

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS UNION, LOCAL 760)	CASE 21235-E-07-3294
)	
Involving certain employees of:)	DECISION 9983 - PECB
)	
CITY OF YAKIMA)	ORDER DETERMINING
)	ELIGIBILITY ISSUE
_____)	

Reid, Pedersen, McCarthy & Ballew, L.L.P., by *Kenneth J. Pedersen*, for the union.

Sofia D. Mabee, Assistant City Attorney, for the employer.

On August 31, 2007, Teamsters Union, Local 760 (union) filed a petition seeking certification as the exclusive bargaining representative of certain employees of the Police Department of the City of Yakima (employer).

Specifically, the union seeks to represent the supervisors, the police captains, and the lieutenants in the department. Representation Coordinator Sally J. Iverson held an investigation conference on October 1, 2007. The employer argued that the police captains should be not be part of the proposed bargaining unit, as they are confidential employees as defined by the Washington Administrative Code. A hearing was held on the issue on October 17, 2007, before Hearing Officer Robin A. Romeo. The parties submitted post-hearing briefs which were considered.

ISSUE

Whether the police captains are confidential employees within the meaning of Chapter 41.56 RCW and therefore excluded from a supervisory bargaining unit?

Based upon the record, the applicable statutes, rules, and case precedent, the Executive Director rules that the position of police captain is confidential, and therefore the three police captains are properly excluded from the bargaining unit because they formulate labor policy, prepare for or conduct collective bargaining, and administer collective bargaining agreements.

APPLICABLE LEGAL STANDARDS

The Commission has a long history of using a labor nexus test in determining the issue of an employee's status as confidential. In 2001, the Commission adopted WAC 391-35-320 which codified the confidential employee test into its own rules. Pursuant to WAC 391-35-320(1), an employee is confidential if they participate directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements.

The Commission has interpreted WAC 391-35-320 to mean that an employee's work assignments need not be exclusively or primarily confidential, but they must be necessary, regular and ongoing. *City of Redmond*, Decision 7814-B (PECB, 2003). The Commission also distinguishes labor relations functions from personnel functions. *Washington State Patrol*, Decision 8469-A (PSRA, 2006). The labor relations duties must be actual duties, not just speculative. *Chelan County Public Utility District*, Decision 8496-B (PECB,

2006). The party seeking a confidential exclusion has a heavy burden of proof because an individual's status as a confidential employee deprives the person of all bargaining rights under state law. *Yakima School District*, Decision 9020-A (PECB, 2007).

In *Yakima School District*, Decision 9020-A (PECB, 2007), the Commission affirmed a decision by the Executive Director finding an employee to be confidential where the employee handled confidential labor relations materials and attended meetings involving collective bargaining issues within the district. She processed documents and correspondence regarding personnel issues, grievances, proceedings before this Commission, and was privy to sensitive salary information that she was instructed to keep confidential.

In *City of Bellevue*, Decision 6699-A (PECB, 1999), the Commission affirmed a decision of the Executive Director finding the position of police major to be confidential. In that case, the employees were assigned to sit at the bargaining table, were given information on the amount of funding available for the agreement, and had input on how the package was formulated. They discussed issues with the union negotiators at the bargaining table, with the city manager and the labor relations consultant. They provided operational advice and participated in management team discussions of strategy, proposals, and packaging alternatives. The union's argument that they were not confidential and were merely "observers" on the bargaining team was rejected.

ANALYSIS

The City of Yakima's Police Department is composed of a chief, three captains, five lieutenants, 15 sergeants, 101 police officers, and other non-commissioned, non-uniformed employees.

There are currently two bargaining units in the Police Department, one represented by the Yakima Police Patrol Association (YPAA) composed of sergeants and police officers, and an AFSCME unit representing the non-commissioned, non-uniformed employees.

Evidence was presented that the three captains have been assigned to collective bargaining duties on a necessary, regular, and ongoing basis. They are assigned one at a time to each of the employer's two bargaining teams; one for the commissioned officers' negotiations and one for the non-commissioned employees' negotiations. Captain Jeff Schneider was on the employer team that bargained in 2003 in the YPAA negotiations, Captain Greg Copeland was on a team that bargained in 2006 in the YPAA negotiations, and Captain Rod Light was on a team that bargained in 2005 in the AFSCME.

There was testimony detailing Copeland's participation in bargaining. He attended bargaining sessions, including private employer caucuses and meetings where confidential information was discussed. He received confidential emails and written information related to bargaining. He discussed the employer's position in bargaining with the police chief and when the bargaining resulted in interest arbitration, he attended as the employer's representative.

There was testimony about Schneider's participation in bargaining. He provided input to the employer's opening proposal and reviewed the proposal prior to submission to the union. He attended every bargaining session and spoke on the employer's behalf at the table. He was privy to financial information and the employer's counter-proposals prior to it being submitted to the union. He attended executive sessions and provided input regarding bargaining proposals to the city council.

There was also testimony about Schneider's involvement in grievances. Schneider had issued a memo concerning the assignment of overtime which led to the filing of an unfair labor practice complaint by the YPAA with this Commission. He assisted the employer in responding to the unfair labor practice proceeding.

There was testimony regarding Light's participation in bargaining. He attended bargaining sessions as the police department representative, provided input in the drafting of employer proposals, and attended caucuses and meetings where confidential strategies and counter-proposals were discussed.

There was also general testimony that the police captains routinely respond to grievances filed by employees and that they are involved in disciplinary matters which have included the termination of a police officer. They also fill in for the police chief in his absence.

CONCLUSION

As stated previously, the employer bears a heavy burden of proof in seeking confidential status as it deprives an employee of all bargaining rights under state law. *Yakima School District*, Decision 9020-A (PECB, 2007).

The employer has met the burden of proof here. As in *Yakima School District* and *City of Bellevue*, the police captains participate in the formulation of labor policy, preparation for or conduct of collective bargaining and the administration of collective bargaining agreements.

The police captains participate in bargaining. Although they are assigned one at a time to a bargaining team, taking all of their

experience together, the type and amount of information that they are exposed to creates a potential conflict of interest. If they were in a bargaining unit and assigned to an employer bargaining team, they could be privy to information of the employer that their union would desire or vice versa. This type of "exposure" warrants their exclusion.

The testimony that the captains sat at the bargaining table, but 99 percent of the time didn't really do anything or didn't participate, does not negate the fact that they were part of the employer's bargaining team. They were exposed to confidential information. They attended confidential meetings.

The police captains assist in the formulating and administering of labor policy. They formulate labor policy and administer the collective bargaining agreement as shown by the participation in the unfair labor practice proceeding, the determination of the assignment of overtime, adjustment of grievances, and disciplinary matters.

The union argues that because the police captains are entitled "deputies" as used in RCW 41.56.030(2)(c), they are not confidential. The fact that they do not have the title "deputy" is not relevant. An employee's designation as confidential is determined by actual duties not the job title. *Chelan County Public Utility District*, Decision 8469-B. The test is codified in the Commission's rules in WAC 391-35-320(1) and does not define the test by title.

The union also argues that the possible creation of a deputy chief position precludes a finding that the police captains are confidential in that the deputy chief will act as the chief's representative in collective bargaining and fill in for the chief when he is

absent. However, these future duties are speculative and speculation alone cannot form the basis of a determination of an employee's confidential status. *Chelan County Public Utility District*, Decision 8469-B.

Using the labor nexus test, the employer has satisfied its burden of proof that the position of police captain is confidential and properly excluded from the bargaining unit.

FINDINGS OF FACT

1. The City of Yakima is a public employer within the meaning of RCW 41.56.030(1). The employer maintains and operates a police department.
2. Teamsters Union, Local 760, is a bargaining representative within the meaning of RCW 41.56.030(3) and has filed a petition with the Public Employment Relations Commission seeking certification as the exclusive bargaining representative of a supervisory bargaining unit of police lieutenants and captains.
3. The employer has contended that the position of police captain is confidential as defined by statute and should be excluded from the bargaining unit.
4. The three employees who occupy the position of police captain, Greg Copeland, Jeff Schneider, and Rod Light, sit on the employer's bargaining teams, provide input to the city's proposals and have access to confidential information. They formulate labor policy and administer the collective bargaining agreement in that they assign overtime, process grievances and make recommendations on discipline.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The Findings of Fact establish that the employees with the title of police captain are confidential employees within the meaning of RCW 41.56.030(2)(c) and WAC 391-35-302(1).

ORDER

The position of police captain shall not be included in the bargaining unit involved in this proceeding.

Issued at Olympia, Washington, this 22nd day of February, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the agency under WAC 391-25-660.