

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

In the Matter of the Petition of

**TEAMSTERS LOCAL 346**

Involving Certain Employees of

**DOUGLAS COUNTY**

Case 293  
No. 68281  
ME-1252

**Decision No. 6182-A**

---

**Appearances:**

**Timothy W. Andrew**, Attorney at Law, Andrew & Bransky, P.A., 302 West Superior Street, #300, Duluth, Minnesota 55802, appearing on behalf of Teamsters Local 346.

**Victoria L. Seltun**, Attorney at Law, Weld, Riley, Prenn and Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Douglas County.

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

On September 15, 2008, Teamsters Local 346 filed a petition with the Wisconsin Employment Relations Commission seeking to clarify the newly created position of Douglas County Highway Department Administrative Assistant into a County Highway Department unit it represents for the purposes of collective bargaining. The County opposes the petition arguing the incumbent in the position will be a confidential employee.

Hearing on the petition was held in Superior, Wisconsin on December 9, 2008 before Commission Examiner Michael R. O'Callaghan. Post-hearing briefs were filed, the last of which was received on February 9, 2009.

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

No. 6182-A

### **FINDINGS OF FACT**

1. Douglas County, herein the County, is a municipal employer. The County operates a Highway Department which is managed and supervised by Highway Commissioner Halverson, Patrol Superintendent Armstrong, Shop Superintendent Wedan, Highway Technician Jackman and Finance Department Accountant Nicoski. The Department's offices are located 23 miles from the County's main offices which house the County's human resources employees.

2. Teamsters Local 346, herein the Union, is the collective bargaining representative of 33 Highway Department employees, all of whom are blue collar except for a Bookkeeper. There are no other County bargaining units that include Department employees.

Until 2008, the Union bargaining unit also included a Head Bookkeeper who performed a variety of clerical and administrative tasks. Upon the retirement of the long-time Head Bookkeeper, Halverson, who hoped to upgrade the skill set of the Department's administrative staff, sought and received County approval to abolish the Head Bookkeeper position and replace it with a non-bargaining unit position of Administrative Assistant. The Administrative Assistant will assume some of the work of the former Head Bookkeeper but will also have some clerical and administrative duties now performed by Commissioner Halverson, Patrol Superintendent Armstrong and other County employees. The vast majority of this clerical and administrative work will not provide the Assistant with access to or knowledge of confidential labor relations information.

3. During the ten years that Halverson has been Highway Commissioner, he and Patrol Superintendent Armstrong have been part of the County bargaining team during contract negotiations with the Union. Typically the parties have bargained two year contracts. In preparation for and during bargaining, Halverson and Armstrong provide the County's lead negotiator/spokesperson with written and verbal suggestions as to contract language changes and general bargaining strategy the Department would like to have the County pursue. Halverson generally sends such communications by e-mail. The County's confidential human resources employees (consisting of Human Resources Analyst Corbin, a Human Resources Specialist and the County Administrator's Administrative Assistant) formalize the suggestions the County elects to pursue into written bargaining proposals. Halverson and Armstrong also actively participate in the County bargaining team caucuses that occur during collective bargaining. Halverson assisted in the County's preparation for the one interest arbitration proceeding that has occurred during his tenure.

The County Highway Commission meets monthly or bi-monthly to discuss Department issues. Halverson and Accountant Nicoski attend the meetings and a clerical employee from another bargaining unit travels to the meetings to take minutes. Twice a year, the meetings proceed to closed session to discuss confidential labor relations issues. When that occurs, the clerical employee leaves the meeting and Halverson takes the minutes.

4. During Halverson's ten-year tenure as Highway Commissioner, there have occasionally been grievances filed by the Union/Union represented employees. Five such grievances have resulted in grievance arbitration awards. Halverson is actively involved in the Department's/County's response to grievances and preparation for grievance arbitration proceedings. Halverson typically types the Department's grievance responses himself.

5. When Department employees are verbally counseled by a supervisor (generally Patrol Superintendent Armstrong) regarding unacceptable work performance, the Department prepares coaching memos as a written confirmation of the content of the counseling which is given to the employee and added to the employee's personnel file. Halverson routinely edits Armstrong's drafts of the written confirmations for style, grammar and content.

During Halverson's tenure, three employees have been discharged and others have been disciplined. Halverson played a significant role in the decision to discipline/discharge and types the discipline/discharge letters himself.

6. The Administrative Assistant will replace Halverson and Armstrong as the typist of all documents referenced in Finding of Fact 3-5.

7. Department employees are randomly tested for alcohol and drugs. A human resources employee receives the names of the employees to be tested and schedules the tests. A human resources employee then hand delivers the names and testing details to the Department. The Administrative Assistant will assume responsibility for scheduling the tests.

8. The Administrative Assistant will assume the Bookkeeper's and Accountant's current responsibilities for monitoring employees' leave usage and reporting suspected abuse to Halverson. The Assistant will monitor employee time sheets to verify accuracy for State Department of Transportation reimbursement and to detect and report any apparent falsification.

9. The Administrative Assistant will type yearly employee performance evaluations using supervisor's notes.

10. The Administrative Assistant's confidential labor relations work will take a minimal amount of time to perform and said work can be performed by other County employees without undue disruption to the County.

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

**CONCLUSION OF LAW**

The Administrative Assistant 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(l)(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 Administrative Assistant is hereby added to the Teamsters Local 346 bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of October, 2009.

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

**DOUGLAS COUNTY**

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

The issue before us is whether the incumbent in the yet to be filled Administrative Assistant position in the Highway Department will be a confidential employee.

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 (Ct. App. 2002), is used when determining whether an employee should be deemed confidential:

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 representatives 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 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, where the confidential work cannot be assigned to another employee without undue disruption to the employer's organization. . . . (Citations omitted).

The record makes clear that Halverson is a hands-on manager who is actively involved in all facets of the Department's work. The Department's Administrative Assistant will be able to perform a variety of administrative/clerical work for Halverson (and other Department supervisors) that will give them more time to perform their core managerial and supervisory duties. The Union's contentions to the contrary, we do not doubt the good faith of the County and thus accept at face value the County's assertions as to the duties planned for the new yet-to-be filled Administrative Assistant position. However, we are persuaded that the proposed confidential labor relations portion of that work will not take much time to perform and thus

can be performed by others without undue disruption of the County's operation. Thus, we conclude that the Administrative Assistant is not a confidential employee and have ordered that the Administrative Assistant be added to the Union bargaining unit.

The County puts forth a wide variety of Administrative Assistant duties as being confidential labor relations work. As to some of the duties, the County is correct. As to some, it is not.

### **Not Confidential Labor Relations Work**

The County contends that after consulting with Halverson, the Administrative Assistant will draft and forward to human resources any proposed changes in existing written interview questions asked of applicants for Department positions. This is not confidential labor relations work. Applicants who may be hired to fill a Departmental position are not employees and thus are not represented for the purposes of collective bargaining by the Union. Therefore, knowledge of any such proposed changes will not provide the Assistant with any strategic labor relations information that ought not be known by the Union.

The County argues that typing job description for Department positions is confidential labor relations work currently performed by Halverson and that the Assistant will be responsible for maintaining and updating the descriptions. Job descriptions are not confidential labor relations documents because they are accessible to the Union upon request. In addition, the County has not identified any strategic advantage the Union might gain from awareness that an updating effort has begun and what the tentative result of such an updating might be. Thus, we conclude this is not confidential labor relations work.

The County asserts that the Assistant will coordinate the security and transmission of confidential employee medical records and information. This is confidential work but not confidential labor relations work because the records and information in question do not relate to the County/Union collective bargaining relationship.

The County alleges that the Assistant will conduct new employee orientation and monitor employee training. The County has not identified any confidential component of these duties or nexus to the parties' collective bargaining relationship. This is not confidential labor relations work.

The County contends that the Assistant will perform clerical duties currently performed by Halverson when he prepares materials for presentations to the County committees. Unless the materials in question contain confidential labor relations information, this is not confidential labor relations work.

### **Confidential Labor Relations Work**

The County contends that the Assistant will type the strategic bargaining memos and suggested bargaining proposals currently drafted, typed and e-mailed to human resources by Halverson. This is confidential labor relations work but will typically take a minimal amount of time every two years.

The County also asserts that once the Assistant becomes knowledgeable as to Department operations and the terms of the collective bargaining agreement, Halverson will strategize with the Assistant over potential bargaining proposals. This duty is contingent on the Assistant's at this point unknown strategic capabilities and acquisition of Departmental and contractual knowledge at some unknown time in the future. In addition, we have consistently rejected use of an employee as a "sounding board" as being a persuasive basis for obtaining confidential employee status. GILLET SCHOOL DISTRICT, DEC. NO. 30755 (WERC, 12/03); GREEN COUNTY, DEC. NO. 31387 (WERC, 7/05); MOSINEE SCHOOL DISTRICT, DEC. NO. 20479-F (WERC, 8/02). Thus, we will not consider this asserted duty as part of our analysis.

The County alleges that the Assistant will type yearly employee performance evaluations using supervisor's notes. The knowledge that the Assistant has of what the evaluation will be or of changes in drafts of evaluations is confidential labor relations information. However, the strategic value (i.e. the harm that would come to the County's interests if that information became known to the employee or the Union) is minimal. Further, once the evaluation is received by the employee, its content is obviously no longer confidential.

As reflected in Finding of Fact 6, the County does quarterly random drug and alcohol testing on certain Department employees and asserts the Assistant will take over the responsibilities for coordinating the testing from human resources employees. Knowing who will be tested is confidential labor relations knowledge.

Halverson currently types letters of discipline received by employees. The County argues that the Assistant will assume that duty. To the extent the letter reflects discipline already imposed, typing the letter will not expose the Assistant to confidential labor relations information. If the discipline has not already been imposed, then typing the letter (and any drafts thereof) temporarily gives the Assistant confidential labor relations information. Once the letter is received by the employee, it is no longer confidential. The Assistant will also be available to type Halverson's responses to grievance and will thereby gain access to confidential labor relations information in terms of what the response will be and any changes that occur during drafting. Again, once the grievance response is received, it is no longer confidential.

The record establishes that when Department employees are verbally counseled by a supervisor (generally Patrol Superintendent Armstrong) regarding unacceptable work

performance, the Department prepares coaching memos as a written confirmation of the content of the counseling which is given to the employee and added to the employee's personnel file. Halverson routinely edits Armstrong's drafts of the written confirmations for style and grammar. The County asserts that the Assistant will assume all responsibility for drafting the coaching memos. From our review of the record, we conclude that some of the memos are prepared after the discussion with the employee has occurred. In these circumstances, the memos do not expose the Assistant to any confidential information because the information has already been shared with the employee. In those circumstances in which the memos are prepared prior to the conversation with the employee, the Assistant is temporarily exposed to the confidential labor relations information that a counseling session will be occurring about the matter described therein but this knowledge has very limited strategic importance given the ultimate disclosure of the information to the employee and the minimal disciplinary impact on the employee.

As reflected in Findings of Fact 3 and 4, Halverson is actively involved in the County's preparation for grievance arbitration and interest arbitration proceedings and the County contends that the Assistant will help Halverson in terms of assembling/copying/typing documents. This is confidential labor relations work because it exposes the Assistant to the County's litigation strategy. However, we note that during Halverson's ten year tenure, there have only six such proceedings.<sup>1</sup>

As indicated in Finding of Fact 3, the County Highway Committee meets monthly or bi-monthly and typically twice a year meets in closed session to discuss confidential labor relations issues. The County contends that the Assistant will assume the minute-taking responsibilities of a clerical courthouse bargaining unit employee as to all open portions of the meetings and of Halverson as to all closed portions of the meetings. Taking minutes during closed meetings where confidential labor relations matters are discussed does provide knowledge of confidential labor relations information. However, the time such responsibilities take is minimal, the record indicates that the minutes in questions are basic not verbatim, and there are others (Halverson and the Accountant) present who can take the minutes.<sup>2</sup>

The County asserts that the Assistant will open Halverson's e-mail in his absence (and respond if appropriate). It is possible but speculative as to whether such e-mails will contain confidential labor relations information. Thus, this duty plays a minimal role in our analysis.

---

<sup>1</sup> The County does argue that Halverson once spent 40 hours preparing a transcript of a tape recording to rebut a transcript placed in evidence by the Union during a grievance arbitration proceeding. In context, particularly because the tape recording was accessible to all parties and the arbitrator, preparation of the transcript was not confidential labor relations work. This also seems unlikely to be a regular occurrence.

<sup>2</sup> We note that there still may be substantial efficiencies to be had by having the Assistant replace the courthouse clerical as the minute taker for open sessions.



The County alleges that the Assistant will assume the current responsibilities of the Bookkeeper and the Accountant to monitor employee leave usage and report any pattern of suspected abuse. The County also contends that the Assistant will monitor employee time sheets to verify accuracy for State Department of Transportation reimbursement and to detect any falsification. Where, as here, it remains Halverson's responsibility to determine whether abuse or falsification in fact exists and what discipline is appropriate, we have consistently found that such monitoring/reporting responsibilities do not create a sufficient conflict of loyalties to warrant excluding an employee from a bargaining unit as a confidential employee. CITY OF RHINELANDER, DEC. NO. 24518-C (WERC, 11/02); SHEBOYGAN AREA SCHOOL DISTRICT, DEC. NO. 10488-B (WERC, 8/02); MANITOWOC PUBLIC SCHOOL DISTRICT, DEC. NO. 29771-C (WERC, .7/01); MINERAL POINT SCHOOL DISTRICT, *supra*, SHAWANO COUNTY, DEC. NO. 7197-D (WERC, 8/94); CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84).

### **Application of MINERAL POINT**

Applying the MINERAL POINT standard to the facts recited above, it is clear that Halverson has significant labor relations responsibilities and that the County plans in good faith to have the Assistant perform clerical and administrative work which will include exposure to confidential labor relations information. However, as discussed above, we conclude that the confidential labor relations work in question takes so little time that it can be assigned to another employee without undue disruption to the employer's organization.<sup>3</sup> Thus, while it is a close question, we conclude that the Administrative Assistant is not a confidential employee and therefore should be included in the Teamsters' Highway Department bargaining unit.

In reaching our decision, we have considered the County's citation of our decision in CLARK COUNTY, DEC. NO. 16648-B (WERC, 6/04) wherein we concluded that an Administrative Assistant was a confidential employee. However, critical to that conclusion was our finding that the Administrative Assistant was a *bona fide* member of the management

---

<sup>3</sup> To the extent that the County relies on the physical distance between the Department's offices and those of human resources personnel, we note that the evolution of communication by e-mail and fax (and in this instance the technological skills of the Halverson) substantially eliminates the prior importance of physical distance in determinations of confidential status.

team that made confidential labor relations decisions as to two bargaining units and who, in that role, attended bargaining sessions. This type of central involvement in the Department's labor relations decision-making is not present here.

Dated at Madison, Wisconsin, this 16<sup>th</sup> day of October, 2009.

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