STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
COMMUNICATIONS WORKERS OF AMERICA, LOCAL 37083	)	CASE 18263-E-04-2932
	)	
Involving certain employees of:	)	DECISION 8496-A - PECB
	)	
CHELAN COUNTY PUBLIC UTILITY DISTRICT	)	ORDER DETERMINING ELIGIBILITY ISSUES
	)	

Schwerin Campbell Barnard, by *Robert H. Lavitt*, for the union.

Cedar River Law Professionals, by *Eileen M. Lawrence*, for the employer.

On February 27, 2004, Communications Workers of America, Local 37083 (union), filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of the Chelan County Public Utility District (employer). On April 9, 2004, the Executive Director denied a motion for dismissal filed by the employer.[1]

An investigation conference was held on June 16, 2004, at which time the employer disputed the propriety of the petitioned-for bargaining unit and the eligibility of several employees. The parties did not agree on a prompt hearing date, the union requested

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[1] *Chelan County Public Utility District*, Decision 8496 (PECB, 2004). The employer sought a "certification bar" period following an informal election.

a prompt election in a letter filed on July 20, 2004 (alleging employer-caused delays), and the employer responded to the union's request. In a letter sent on July 22, 2004, Operations Manager Kenneth J. Latsch directed the parties to show cause why an election should not be conducted in advance of a hearing.[2] In a letter sent to the parties on August 18, 2004, the Operations Manager remanded the case to the agency's Representation Coordinator for the conduct of an election by mail ballot, with all of the ballots to be impounded pending a hearing and ruling on the eligibility issues. The notice of election issued on August 30, 2004, described the bargaining unit as:

> All full-time and regular part-time employees of the Chelan County Public Utility District in the Information Technology Department, excluding supervisors and confidential employees.

September 14, 2004, was established as the deadline for return of ballots, and all ballots returned by employees were impounded.

In a letter filed on November 10, 2004, the employer asserted that one of the employees who was eligible to vote in the election (Dan Enslow) had retired, and should not be considered an eligible voter when the impounded ballots are tallied.

Hearing Officer Starr Knutson held a hearing on January 6 and 7, 2005. At the outset of the hearing, the parties stipulated that Duane Whitley and Ken Smith are excluded as supervisors and Scott Calhoun (who had been claimed by the employer as a confidential employee) was properly included in the bargaining unit. The parties filed post-hearing briefs.

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[2] The Operations Manager took over the processing of this case under WAC 391-08-630(5), when the Executive Director was unavailable.

ISSUES

The parties presented evidence on the remaining issues framed in the Investigation Statement (items 1 through 3, below) and also presented evidence on two additional issues that arose after the Investigation Conference was held (items 4 and 5, below).

1. Should Administrative Assistant Nicole Villacres be excluded from the bargaining unit on "community of interest" grounds?

2. Are Nicole Villacres, Darryl Doughty, Megan Horner, and/or Randy Pauli properly excluded as "confidential" employees?

3. Should Mark Bolz be excluded from the unit as a supervisor?

4. Should the employees in a "project" work group supervised by Ray Hahne be included in the bargaining unit in this case, where the parties did not mention the group or identify a potential for its inclusion in the bargaining unit until the hearing held in this case?

5. Should the impounded ballot cast by Dan Enslow be voided on the basis that he has retired?

APPLICABLE STATUTES

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, applies to all municipal corporations of the state of Washington and to their employees. RCW 41.56.020. This employer is a municipal corporation created as a public utility district under Title 54 RCW, so that RCW 54.04.170 and 54.04.180 also apply to it. In *PUD of Clark County v. PERC*, 110 Wn.2d 114 (1988), the Supreme Court of the State of Washington ruled that the Commission is to

assert jurisdiction over public utility districts and their employees under the Chapter 41.56 RCW procedures, but is to apply federal substantive law where it differs from the state law on a particular subject. Inasmuch as the private sector utility industry is primarily (if not exclusively) covered by the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947 (NLRA), the search for federal substantive law is confined to the NLRA.

The determination of appropriate bargaining units under Chapter 41.56 RCW is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060. All employees of an employer inherently have some community of interest in dealing with their common employer, so employer-wide units have been found appropriate under RCW 41.56.060. Smaller units have also been found appropriate under the statute, particularly where the unit includes all employees assigned to a single branch or department of the employer's table of organization,[3] or includes all of the employees in a single generic occupational type.[4] *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962) enumerated factors to be considered in determining whether a "community of interest" exists:

> [Difference[s] in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training, and skills; differences in job functions and amount of working time spent away from the employment or plant situs under State and Federal regulations; the infrequency or lack of contact with other employees; lack

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[3] Such a vertical unit draws its community of interest from the commonality of "working conditions" implied among employees reporting to the same supervisor.

[4] Such a horizontal unit draws its community of interest from the commonality of "duties and skills" implied among employees performing similar functions.

> of integration with the work functions of other employees or interchange with them; and the history of bargaining.

Thus, even though the "duties, skills and working conditions, history of bargaining, extent of organization, and desires of employees" criteria in RCW 41.56.060 are more detailed than the language found in Section 9 of the NLRA, the state law and interpreting precedents merely reflect the "community of interest" approach used under the federal law.

Another substantive similarity between state and federal law affects Issues 1 and 2 in this case: The "labor nexus" test for exclusion of confidential employees that was embraced in *NLRB v. Hendricks County Rural Elec. Membership Corp.*, 454 U.S. 170 (1981) is congruent with the "labor nexus" test for confidential status under RCW 41.56.030(2)(c) and *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).

A substantive difference between state and federal law affects Issue 3 in this case: While supervisors have full collective bargaining rights under Chapter 41.56 RCW, under *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977), supervisors are excluded from all bargaining rights by Section 2(11) of the NLRA.

ANALYSIS

Issue 1: Should the Administrative Assistant be in the Unit?

The employer asserts that Administrative Assistant Nicole Villacres does not share a community of interest with other employees in the proposed unit. This "community of interest" argument is rejected.

When the petition was filed to initiate this proceeding in March 2004, the employer's information technology organization was known as Management Information Systems (MIS) and functioned as one of three sections within an Enterprise Business Solutions (EBS) division headed by Greg Larsen since November 2003. The organizational chart in effect in March 2004 showed:

- Only three people reported directly to Larsen (MIS Director G. Graham; EBS Manager J. Smith; and Project Manager - Asset Management System R. Hahne).
- Villacres and four other people (Bolz,[5] Whitley,[6] Calhoun and Stewart) reported to MIS Director Graham.

The employer's current organizational chart, dated July 27, 2004, now lists nine people who report directly to Larsen (Smith and Hahne, who had previously reported to Larsen; Villacres, Bolz, Calhoun, and Whitley who had previously reported to Graham; and Business Analyst Rod Rogness, Business Analyst Jeanette Larson, and EBS Project Assistant Jean Senst). Thus, Graham no longer heads the information technology (IT) function, and Larsen is asserting direct control in that area of the employer's operations.[7]

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[5] Bolz had an "application development supervisor" title and supervised seven to nine people.

[6] Whitley had a "systems & operations supervisor" title and supervised 10 people.

[7] The employer's argument must be closely scrutinized because it is based on a reorganization that occurred while this petition was pending. Villacres was within the employer's IT operation under Graham (along with the other petitioned-for employees) before that reorganization. Once the petition was filed to initiate this proceeding, WAC 391-25-140 required the employer to maintain the "status quo" with regard to the wages, hours and working conditions of petitioned-for employees.

Duties, Skills and Working Conditions - The employer argues that Villacres' duties are clerical in nature, while all of the other petitioned-for employees have information technology duties.

The employer's characterization of Villacres's position is not completely inapt. Villacres testified that she provides administrative support (such as copying, faxing and filing) for about 30 people in the IT department, and that she also assists Larsen with writing and editing documents. The analysis cannot end there, however. The employer's job description for the "Administrative Assistant/Trainer" position held by Villacres includes:

> POSITION PURPOSE
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> The IT Training Administrator/Assistant will support the Director of IT and IT department staff. This includes assistance with confidential issues and coordination of projects and office functions to ensure that all required supporting processes and documentation for IT office management are complete. The Administrator will also *organize and provide in-house training* that will enable District employees to provide a high level of customer service and help ensure operational excellence.
>
> JOB RESPONSIBILITIES
>
> 1. SAFETY FIRST: Develop and maintain a working knowledge and comply with District safety procedures and specific safety requirements of this position . . . .
> 2. *Provide administrative support* to the IT Director and manage all IT office procedures including scheduling/coordinating meetings, making travel arrangements, distributing mail, preparing correspondence, maintaining confidential department and staff employee working files, recording meeting minutes and managing action item lists. Assist with special projects as requested. *% of time: 35%*
> 3. *Organize, schedule, and provide in-house training in PeopleSoft*, specifically, Expense Reports, P-Cards, Travel Authorizations and Time Keeping. Manage classes and class rosters through ETMS. Provide District employees with lists of upcoming training and manage the training calendar. *Update training manuals and write new manuals as needed.* Ensure that

manuals are available online in their most up-to-date form. Maintain training centers for housekeeping and preparedness for classes. *% of time: 35%.*

4. *Facilitate process flow for IT documentation. This represents tracking and processing Remote Access Requests and Technology Resource Requests, and included maintaining spreadsheets to identify file location for easy and accurate retrieval purposes. Function as librarian for technical PeopleSoft documentation, including Development Requests and Issues. % of time: 15%.*
5. Prepare, track and monitor PSA's, Terms & Conditions, Purchase Requisitions/Orders, HR Requisitions, and other business processes. % of time: 10%.
6. *Provide backup for Help Desk call center.* This includes responses to customer inquiries and route calls as necessary. *Provide first line expert assistance for Microsoft Word, Excel, and PowerPoint. % of time: 5%.*
7. Maintain regular and predicable attendance. Perform related duties and responsibilities as required. % of time: On-going.

(emphasis added). Thus, the employer's own document puts more of this position on the "IT" side of the scale (35% + 15% + 5% = 55%) than on the office-clerical side of the scale (35% + 10% = 45%).

Villacres recently began training employees on using the People-Soft system. She also confirmed that she updates existing training materials/manuals and writes new manuals. Villacres also responds to employee questions about computer problems as the third member in a help desk response chain. Even with eliminating Graham's position and assigning the IT supervisors to report directly to Larsen, the employer has not eliminated the IT aspects of Villacres' job.

Extent of Organization - Based on the fact that it persuaded another union to exclude one administrative assistant to each high-

level manager from the bargaining unit represented by that union,[8] the employer argues here that a similar exclusion should be extended to this bargaining unit. The argument is without merit. The employer does not rely on any certification or unit clarification decision issued by the Commission on the status of its other administrative assistants. Accepting that an agreement was made, unit determination is not a subject for bargaining under *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). Neither the Commission nor the union that filed the petition in this case is bound by any agreement made by this employer with another union.

Issue 2: Should Employees be Excluded as "Confidential" Employees? In addition to its "community of interests" arguments, the employer contends (and provided testimony) that Nicole Villacres would be assigned additional support functions for Larsen (such as taking notes at grievance and labor/management meetings), if the employees vote to establish a bargaining unit. The employer further argues that three employees who report to Duane Whitley should be excluded as "confidential" employees because a serious conflict of interest would exist if the three named employees are included in the unit. They are: Darryl Doughty (who works as an IT network administrator), Megan Horner (who works as a network server administrator), and Randy Pauli (who works as a network security specialist). All of those claims of "confidential" status are rejected, however.

The Commission and courts impose a heavy burden on the party that seeks a "confidential" exclusion, because confidential status deprives the individual(s) of all collective bargaining rights that would otherwise be conferred upon them by statute. *City of*

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[8] The employer provided extensive testimony by a business agent for the International Brotherhood of Electrical Workers, AFL-CIO (IBEW).

Chewelah, Decision 3103-B (PECB, 1989). In 2001, the Commission adopted WAC 391-35-320 to codify the "labor nexus" interpretation handed down by our Supreme Court in *City of Yakima*, 91 Wn.2d 101, as follows:

> WAC 391-35-320 EXCLUSION OF CONFIDENTIAL EMPLOYEES. Confidential employees excluded from all collective bargaining rights shall be limited to:
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> (1) 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, or the administration 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
>
> (2) Any person who assists and acts in a confidential capacity to such person.

Commission decisions before and since that codification have noted that the exclusion protects the collective bargaining process, and that the employee being excluded must be assigned specific, ongoing involvement in or connection to collective bargaining.

The duties of Nicole Villacres listed on her position description are not linked to the collective bargaining process in any way, and the record in this case does not show that Villacres has actually participated in any of the employer's labor relations processes. Preventing unauthorized access to confidential collective bargaining information (via screening and/or security devices ranging upward from simple "confidential" labels and locking file cabinets) is the responsibility of the employer,[9] and a failure of an employer to take reasonable steps to protect itself cannot be a basis to deprive employees of their statutory collective bargaining

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[9] In *Clover Park School District*, Decision 2243-A (PECB, 1987), the simple solution was to instruct office-clerical employees to pass along envelopes containing labor nexus materials without opening them.

rights. Simply knowing how or where to obtain unauthorized access to information or documents is insufficient to support a "confidential" exclusion. Finally, the employer's "confidential" argument concerning Villacres is based largely on speculation as to what might happen in the future. An employer cannot meet its heavy burden by speculating about the future. *City of Puyallup*, Decision 5460 (PECB, 1996). Villacres does not presently have authorized and ongoing access to the employer's collective bargaining materials. Therefore, her current duties are not sufficient to invoke the "labor nexus" test, and do not warrant her exclusion from the bargaining unit as a "confidential" employee.

The duties of Doughty, Horner, and Pauli that form the basis for the employer's claim of "confidential" status stem solely from their potential use as "sleuths" in investigating misuse of the employer's computer network. The employer's security director, Richard Robert, testified he does not have expertise within his department to investigate computer security breaches, and that he would rely on Doughty, Horner, or Pauli to investigate an alleged security breach. Roberts expects persons making security investigations to be "neutral positions and awfully confidential" and he foresaw a problem if an investigator assigned to look into computer activities was a member of the bargaining unit (as a conflict between the investigator's loyalty to the bargaining unit and his or her loyalty to the employer). The argument must be categorized as speculative, in the absence of evidence justifying even one (let alone three) computer sleuths in this employer's operation.[10] The employer's reliance on *Concrete School District*, Decision 8131-A

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[10] Additional cases (among the many) where the Commission has rejected "confidential" claims based on speculation include *City of Redmond*, Decision 7814-B (PECB, 2003) and *Colville School District*, Decision 5319-A (PECB, 1996).

(PECB, 2004) is also misplaced.[11] Different from the individual excluded in that case (who had a fiduciary relationship with the executive head of the bargaining unit concerning knowledge of specific wage alternatives the employer was considering in preparation for collective bargaining), Doughty, Horner, and Pauli are not assigned duties that would compromise or impact the employer's preparations for or conduct of collective bargaining. Commission precedents have held that sporadic contact or limited back-up work for another confidential employee is not sufficient to meet the test for exclusion. *Mason School District*, Decision 1198 (PECB, 1965); *Clover Park School District*, Decision 2243-A (PECB, 1987).

Issue 3: Should Mark Bolz be Excluded as a Supervisor?

The employer asserts that Bolz has the same rank, salary and basic responsibilities as the other supervisors that were excluded from the bargaining unit by stipulation of the parties. The union responds that Bolz's situation differs from the other supervisors, and that the employer has gradually removed the supervisory duties assigned to Bolz in the past (particularly after the filing of the petition to initiate this proceeding). The employer countered that, while Bolz' duties may have changed since he was initially hired, he still supervises the employees who report to him. The applicable (federal) substantive law supports exclusion of Bolz from the bargaining unit as a supervisor.

When Bolz commenced working as application development supervisor for this employer in 2002, he had up to nine people reporting

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[11] In fact, the Commission deleted findings of fact related to "sleuthing" activity in the *Concrete* case as unnecessary to the determination of the confidential status of that employee.

directly to him.[12] Bolz testified that his primary task at the outset was to assist in a decision process which ultimately resulted in the employer's purchase of the "PeopleSoft" computer software. It is clear that his duties have changed somewhat, and that the number of people reporting to him has declined to three.

Authority to hire is among the duties listed in the employer's position description for Bolz's job. Bolz opined that he does not recommend hiring, but he acknowledged on cross-examination that he participated in the hiring process for his subordinates.

Authority to transfer employees is not specifically mentioned in the employer's position description, but can be inferred from the document taken as a whole. Moreover, Bolz acknowledged that he has requested Larsen transfer someone to his section.

Authority to assign employees is specifically listed in the employer's position description. Bolz sought to characterize himself as more of a peer to the three people currently in his section, and he asserted that he does not control the work assignments of the people who report directly to him, but he acknowledged his place in the basic "chain of command" structure. There is no evidence that Larsen or anybody else directly assigns work to those employees.

Authority to reward employees can be inferred from the employer's position description, and Bolz acknowledged that he has asked Larsen for salary increases for some of the employees in his section.

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[12] That was two more than the seven listed in the employer's position description for the job held by Bolz.

Authority to responsibly direct employees can be inferred from the specific references to "training and development" and "conduct regular performance appraisals" and "conduct regular reviews of individual work for adherence to standards" in the employer's position description. Again, Bolz's claim that he is more of a peer to his subordinates is contradicted by his acknowledgment in cross-examination that he completed the evaluation form utilized by the employer for the three employees remaining in the section that he heads, and the employer presented testimony that it regards the evaluation forms completed by Bolz as its "official" performance assessments on those employees.[13]

Authority to suspend, layoff, recall, discharge or discipline is not explicit in the employer's position description or in the testimony, but that omission is not fatal to the employer's claim in this case. The employer correctly argues that it is the fact of having authority, rather than the number of direct reports, that must be considered. The National Labor Relations Board and the federal courts read the definition of "supervisor" in Section 2(11) of the NLRA in the disjunctive, under *Yeshiva University*, 444 U.S. 672 (1980), so that the authority possessed and exercised by Bolz in the hiring, transfer, assignment, reward, and responsibly direct areas is sufficient to warrant his exclusion as a supervisor.

Issue 4: Should the Bargaining Unit Include the Project Employees?
The employer now contends that the employees in the "Asset Management Project" group supervised by Ray Hahne should be included in the bargaining unit. Even if that was a theoretical possibility at the outset of this proceeding, the argument is rejected here as untimely.

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[13] The employer acknowledges that Bolz disagrees with its choice of evaluation method.

The Commission's representation case procedures in Chapter 391-25 WAC emphasize exchange of information at early stages,[14] and the Commission's precedents hold parties to their stipulations except for good cause shown.[15]

The union's petition in this case described the bargaining unit claimed appropriate in reference to the "Information Technology Dept." and as encompassing only:

> [H]elp desk, system admins [sic], application development, senior analyst, program analyst, database admin [sic], web master and admin asst [sic].

The petition estimated that there were 20 employees in that bargaining unit.

The Commission's Representation Coordinator sent a letter to the employer on March 4, 2004, which included:

> Additional information is needed to facilitate the processing of this case:
>
> 1. Please supply the undersigned with a *list containing the names and last known addresses of all the employees currently on the employer's payroll who occupy positions or classifications of the type described in the petition* . . . . The submission of the list is required by WAC 391-25-130. The list should be as complete and accurate as possible, but will be subject to change. Persons which the employer will

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[14] Different from the NLRB procedure under *Excelsior Underwear Co.*, 156 NLRB 1236 (1966), where a petitioning union may not see a complete list of employees until very late in the election process, WAC 391-25-130 both requires an employer to produce a list of employees near the outset of the proceedings, and gives the union access to that list.

[15] *Community College District 5*, Decision 448 (CCOL, 1978).

> desire to have excluded from the bargaining unit (as confidential employees, supervisors, or otherwise) should be listed, with indication of the basis for their proposed exclusion. After the sufficiency of the showing of interest filed in support of the petition is verified, *the list will be used as the base of information from which the parties will be asked to make stipulations concerning the employees to be included in or excluded from any bargaining unit*. You will be contacted by a member of the Commission staff concerning an investigation conference.

(emphasis added). Thus, the employer was given the opportunity to list any other employees doing computer-related work, including any such employees working in the group supervised by Hahne.

Rather than responding with the list which had been requested (and was required by WAC 391-25-130), the employer filed a motion for dismissal. It cited a representation petition that the IBEW filed with the Commission in August 2003,[16] for a bargaining unit described as "IT Department of Chelan PUD" and described an agreement to resolve that controversy by a privately-conducted election. Of interest to the issue at hand, an attachment to that motion contained the eligibility list for the privately-conducted election: That list did not contain the names of the project employees supervised by Hahne. This supports an inference that the employer's focus when asked for a list in this case was on the MIS group then supervised by Graham.

After the decision was issued denying its motion for dismissal, the employer did eventually produce a list of employees for this case in a letter filed on May 7, 2004. The employer asserted in that letter that the description of the bargaining unit should refer to

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[16] Case 17794-E-03-2875.

"The Information Technology Department . . ." and the list it provided did not contain the names of the project employees supervised by Hahne. This confirms the employer's focus on the MIS group then supervised by Graham.[17]

The Commission's Representation Coordinator scheduled and held an Investigation Conference in this matter. The employer was represented in that procedure by legal counsel, as well as by EBS Director Greg Larsen. The Investigation Statement issued on June 1, 2004, included:

> This statement is issued pursuant to WAC 10-08-130 to state the stipulations made by the parties at the Investigation Conference and to control the subsequent course of proceedings. WAC 391-25-220 requires that this statement be posted on the employer's premises for a period of at least seven days.
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> 1. The following matters were resolved during the course of the conference:
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> a. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.
>
> b. The addresses of the parties . . . are correct.
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> c. The [CWA] is . . . qualified to act as bargaining representative under RCW 41.56.030(3).
>
> d. A question concerning representation exists....
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> e. The Petition . . . was timely filed.
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> f. None of the parties claim that an unfair labor practice charge [is] a blocking charge.
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> 2. The following matters remain in dispute between the parties:
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> a. The parties disagreed on . . . Villacres. . . .

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[17] Close comparison of the two lists discloses a shift of position by the employer in this case: It had agreed to list Calhoun, Horner, Pauli and Ken Smith as eligible voters in the privately-conducted election in 2003.

> b. The parties disagreed on . . . Bolz, . . . Whitley, and Ken Smith . . . .
>
> c. The parties disagreed on . . . Calhoun, . . . Doughty, . . . Horner, and . . . Pauli . . . .
>
> d. The parties did not stipulate to the unit description *because of the outstanding issue of the inclusion/exclusion of the administrative assistants.*
>
> . . . .
>
> *Any objections to the foregoing must be filed at the Olympia office of the Commission, in writing, within 10 days following the date hereof* and shall, at the same time, be served upon each of the other participants named above. *This statement becomes part of the record in this matter as binding stipulations of the parties, unless modified for good cause by a subsequent order.*

(emphasis added). Thus, there was no reference to Ray Hahne or to the people shown under him on the employer's July 2004 table of organization (Filenet Records Administrator David Shaw, Enterprise Software Administrator Julie Tarbert, and CMMS Analyst/Administrator Rick Uhlrich) or to another position who had been listed on the March 2004 organization chart (GIS Analyst P. Dauer) who was mentioned at the hearing. Neither party filed any objection to the Investigation Statement, and it became binding on the parties.

The Commission's procedures implement the stipulations made by the parties. It would interfere with the rights of the petitioned-for employees to allow the employer to withdraw from its positions and stipulations at this late date.

Issue 5: Should the Ballot of Dan Enslow be Considered Void?

The employer would have the Commission revisit the eligibility list of the election conducted in this case, to now void the ballot of one employee (Dan Enslow) who has retired since he had the opportunity to cast his ballot. The employer's argument is rejected.

The legal considerations controlling this issue are the same as for Issue 4: Commission's representation case procedures emphasize exchange of information at early stages, and the Commission's precedents hold parties to their stipulations except for good cause shown.

In this case: The name of Dan Enslow was on the list of employees filed by the employer under WAC 391-25-130; the parties participated in an Investigation Conference was held under WAC 391-25-220, and neither of them disputed the eligibility of Enslow to vote in this proceeding; the employer did not raise any issue concerning the eligibility of Dan Enslow until long after the deadline for return of the ballots in the election.

Any representation election produces a "snapshot" of the employees' views at a particular moment in time. An election result will not be overturned because one or more employees quit, die, or retire after the "snapshot" is taken, but employees retain the right to change unions or decertify their union after the certification bar year has passed.

An election was directed in this case, in the particular context of the "delay" allegation described above, in order to protect the employees' right to a timely voice on their representation. The employees have voted, and only the result of that election remains to be discerned. That protection of employee rights would be severely compromised if the taking of the "snapshot" is affected by intervening events, including the substantial delay in getting this case to hearing and the additional delay in the issuance of this decision. Under the unusual circumstances of this case, the eligibility of voters must be assessed as of the deadline that was set for return of the ballots to the Commission. Dan Enslow was an eligible voter when the ballots constituting that "snapshot" were impounded, and his ballot must be counted.

FINDINGS OF FACT

1. Chelan County Public Utility District is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.020.

2. Communications Workers of America, Local 37083, a bargaining representative with the meaning of RCW 41.56.030(3), filed a timely and properly supported petition for investigation of a question concerning representation with the Commission. The petitioner seeks certification as exclusive bargaining representative of certain employees working in the employer's information technology department.

3. Prior to the filing of the petition in this case, the petitioned-for employees had no history of collective bargaining with the employer.

4. The employer has one other bargaining unit of employees working in connection with production of electric power. Those employees are represented by the International Brotherhood of Electrical Workers. One employee in the information technology department is included in that unit.

5. A consultant and the human resources director, with assistance from various other directors, represent the employer in collective bargaining negotiations.

6. Information technology services are provided as part of the employer's enterprise business solutions organization. Greg Larsen directs that organization.

7. Nicole Villacres works as the administrative assistant in the enterprise business solutions organization. Villacres has some office-clerical duties, but a majority of her position description concerns the information technology functions by working at the help desk, providing training and preparing or revising training materials. Villacres has not had any involvement in activities related to the collective bargaining process.

8. Darryl Doughty, Megan Horner, and Randy Pauli do not have any involvement in activities related to the collective bargaining process.

9. Mark Bolz is a supervisor as defined by Section 2(11) of the National Labor Relations Act.

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. A bargaining unit consisting of all full-time and regular part-time employees of the Chelan County Public Utility District in the Information Technology Department, excluding supervisors and confidential employees, is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

3. Administrative Assistant Nicole Villacres is not a confidential employee within the meaning of RCW 41.56.030(2)(c) or WAC 391-35-320, and has a community of interests under RCW 41.56.060 with the employees in the bargaining unit described in paragraph 2 of these conclusions of law.

4. Darryl Doughty, Megan Horner and Randy Pauli are not confidential employees within the meaning of RCW 41.56.030(2)(c) or WAC 391-35-320.

5. Mark Bolz is a supervisor under the federal substantive law applicable in this case under RCW 54.04.170 and 54.04.180.

6. A question concerning representation presently exists in the appropriate bargaining unit described in paragraph 2 of these conclusions of law, and the circumstances for concluding the election process under WAC 391-25-390 have been met.

ORDER

1. Any ballot cast by Mark Bolz in this case shall be deemed void.

2. Except as provided in paragraph 1 of this Order, the ballots received in this case on or before September 14, 2004 (and impounded by the Public Employment Relations Commission), shall be counted to determine whether a majority of the employees in that bargaining unit have authorized the Communications Workers of America, Local 37083, to represent them for the purpose of collective bargaining.

Issued at Olympia, Washington, on the 8th day of June, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, Operations Manager
acting under WAC 391-08-630(5)

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.