing, spreadsheets, databases, email and internet usage.
 - B. Demonstrated ability to maintain accurate and complete records and to prepare clear and detailed reports.
 - C. Demonstrated ability to maintain and establish effective working relationships with public.
 - D. Demonstrated ability to supervise employees.
 6. Knowledge, Skills, and Abilities
 - A. Ability to correspond independently in an appropriate and professional manner.
 - B. Ability to perform varied and difficult tasks using diverse techniques.

- C. Extensive knowledge of business math and English, spelling, and good communication skills.
- D. In depth understanding of Department programs, guidelines, operations and policies with respect to functions performed and the ability to use this understanding to determine how to complete assigned, varied tasks.
- E. Knowledge of Statutes pertaining to Open Meetings and Open Records; ability to prepare appropriate meeting notices, agendas and minutes.

8. When filling the Account Clerk position now held by Linda Ovaska, Butterfield, County Administrator Mark Abeles-Allison, and Highway Commissioner Dale Brevak met, reviewed the job applications, and selected six applicants to be interviewed. Butterfield, Brevak, and Abeles-Allison then interviewed the six applicants and selected three finalists. Butterfield had an equal say as to which applicants to interview and which three applicants were finalists. Abeles-Allison then checked the finalists' references and chose Ovaska as the Account Clerk, without further consultation with Butterfield. Should additional clerical positions be created, Butterfield would have the same involvement in the hiring process.

There has been no discipline of Ovaska. If Butterfield believed discipline was appropriate, she would make a recommendation to Brevak who would then independently determine whether and how to proceed. Butterfield does not have any independent disciplinary authority.

Butterfield completed a three-month evaluation of Ovaska, which Commissioner Brevak reviewed and approved before the evaluation was ultimately reviewed by Butterfield with Ovaska. Brevak did not make any changes in Butterfield's proposed evaluation of Ovaska. Butterfield will complete six-month and one-year evaluations of Ovaska that will also be reviewed by Brevak before submission and review with Ovaska. If Brevak wanted Butterfield to change the proposed evaluation, she would do so.

The one-year evaluation will include a recommendation by Butterfield as to whether Ovaska has successfully completed her one year probationary period. Commissioner Brevak will consider Butterfield's recommendation but will independently determine the probationary issue.

Former Office Manager Hyde did not prepare employee evaluations. Brevak and his predecessor, Larry Young, evaluated both Hyde and Butterfield.

The collective bargaining agreement provides that grievances are to be presented to the Highway Commissioner (Brevak) or his designee. Butterfield has not been formally designated as his designee but would receive any grievance from Ovaska and make a recommendation to Brevak as to outcome.

Butterfield is responsible to see that the work in the office gets done, and she has the authority to prioritize Ovaska's work assignments, just as Hyde did as Office Manager. Brevak and Patrol Superintendent Keith Larson give work directly to Ovaska, without going through Butterfield, as in the past they gave work directly to Butterfield or Hyde. Brevak and Larson are in and out of the office during the work day.

9. When she is not on vacation or otherwise absent from work, Butterfield types agendas for and takes notes and prepares minutes of the monthly Highway Committee meetings, including any closed sessions. She was present during closed session discussions about the instant unit clarification proceeding and associated grievances. When Butterfield is unable to attend these meetings, Keith Larson, the Patrol Superintendent, takes notes. Previously Hyde, as Office Manager, took minutes of Highway Committee meetings but did not attend closed sessions, for which either a committee member or Larson took minutes.

Butterfield has access to Brevak's e-mail account and prints out his messages for him, as he does not have a computer. E-mails to Brevak can contain confidential labor relations information. Butterfield has responsibility for preparing any confidential correspondence for Brevak relating to labor relations matters, including grievances or negotiations issues. As of the time of the hearing, she had not typed any confidential labor relations documents. Previously, both Hyde and Butterfield were available to perform labor relations typing for the Highway Commissioner, which was limited to a single written reprimand for the period 1995-2004. There had been three grievances during 2004, two related to the instant issue and one relating to a job posting issue.

Butterfield will be consulted regarding any contractual issues relating to the clerical position held by Ovaska in preparation for negotiating a successor labor agreement. She may also be asked by Abels-Allison to prepare and provide data (such as the level of sick leave use by employees) for potential use by the County when preparing/responding to bargaining proposals. The spokesman for the County during negotiations of the current County/Teamsters Highway Department contract was Abeles-Allison. Brevak was not present. Bargaining notes were taken by Abeles-Allison's confidential secretary.

Butterfield has access to the personnel files of department employees. Previously, both Hyde and Butterfield had access to these files.

10. The County currently employs five individuals considered to be confidential secretaries, including Butterfield. They are located in the County Clerk's office, the Highway Department, the County Administrator's office, Sheriff's Department and the jail. There are no confidential employees in the Health and Human Services Department which has approximately 30 employees, none of whom are confidential and where each of the four non-union section managers take minutes of committee meetings, including closed sessions. The County Administrator's secretary performs work for various county committees, including personnel. She does not do work for any departments.

11. Butterfield does not have sufficient supervisory authority to be a supervisor.

12. Butterfield will perform a de minimus amount of confidential labor relations work and that confidential work can be performed by other non-bargaining unit employees without undue disruption of the County's operation.

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

CONCLUSION OF LAW

The incumbent in the position of Confidential Secretary/Office Supervisor is not a confidential employee within the meaning of Sec. 111.70(1)(i) or a supervisor within the meaning of Sec. 111.70 (1)(o)1, Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Confidential Secretary/Office Supervisor is included in the bargaining unit represented by Teamsters Local 346.

Dated at Madison, Wisconsin, this 28th day of March, 2005.

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

Bayfield County

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

The County, contrary to the Union, asserts that the Confidential Secretary/Office Supervisor (Butterfield) cannot be included in the Highway Department bargaining unit because she is a supervisor and a confidential employee. The position of Confidential Secretary/Office Supervisor was created in April 2004 upon the retirement of the former Office Manager, Wanda Hyde, whose position was included in the bargaining unit. The position description for the Confidential Secretary/Office Supervisor was created by the County Administrator, Mark Abeles-Allison, in response to concerns raised by the Highway Commissioner, Dale Brevak, and members of the Highway Committee.

The County argues that the Highway Committee members had expressed frustration about the need to have confidential discussions at their meetings, without a unit member present, but with someone who could take notes. Although Patrol Superintendent Larson has been present at closed meetings and taken notes, the County asserts he works 12 hour days and Abeles-Allison did not feel that he should have to attend meetings. Abeles-Allison felt the need for a non-union member to retrieve and provide information that could be used in negotiations.

The County contends that Commissioner Brevak is out of the office a great deal and wanted a supervisor in the office, who is able to evaluate the Account Clerk's performance and report back to the Commissioner. The County contends that Patrol Superintendent, Keith Larson, the only other Highway Department employee not in the bargaining unit, is out of the office most of the time and cannot serve as the supervisor of the Account Clerk.

Supervisory status

We first consider the County's contention that the Confidential Secretary/Office Supervisor is a 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 connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When interpreting this statutory language, we consider the following:

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.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

Looking at Factor 1, when Account Clerk Ovaska was hired Butterfield was an equal partner with Commissioner Brevak and County Administrator Abeles-Allison in selecting which six applicants should be interviewed and then in the interviews that produced the three finalists. Although there is conflicting testimony in the record as to whether the three finalists were ranked by the interview panel, we conclude that Butterfields' testimony that no ranking occurred was more definitive than that of Administrator Abeles-Allison. It is clear from the record that Abeles-Allison checked references and then selected Ovaska without any further interaction with Butterfield. Therefore, although Butterfield played a significant role in the hiring process, we conclude that her role fell short of effectively recommending Ovaska's hire.

As to discipline, there is no evidence in the record that Butterfield has any independent disciplinary authority. From the testimony regarding the Highway Commissioner's "hands on" management style and his role in the evaluation process, we conclude that Butterfield cannot effectively recommend discipline.

As to Factor 2, Butterfield has the authority to assign work and prioritize the work flow. However, both Larson and Brevak can and do assign work directly to Ovaska without discussing this with Butterfield first.

Turning to Factor 3, Butterfield is assigned to supervise one employee. Both Larson and Brevak have greater authority over the same individual.

Looking at Factor 4, Butterfield's January 1, 2005 wage rate is \$1.72 per hour higher than Ovaska's. This wage differential is at least somewhat supportive of supervisory status.

As to Factors 5 and 6, Butterfield spends the majority of her time performing clerical work. It is her intent to cross-train Ovaska so that all tasks can be done by both and that they can fill in for one another in the event of absence due to illness or vacation. Thus, to the extent she directs Ovaska's work, she is directing the activity rather than the employee. This was also the case when Butterfield was employed as Account Clerk and Hyde was the Office Manager.

Regarding Factor 7, it is clear that Butterfield's judgment on any matters of consequence is subject to independent review and approval by Brevak or the County Administrator. Even leave requests are subject to Brevak's scrutiny.

Given the foregoing, we conclude that the Confidential Secretary/Office Supervisor is a leadworker but not a supervisor. Although she played a significant role in Ovaska's hire, that role fell short of an effective hiring recommendation. She has no significant disciplinary authority and directs the work of only one employee. While the record is not definitive as to the amount of time that neither the Commissioner nor the Patrol Supervisor are present in the Highway Department office, we are not persuaded that the periods of their mutual absence are so substantial that Ovaska is effectively left without supervision.

In reaching this conclusion, we have considered the County's argument comparing Butterfield to the Office Manager found to be a supervisor in JACKSON COUNTY, DEC. NO. 17828-G (WERC, 11/96). However, unlike Butterfield, the Office Manager in JACKSON COUNTY had very significant independent disciplinary authority (including suspensions) and thus is readily distinguishable. The County also points to the Administrative Assistant found to be a supervisor in CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97). While this presents a closer question, the Assistant supervised at least five employees and her authority in hiring and probationary determinations exceeded that of Butterfield. Therefore we conclude the Assistant's status in CHIPPEWA COUNTY is distinguishable from Butterfield's.

Confidential Status

The following legal standard 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 SCHOOL DISTRICT V. WERC, 251 Wis.2d 325, 337-338 (2002) is used when determining whether an individual is a confidential employee:

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 minimis* 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.)

As noted above, the critical area of inquiry when we determine an employee's confidential status is the degree of exposure to the employer's strategy in collective bargaining and contract administration. Thus, for instance, the individual who determines the cost of the wage and fringe benefit proposals the employer may make to the union is typically found to be a confidential employee because that person is privy in a very significant way to strategic information which, if known to the union, would compromise the employer's interests at the bargaining table. WINTER SCHOOL DISTRICT, DEC. NO. 28464-B (WERC, 6/96). However, the payroll individual who supplies the raw data to the person doing the costing typically is not found to be a confidential employee because his or her exposure to the employer's bargaining strategy through the supply of data is minimal. Further, such individual's overall payroll responsibilities (which may also include managing personnel files and leave records) generally do not provide any substantial support for exclusion as a confidential employee because said responsibilities do not expose them to the employer's strategic interests. OUTAGAMIE COUNTY, DEC. NO. 14062 (WERC, 10/75).

As to the District's contention that Butterfield may play a strategic role prior to the commencement of bargaining, the record reflects that Abeles-Allison typically seeks input from supervisory staff regarding possible changes in contract language that would assist them when supervising employees. Because the potential strategic information Butterfield might provide would apply only to one employee (Ovaska), this potential does not provide any significant

support for finding Butterfield to be a confidential employee. Abeles-Allison would also like to obtain data from Butterfield regarding, for example, the amount of sick leave used by different employees. We have generally found that such inquiries do not expose an employer's bargaining strategy in a meaningful way. Such inquiries are more akin to the provision of raw data, a role that has not been sufficient to exclude payroll personnel from employee status. SEE, E.G., CITY OF NEW BERLIN, DEC. NO. 13173-I (WERC, 4/04). The fact that Abeles-Allison may not be comfortable requesting the information from a bargaining unit person does not change this result.

The County also contends that Highway Commissioner Brevak has significant labor relations responsibilities as to both the bargaining and administration of labor agreements and thus should be entitled to a confidential secretary, citing OCONTO FALLS PUBLIC SCHOOLS, DEC. NO. 26815-B (5/04). However, the record is clear that Brevak was not at the bargaining table during the last round of negotiations and in any event clerical/administrative support was provided by the confidential secretary to Abeles-Allison. With respect to the typing of confidential labor relations documents on behalf of Larson or Brevak regarding administration of the labor agreement, there have been few grievances or instances of discipline within the Highway Department. Thus the amount of any confidential work related thereto is clearly de minimus and could easily be performed by other confidential clerical employees. Thus, we are satisfied that Brevak's labor relations responsibilities do not generate sufficient work to warrant confidential status for Butterfield.

With respect to whether taking minutes during closed sessions of the County Highway Committee is sufficient to warrant confidential status for Butterfield, the Committee's closed sessions relatively infrequently involve matters that are related to labor relations. As to other closed session matters, Butterfield's presence would not render her confidential and her presence at meeting where confidential matters are not on the agenda would not be problematic. As to the relatively few matters relating to labor relations that do arise during closed sessions, Larson (who has performed this role in the past) or a committee member could take notes. Although this might not be seen as ideal by members of the Committee, such concerns do not rise to the level of undue disruption of the County's operations and thus are insufficient to warrant finding that Butterfield is a confidential employee. We note that the Health and Human Services Department, with more employees than the Highway Department, has no confidential secretary and that non-union personnel take such notes.

The County also contends that Butterfield is a confidential employee because she has access to personnel files and to Brevak's e-mail. In OCONTO FALLS PUBLIC SCHOOLS, SUPRA, we found that an employee's responsibility for payroll and maintenance of leave records and personnel files did not expose her in a significant way to confidential labor relations information. That holding is applicable here. The fact that Butterfield has access to Brevak's e-mail (as did Ovaska until the date of the hearing) is also insufficient to support a finding of the position as confidential. There is no persuasive evidence in the record that Brevak receives a significant amount of confidential labor relations information by e-mail. To the extent that

situation changes in the future, the County's/Brevak's decision not to have a computer does not provide a persuasive basis for excluding an employee as confidential so that she can retrieve the occasional confidential e-mail.

The County argues that Butterfield's confidential role is like that of the Administrative Assistant found confidential in CLARK COUNTY, DEC. NO. 16648-B (WERC, 6/04). However, unlike Butterfield, the Assistant in CLARK COUNTY was an active member of the management team which exposed her to discussions of confidential labor relations information on a regular basis. In addition, the Assistant performed confidential labor relations work for a management employee who was (unlike Commissioner Brevak) a member of the County bargaining team. Thus, Butterfield's exposure to strategic labor relations information is far less substantial than was the Assistant's in CLARK COUNTY.

Given the foregoing, we conclude that Butterfield does not have sufficient access to, knowledge of or participation in confidential labor relations matters to be excluded from the unit as a confidential employee.

Conclusion

Because Butterfield is not a supervisor or a confidential employee, she is included in the bargaining unit.

Dated at Madison, Wisconsin, this 28th day of March, 2005.

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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