

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CLASSIFIED PUBLIC EMPLOYEES)	CASE NO. 5759-E-85-1028
ASSOCIATION/WEA)	
Involving certain employees of:)	DECISION 2243-B - PECB
CLOVER PARK SCHOOL DISTRICT)	DECISION OF COMMISSION
)	
)	

Faith Hanna, Staff Attorney, Washington Education Association, appeared on behalf of the petitioner.

Ronald J. Knox, Assistant Administrator for Personnel, appeared on behalf of the employer.

On April 4, 1985, Classified Public Employees Association (CPEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of a bargaining unit of office clerical employees of Clover Park School District No. 400. While stipulating the exclusion of approximately 29 employees from that bargaining unit, the parties entered into a supplemental agreement for a post-election determination on the voter eligibility of approximately 49 persons claimed by the employer to be confidential and/or supervisory employees. CPEA prevailed in the representation election conducted by the Commission, and received interim certification as exclusive bargaining representative of the bargaining unit. Clover Park School District,

Decision 2243 (PECB, June 12, 1985). A hearing on the eligibility dispute was held on October 21, 22, 23, and 24, 1985, before Frederick J. Rosenberry, Hearing Officer. On February 9, 1987, Executive Director Marvin L. Schurke found that none of the contested employees held confidential or supervisory positions. Decision 2243-A - PECB. The employer filed timely objections, bringing the matter before the Commission.

POSITIONS OF THE PARTIES

The employer's position on employees who should be excluded from the bargaining unit is summarized below:

	<u>EXCLUDED BY AGREEMENT</u>	<u>ADDITIONAL EXCLUSIONS</u>
Elementary schools	0	12 confidential
		7 confidential/supervisory
Junior high schools	0	4 confidential/supervisory
Senior high schools	0	5 confidential/supervisory
Vocational/technical	3	12 confidential
Personnel office	3	2 confidential ¹
Superintendent's office	5	1 confidential
Maintenance	0	1 confidential/supervisory ²
Purchasing	0	1 confidential
Transportation	<u>0</u>	<u>1</u> confidential
TOTALS	11	46

¹ On page 11 of the employer's brief in support of its objections, it states that "the finding with respect to Receptionist/Secretary [referring to Barbara West in the personnel office] is not being challenged".

² In a letter filed on March 23, 1987 in response to a motion to strike filed by CPEA, the employer stated that it had "inadvertently included the position in its brief" and withdrew its objections to the ruling of the Executive Director.

The employer cites court and PERC decisions from the well-developed area of confidential employee status. Those precedents, and the issue of supervisory employees, are discussed later in this decision.

The Classified Public Employees Association agrees with the findings and order of the Executive Director.³

DISCUSSION

The facts of this case, job descriptions and background material are well developed in the Executive Director's decision and are not repeated here.

Supervisory Exclusions

PERC made reference in City of Richland, Decision 279-A (PECB, 1978), aff., 29 Wn.App. 599 (Division III, 1981), cert. den., 96 Wn.2d 1004 (1981), to the definition of "supervisor" contained in the National Labor Relations Act:

The term "supervisor" means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them, 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.

³ The CPEA made a motion to withdraw from a pre-hearing stipulation by which it agreed to exclude five employees from the bargaining unit. Following the reasoning detailed in the Executive Director's decision, the motion is denied.

It is clear from the record that none of the employees at issue in this case meet that test. In every instance, the principal or administrator retains control. The secretaries in question function as non-supervisory "senior secretaries" or "lead secretaries", rather than as supervisors. Exclusions based on supervisory responsibilities are denied.

Confidential Exclusions

Within the Public Employees Collective Bargaining Act, RCW 41.56.030(2)(c) defines the "public employees" covered by the Act and states the general criteria for the "confidential" exclusion (among others):

"Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer. (emphasis supplied)

RCW 41.59.020(4)(c) in the Educational Employment Relations Act further defines the "confidential" employee:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and,

(ii) Any person who assists and acts in a confidential capacity to such person.

The confidential exclusion has been further defined in a series of decisions, the most prominent being City of Yakima v. IAFF, 91 Wn.2d 101 (1978), where the Supreme Court cited RCW 41.59-.020(4)(c) as helpful in interpreting RCW 41.56.030(2)(c). That decision specified the formulation of labor relations policy as a necessary requirement for confidentiality. Neither general supervisory responsibility nor the handling of confidential material outside of labor relations constitute a basis for a "confidential" exclusion.

The secretaries in elementary, junior high and senior high school buildings work with principals who have no meaningful role on behalf of the employer in collective bargaining and who handle very few grievances. The secretaries' duties of maintaining personnel files, infrequently typing disciplinary or grievance notes and rarely typing bargaining "input" do not qualify them for confidential exclusions.

At the vocational technical institute and central offices most of the secretaries clearly do not meet the standard for exclusion as a "confidential" employee. In the case of a few others, who have occasionally typed, gathered or proofread bargaining or grievance materials, the Commission weighs the needs of the employer against the rights of the employees to be represented. With three (3) secretaries excluded by mutual agreement at the vocational-technical institute and eight (8) more excluded by mutual agreement at central office, we believe that the limited amount of labor relations work handled in the past by the contested employees can be assigned in the future to the agreed-upon confidential secretaries. We do not believe that such a slight rearrangement in assigning this work will unduly burden the employer or its administrators. Conversely,

we are hesitant to withhold statutory representation rights from the contested secretaries when reasonable accommodations can be made to eliminate any question of their confidentiality.

The foregoing process leaves two contested employees to consider: The "payroll specialist" position at the Vocational-Technical Institute, occupied by Betty Whinnery; and a "data management secretary" position in the Personnel Office, occupied by Ann Hibbert (Andrews). Both of these individuals work on data processing equipment and work with grievances and bargaining proposals. They are called upon by the employer's negotiators to use the data processing equipment to gather information and evaluate proposals for bargaining. Because their job functions appear to demand some distinguishing technical ability, and because nothing in the record shows that their duties associated with labor relations could be performed by other employees already excluded, we find that they meet the standard for exclusion as "confidential" employees.

NOW, THEREFORE, it is

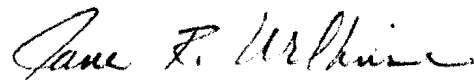
ORDERED

1. Except as provided below, the findings of fact, conclusions of law and order of the Executive Director are affirmed.
2. Paragraph 12 of the findings of fact and paragraph 2 of the conclusions of law are amended by striking the references to "the payroll specialist employed in the VTI personnel office" and "district personnel office data management secretary".

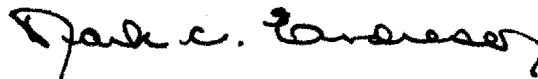
3. A new finding of fact is added, as follows:
 15. As described by the record in these proceedings, the payroll specialist employed in the VTI personnel office and the district office data management secretary apply unique technical skills in performing assignments which include the evaluation and computation of proposals received and made by the employer in collective bargaining.
4. A new conclusion of law is added, as follows:
 4. The payroll specialist employed in the VTI personnel office and the district office data management secretary are "confidential" employees within the meaning of RCW 41.56.030(2)(c).
5. Paragraph 1 of the Order is amended, as follows:
 1. The employees holding the positions described in paragraph 15 of the Findings of Fact and paragraph 4 of the Conclusions of Law are excluded, but other employees holding positions identified in the Supplemental Agreement in this proceeding are included in the bargaining unit described in paragraph 5 of the Findings of Fact.

Issued at Olympia, Washington, this 28th day of May, 1987.

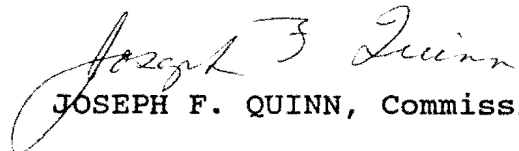
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner