

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON EDUCATION ASSOCIATION)	CASE 20555-E-06-3170
)	
Involving certain employees of:)	DECISION 9445-A - PECB
)	
COLLEGE PLACE SCHOOL DISTRICT)	ORDER DETERMINING
)	ELIGIBILITY ISSUES
_____)	

Michael Gawley, Staff Attorney, for the union.

John S. Biggs, Attorney at Law, for the employer.

On August 2, 2006, the Washington Education Association (union) filed a petition for investigation of question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain classified employees of College Place School District (employer). The petition described the bargaining unit sought as "all full time and regular part-time non-supervisory classified employees of the College Place School District, excluding bus drivers, confidential employees and all other employees." An investigation conference held on August 23, 2006, resolved all issues except whether Terrie Hall and Erin Partlow should be excluded as confidential employees.

The union prevailed in a secret ballot election on September 20, 2006, and the Commission issued an interim certification on September 28, 2006. See *College Place School District*, Decision 9445 (PECB, 2006). The case was assigned for further proceedings on the eligibility issues framed in the investigation conference.

Hearing Officer David I. Gedrose held a hearing on December 14, 2006. The parties filed post-hearing briefs.

ISSUES

The only issues remaining to be decided by the Executive Director in this case are:

Issue 1: Is the fiscal assistant position held by Terrie Hall confidential within the meaning of Chapter 41.56 RCW?

Issue 2: Is the fiscal assistant position held by Erin Partlow confidential within the meaning of Chapter 41.56 RCW?

Based upon the record, the applicable statutes and rules, and the applicable case precedents, the Executive Director rules that the fiscal assistant employees at issue in this case are not confidential, and are properly included in the bargaining unit.

APPLICABLE LEGAL PRINCIPLES

The bargaining relationship between these parties is regulated by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The determination of appropriate bargaining units under that statute is a function delegated by the Legislature to the Commission. RCW 41.56.060. The Commission promulgated Chapter 391-35 WAC to regulate the "clarification" of existing bargaining units.

In 2001, the Commission adopted a rule codifying a long-standing requirement that in order for a position to be excluded from a bargaining unit as confidential, the party seeking exclusion must prove a "labor nexus." The Commission rule reads as follows:

WAC 391-35-320 EXCLUSION OF CONFIDENTIAL EMPLOYEES. Confidential employees excluded from all bargaining rights shall be limited to:

(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.

The rule reflects the definition in RCW 41.59.020(4)(c), which was cited with approval by the state Supreme Court in *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).

The Commission imposes a heavy burden on the party that seeks a "confidential" exclusion. *City of Seattle*, Decision 689-A (PECB, 1979). The exclusion depends on particular relationships and actual duties, rather than on arbitrary tests such as titles, locations on organization charts, or job descriptions. *Shelton School District*, Decision 1609-B (PECB, 1984). Mere access to personnel files and payroll data does not establish confidential status. *Darrington School District*, Decision 5573 (PECB, 1996). Simply knowing how or where to obtain unauthorized access to information is insufficient to support a confidential exclusion. *Chelan County Public Utility District*, Decision 8496-A (PECB, 2005). Preventing unauthorized access to confidential information (via screening and/or security devices ranging from simple confidential labels and locking file cabinets) is the responsibility of the employer, 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 rights. *Chelan County Public Utility District*. Sporadic contacts and limited back-up

work are not sufficient to meet the test for exclusion. *Clover Park School District*, Decision 2243-A (PECB, 1987); *Yakima School District*, Decision 7124-A (PECB, 2001).

An employee does not have to work exclusively, or even primarily, on labor nexus work in order to be excluded as a confidential employee, so long as the assignments can be described as "necessary," "regular," and "on-going." *Oak Harbor School District*, Decision 3581 (PECB, 1990). An employee's access to pertinent files and duties involving the processing of sensitive information for bargaining, grievances, and investigations met the standard for confidential exclusion in *Puyallup School District*, Decision 5764 (PECB, 1996). Employees who reported to members of their agency leadership team and assisted them in gathering material related to negotiations for the master contract, and who had regular access to internal communications regarding labor relations matters were excluded from the bargaining unit as confidential employees in *State - Labor and Industries*, Decision 8437-A (PSRA, 2004).

ANALYSIS

Issue 1: Is the fiscal assistant position held by Terrie Hall confidential within the meaning of Chapter 41.56 RCW?

College Place School District employs Terrie Hall as a fiscal assistant. Hall's duties consist primarily of payroll processing. Hall has worked in the position for over 10 years. Business office and human resource manager Shanda Zessin costs contracts for the purposes of collective bargaining. Zessin is Hall's supervisor. Superintendent Timothy Payne processes grievances.

As part of her primary payroll responsibility, Hall has access to personnel files, student files, and fiscal records through a common server. Hall rarely uses personnel files, and access to personnel files is not crucial to performing her duties. She also has access to fingerprint reports of new or potential employees. Hall does not attend bargaining sessions and is not involved in strategy discussions concerning bargaining.¹ Given Hall's lengthy experience in processing payroll, Zessin and Payne occasionally rely on Hall for historical perspective concerning district policy. According to Payne's testimony, Hall sometimes interacts with parents who come into the office with a complaint.

The employer's assertion that Hall regularly deals with confidential information fails to meet the labor nexus test. While Hall may access limited confidential information, it is not of the nature anticipated by the labor nexus test. Although processing parent complaints, accessing student files, and accessing job applicant's fingerprints may be confidential activities, they are unrelated to labor relations. While Hall can access fiscal records in the course of her duties, there was no evidence to suggest that Hall accessed this information for the purpose of formulating collective bargaining policies.

Although the employer asserted that Hall was "cross-trained" to fill in for a confidential position currently held by Alison Park-Swanson, there was nothing in the record to suggest that occasionally filling in for a missing staff member put her at odds with union membership. At best, she has sporadic and limited involve-

¹ On one occasion, the employer consulted Hall regarding a grievance on a payroll issue. Her contribution was limited to a historical discussion about the employer's practices, though she did express her opinion about the fairness of a district policy.

ment in matters relating to labor relations. Nothing in the record suggests that her role conflicts with her being a member of a bargaining unit. Hall is not directly involved in the employer's labor nexus activities and currently lacks the labor nexus needed to exclude her as a confidential employee.

CONCLUSION ON ISSUE 1

The employer failed to satisfy its burden of proof with respect to Hall. While there is no doubt that Hall has specific knowledge in her particular area of expertise, she responds to requests and provides information as a natural extension of her knowledge and expertise. She does not have an intimate fiduciary role in connection with the employer's labor relations policies and strategies, and the record is bereft of evidence indicating that she is privy to sensitive labor relations information such that disclosure could damage the collective bargaining process. Hall is properly included in the bargaining unit.

Issue 2: Is the fiscal assistant position held by Erin Partlow confidential within the meaning of Chapter 41.56 RCW?

Partlow has worked part-time for the employer for over three years. Her primary duties include paying bills. She is not involved in processing grievances, and does not have access to personnel files. Partlow testified that Payne and Zessin discuss confidential matters behind closed doors, excluding Hall and Partlow. Partlow has, on limited occasions, compiled payroll data to assist Zessin in responding to a grievance. Like Hall, Partlow is not present during the bargaining process and is not involved in strategy discussions concerning bargaining.

CONCLUSION ON ISSUE 2

In accordance with the analysis set forth above for Hall's position, the employer also failed to meet its burden of proof with respect to Partlow. The employer did not show any labor nexus with respect to Partlow's job duties. Partlow is properly included in the bargaining unit.

FINDINGS OF FACT

1. College Place School District is a public employer within the meaning of RCW 41.56.030(1).
2. The Washington Education Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain classified employees of the employer.
3. On September 28, 2006, the Public Employment Relations Commission issued an interim certification, for a bargaining unit consisting of "All full-time and regular part-time non-supervisory classified employees of College Place School District, excluding supervisors, confidential employees, bus drivers and all other employees."
4. Terrie Hall is employed by College Place School District as a fiscal assistant, where she is primarily responsible for payroll. She has had no direct involvement in preparing for or conducting collective bargaining negotiations or processing grievances on behalf of the employer.

5. Erin Partlow is employed by College Place School District part-time as a fiscal assistant, where she is primarily responsible for accounts payable. She has had no direct involvement in preparing for or conducting collective bargaining negotiations or processing grievances on behalf of the employer.

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. As described in Findings of Fact 4 and 5, the fiscal assistant positions (currently held by Terrie Hall and Erin Partlow) are public employees within the meaning of RCW 41.56.030(2), and are not confidential employees within the meaning of RCW 41.56.030(2)(c) and WAC 391-35-320.

ORDER DETERMINING ELIGIBILITY ISSUES

The positions of fiscal assistant shall be included in the bargaining unit involved in this proceeding.

Issued at Olympia, Washington, this 1st day of May, 2007.

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 Commission under WAC 391-25-660.