

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS UNION, LOCAL 763)	CASE 20833-E-06-3210
)	
Involving certain employees of:)	DECISION 9649-B - PECB
)	
SHORELINE WATER DISTRICT)	ORDER DETERMINING
)	ELIGIBILITY ISSUE
)	

Robert McCauley, Business Agent, for the union.

Davis Grimm Payne & Marra, by *Joseph G. Marra*, Attorney at Law, for the employer.

On December 22, 2006, Teamsters Union, Local 763 (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 Shoreline Water District (employer). The petition was accompanied by a sufficient showing of interest. The union seeks to represent a bargaining unit of all office clerical and maintenance employees of the employer.

Representation coordinator Sally J. Iverson held an investigation conference on February 8, 2007. Three matters remained in dispute following the conference: whether the office clerical employees have a community of interest with the maintenance employees, the potential exclusion of three employees as confidential, and the potential exclusion of one employee as a supervisor.

Hearing Officer Sally B. Carpenter held a hearing on March 27, 2007, before. Prior to the start of that hearing, the parties agreed that

one of the two customer service specialist positions would be excluded from the bargaining unit as a confidential employee. The parties also stipulated that the only issue remaining to be determined by the Executive Director was the status of the accounting specialist position. The parties filed post-hearing briefs which were considered.

On April 24, 2007, the Executive Director ruled that it was appropriate to conduct a cross-check for the purpose of determining the exclusive bargaining representative. See *Shoreline Water District*, Decision 9649 (PECB, 2007). That decision described the appropriate bargaining unit as: "all full-time and regular part-time office-clerical and maintenance employees of Shoreline Water District, excluding supervisors and confidential employees."

On May 8, 2007, after Commission staff conducted a cross-check of employee records, the Executive Director issued an interim certification confirming that employees in the unit had chosen the union as their exclusive bargaining representative. *Shoreline Water District*, Decision 9649-A (PECB, 2007). Evidence concerning the remaining eligibility issue was taken at the March 27, 2007, hearing.

ISSUE

The issue to be decided by the Executive Director is whether the accounting specialist position held by Amalia Hill is confidential within the meaning of Chapter 41.56 RCW.

Based upon the record, the applicable statutes, rules, and case precedent, the Executive Director rules that the accounting

specialist position is not confidential and is properly included in the bargaining unit.

APPLICABLE LEGAL PRINCIPLES

The parties have a bargaining relationship under the Public Employees' Collective Bargaining Act (PECB), Chapter 41.56 RCW. In determining the issue of an employee's status as confidential, the Commission has a long history of applying a labor nexus test. *Yakima School District*, Decision 9020-A (PECB, 2007). This test, which originated in *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978), states that a confidential employee is an employee whose duties imply a confidential relationship which must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. *Yakima School District*, Decision 9020-A.

In 2001, the Commission adopted WAC 391-35-320 which codified the confidential employee test into its own rules. WAC 391-35-320 reads:

Confidential employees excluded from all collective 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.

As demonstrated in this regulation and case history, the confidential exclusion extends beyond those who are directly responsible for

collective bargaining matters and includes those support personnel who process sensitive labor relations material at the direction of those responsible for such matters. *City of Mountlake Terrace*, Decision 3832-A (PECB, 1992).

The confidential exclusion prevents potential conflicts of interest between the employee's duty to the employer and the employee's status as a union member. *Walla Walla School District*, Decision 5860-A (PECB, 1997). For example, when employees' official duties provide access to sensitive information regarding the employer's collective bargaining position, it would be unfair to place the employees in a position where they must question whether their loyalties lie with the employer or with the union. *Pierce County*, Decision 8892-A (PECB, 2005).

The Commission has established that confidential exclusions must be based upon the actual labor nexus duties and responsibilities performed by the employee and cannot be based upon speculation on the employee's future job duties. *State - Natural Resources*, Decision 8458-B (PSRA, 2005); *King County Fire Protection District 13*, Decision 9845 (PECB, 2007). Although the Commission has recognized that employee job descriptions and duties are not static and may change as an organization evolves and faces different challenges, the Commission has unequivocally ruled that a confidential exclusion can only be based upon current job duties. *City of Redmond*, Decision 7814-B (PECB, 2003).

Because an individual's status as a confidential employee deprives the person of all bargaining rights under state law, the party seeking a confidential exclusion has a heavy burden of proof. *City of Redmond*, Decision 7814-B.

ANALYSISOverview of Accounting Specialist Position

The parties introduced limited evidence of the duties performed by Amalia Hill, the incumbent in the disputed accounting specialist position. Hill did not testify. Most of the evidence concerning Hill's duties came through the testimony of the finance manager, Mary O'Day. The position occupied by O'Day is excluded from the bargaining unit. At the time of the hearing, O'Day had worked for the employer for nearly three months. The employer did not introduce into evidence a job description for the accounting specialist position and did not stipulate that the job description introduced into evidence by the union was current.

From the evidence presented, Hill's major responsibilities include accounts payable and processing employee payroll and benefits. Her accounting responsibilities include data entry as well as running budget reports. Hill is also involved with investments, labor and industry claims, inventory of fixed assets, and answering phones and taking payments from customers in a back-up capacity.

O'Day testified about Hill's involvement with financial transactions and contracts between the employer and other entities, such as Ronald Wastewater District. During direct examination O'Day testified about Hill's involvement in projecting costs and completing spreadsheets for comparison purposes when negotiating contracts or leases. Upon cross examination, O'Day stated that since she, O'Day, has worked with the employer, Hill has not helped negotiate contracts or made presentations to the board in executive session. Hill's work station is located outside of O'Day's office and Hill uses independent judgment in her work. O'Day considers Hill her "right hand person."

Speculation on Future Job Duties

Much of the evidence presented by the employer focuses on tasks that O'Day anticipates assigning to Hill, not work that has actually been assigned. O'Day testified that her expectation is that Hill will have budgeting responsibilities, including making projections. She also testified that she anticipates Hill will interact with the board during executive session. These are tasks performed by O'Day's accountant in her previous position with another employer.

O'Day projected that she would assign Hill a variety of bargaining-related tasks, including projecting costs that will be used in developing the employer's bargaining strategy, doing salary surveys, preparing wage matrixes, costing out bargaining proposals, and preparing spreadsheets. No evidence provided establishes that Hill is currently performing any bargaining-related tasks.

The employer argues that because its employees have never been represented by a union, factors such as access to information related to bargaining proposals and contract negotiations are not applicable. Instead, the employer argues that Hill's anticipated job duties and responsibilities, as well as her future access to information, justify her exclusion from the unit.

The employer points to *City of Dupont*, Decision 4959-B (PECB, 1995), as support for its position. In that case, there had not yet been a bargaining relationship between the employer and the union and the Commission recognized "[t]he line between speculation and predictability is sometimes unclear, where the employer has never had any collective bargaining relationships to administer." In that case, the Commission analyzed two positions, the administrative secretary and the accounting technician, positions that the incumbents had held for a short period of time. The Commission found insufficient

evidence of a labor nexus as neither employee had done any work preparing for labor negotiations. Also, the Commission found that the work one of the employees had done assisting the city administrator in developing a salary step system of the type that might eventually be discussed in collective bargaining was insufficient for exclusion from the bargaining unit.

Additionally, in *City of Dupont*, the Commission stated with respect to the administrative secretary position:

The testimony shows the matters held in confidence actually relate primarily to negotiations with the Weyerhaeuser Real Estate Corporation and Lonestar Industries about the Northwest Landing development, and to correspondence with the city attorney on criminal cases. No actual labor nexus has been proved by the employer, and the necessity of confidential assignments in the future has not been established.

Similarly, although Hill may play a role with respect to contracts between the employer and other governmental entities, there is no evidence that Hill participates in any activities that help to establish employee wages, hours or working conditions or otherwise meets the labor nexus test. The evidence fails to establish that Hill has any direct or supporting role in the development of the employer's labor relations policy or negotiations of collective bargaining agreements. The evidence also fails to establish that Hill is necessarily privy to confidential information concerning the employer's labor relations policies.

Non-Speculative Job Responsibilities

Hill performs a number of job responsibilities relating to processing payroll and benefits as well as participating in the analysis of contracts with other agencies. These responsibilities require that Hill act discreetly. However, they are unrelated to labor relations

and do not meet the standards for confidential exclusion. The Commission has ruled that mere access to personnel files and payroll data does not establish confidential status. *Darrington School District*, Decision 5573 (PECB, 1996).

Community of Interest Issue

The bargaining unit at issue has eight uncontested positions, including seven maintenance employees and one office clerical employee. When the hearing began, the parties stated for the record that the only remaining issue in dispute was Hill's exclusion from the bargaining unit. During the course of the hearing and in the closing brief, the employer asserted that Hill lacks a community of interest with the other positions in the bargaining unit. The argument focuses on differences between office personnel and maintenance staff who work in the field, suggesting that because Hill works in the office, she lacks a community of interest with those who work in the field. This argument appears to have lost sight of the fact that one of the two customer service representatives who works in the office is included in the bargaining unit. That employee's inclusion in the bargaining unit has not been contested. There is no credible factual or legal basis to exclude Hill's position from the bargaining unit for lack of community of interest.

CONCLUSION

The employer has not met its heavy burden to establish that the accounting specialist position currently meets the labor nexus test. The position is included in the bargaining unit.

FINDINGS OF FACT

1. Shoreline Water District is a public employer within the meaning of RCW 41.45.030(1).

2. Teamsters Union, Local 763, is a bargaining representative within the meaning of RCW 41.56.030(3).
3. On May 8, 2007, the Executive Director issued an interim certification for a bargaining unit consisting of "all full-time and regular part-time office-clerical and maintenance employees of Shoreline Water District, excluding supervisors and confidential employees." The interim certification indicated that employees in the unit had chosen Teamsters Union, Local 763 as their exclusive bargaining representative.
4. Amalia Hill is employed by Shoreline Water District as an accounting specialist. Her major responsibilities include accounts payable and processing employee payroll and benefits.
5. Hill does not have any direct or supporting role in the development of the employer's labor relations policy or negotiations of collective bargaining agreements.
6. Hill is not necessarily privy to confidential information concerning labor relations policies of the employer.
7. Hill has a community of interest with other bargaining unit employees.

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 5, 6, and 7, Amalia Hill is a public employee within the meaning of RCW 41.56.030(2), and is

not a confidential employee within the meaning of RCW 41.56.030(2)(c) and WAC 391-35-320.

ORDER DETERMINING ELIGIBILITY ISSUE

1. The position of accounting specialist held by Amalia Hill is included in the bargaining unit.
2. The interim certification issued on May 8, 2007, stands as the final certification for the unit.

Issued at Olympia, Washington, this 9th day of November, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-660.