

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
YAKIMA SCHOOL DISTRICT)	CASE 14955-C-00-962
)	
For clarification of an existing bargaining unit of employees represented by:)	DECISION 7124 - PECB
)	
YAKIMA EDUCATIONAL OFFICE PROFESSIONALS)	ORDER CLARIFYING BARGAINING UNIT
)	
<hr/> In the matter of the petition of:)	
YAKIMA EDUCATIONAL OFFICE PROFESSIONALS)	CASE 14970-C-00-964
)	
For clarification of an existing bargaining unit of employees of:)	DECISION 7125 - PECB
)	
YAKIMA SCHOOL DISTRICT)	ORDER CLARIFYING BARGAINING UNIT
)	
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Menke, Jackson, Beyer & Elofson, by Rocky Jackson, Attorney at Law, appeared on behalf of Yakima School District.

Faith Hanna, Attorney at Law, appeared on behalf of Yakima Educational Office Professionals.

On January 3, 2000, the Yakima School District (employer) filed a petition with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking clarification of an existing bargaining unit represented by Yakima Educational Office Professionals (union). [Case 14955-C-00-962.] On January 12, 2000, the union filed a petition under Chapter 391-35 WAC, involving the same bargaining unit. [Case 14970-C-00-964.] The cases were consolidated under a notice of hearing issued on January 24, 2000, and a

hearing was held on March 9 and 10, 2000, before Hearing Officer Vincent M. Helm. The parties submitted post-hearing briefs on May 22, 2000.

Authority to decide the eligibility issues framed in this proceeding has been delegated by the Executive Director to the Hearing Officer, under WAC 391-25-390. Following a narrowing of issues by the parties, the Hearing Officer rules that, based on the evidence and arguments, the two positions remaining at issue are properly included within the existing bargaining unit.

PROCEDURAL BACKGROUND

In its petition, the employer proposed the exclusion of 11 job classifications from the existing bargaining unit as "confidential employees", or in some instances as both "confidential" and supervisors. In its petition, the union proposed addition of the certificated placement coordinator to the bargaining unit it represents. While 12 positions were thus at issue initially, that number has been reduced:

- Prior to the hearing, the union provided written notice that it was not objecting to the exclusion of three positions identified in Case 14955-C-00-962, as "confidential": (1) "administrative secretary to the associate superintendent budget/business services"; (2) "administrative secretary to the assistant superintendent human resources"; and (3) "confidential secretary to human resources director".
- At the outset of the hearing, the employer withdrew its requests for exclusion of five positions identified in Case

14955-C-00-962: (1) "certificated budget report specialist"; (2) "human resources substitute coordinator"; (3) "payroll retirement specialist"; (4) "payroll specialist substitute"; and (5) "general fund accounting technician".

- During the hearing, the employer withdrew its requests for exclusion of two additional positions identified in Case 14955-C-00-962: (1) "payroll accounting specialist"; and (2) "fiscal coordinator grants/internal".

Those amendments to the original petitions were set forth in a written stipulation executed by the parties on March 23, 2000.

At this juncture, the only positions remaining in dispute are: (1) a "human resources classified specialist" in Case 14955-C-00-962; and (2) the "certificated placement coordinator" in Case 14970-C-00-964.

BACKGROUND

The Employer's Office Operations

The employer divides its office-clerical functions into three major categories:

- 1) Budget and business services, headed by Associate Superintendent Budget/Business Services Rick Gagnier, is responsible for preparing budgets, purchasing, maintenance and operations, food services, transportation, and payroll. Among those reporting to Gagnier are a director of budget and accounting and a director of payroll/safety. According to Gagnier, the director budget and accounting is responsible for providing

all necessary financial, accounting or budget data for collective bargaining with the union representing the employer's certificated employees. Reporting to that director is a "fiscal coordinator" who assists in calculating the cost of contract proposals and determining whether proposals on economic items can be funded.¹ The director of payroll/safety participates in contract negotiations with the unions representing the employer's classified employees, and two of the three payroll accounting specialists who report to that director assist in preparing bargaining data for use in contract negotiations.²

- 2) Instructional programs, headed by Deputy Superintendent Instructional Programs Jack Irion.
- 3) Human resources, headed by Assistant Superintendent Human Resources Steve Mitchell. Director of Human Resources Julia Blasio reports to Mitchell.

The two job classifications which remain at issue are located in the human resources component.

Facts Bearing on Whether Changed Circumstances Exist -

The human resources unit negotiates and administers collective bargaining agreements with nine existing bargaining units.³ The

¹ For at least the past 21 years, this "fiscal coordinator" position has been included in the bargaining unit involved herein.

² Those "payroll accounting" positions also are included in the bargaining unit involved herein.

³ At the time of the hearing in this matter, a 10th unit consisting of employees who conduct extracurricular activities was expected to be in place soon.

employer has transitioned, over an unspecified period, from a situation where outside counsel negotiated all of its collective bargaining agreements to one where in-house personnel negotiate a majority of those agreements, and that switch requires employer personnel to spend more time and effort in the negotiating process. The time frame for this transition is unclear. In addition, with the exception of three contracts with the Teamsters Union, the labor contracts are now negotiated in an interest-based bargaining format, which has resulted in employer personnel devoting much more time to contract negotiations and administration.

As the result of a double levy failure in 1998, the employer cut its budget by over \$13 million, and reduced a workforce by 183 positions out of a total of approximately 1500. Eight of the jobs eliminated were administrative positions, and the human resources function lost one-and-one-half full-time positions. The employer reorganized its human resources functions in the midst of that reduction, and the human resources staff assumed parts of the duties previously performed by curriculum and instruction administrators who were laid off.

Subsequent to the certification of the union as exclusive bargaining representative of the employer's office-clerical employees, but prior to the negotiation of the parties' latest collective bargaining agreement, the human resources staff was given responsibility for compliance with federal law (Title 9) and for administration of the substitutes program.

The Human Resources Classified Specialist -

Diann Graham has been performing elements of her current job for the past 12 years, including a period when she had the title of "confidential secretary to the human resources director". When Graham began work, she was one of three office-clerical employees

in the human resources area, and none of those employees were excluded from the bargaining unit. By the time of the hearing, the office-clerical staff in the human resources area had grown to six plus a trainee, two of whom are now excluded as confidential employees. Some time between 1998 and 2000, Graham's job functions were split with one of the employees stipulated by the parties to be a confidential employee. That individual assumed the job title previously used by Graham, and assumed responsibility for typing materials such as bargaining proposals, grievance investigation reports, and grievance responses.

The Certificated Placement Coordinator -

Rosalinda Martinez has worked for the employer in business office and human resources positions for over 19 years, and was always included in the bargaining unit until she assumed her present position. Martinez has held her current position since September of 1999, but apparently did not actually begin performing the duties of that position until some time later. It is only clear that she has been performing her current duties since January of 2000. Part of the duties she now performs were done previously by Nancy Henness, another bargaining unit employee.

POSITIONS OF THE PARTIES

The employer argues that each of the employees holding the two positions remaining at issue should be excluded from the bargaining unit as a "confidential employee". It cites their participation in meetings concerning collective bargaining negotiations, and their preparation of materials and making of recommendations which are relied upon by the employer in collective bargaining negotiations. The employer contends that an expansion to six confidential clerical employees is not an unreasonable utilization of employee

resources, in view of the size of its operations. It asserts that its determinations of effective allocation of employee resources should be controlling, and that the Commission should not substitute its judgment for that of the employer. The employer cites a combination of levy failures, growth, reorganization, and the expanded responsibilities of its human resources staff as changed circumstances which now require the two disputed positions to have ongoing activities of a confidential nature involving labor relations and contract negotiations. Lastly, the employer notes that both employees have testified to a conflict of interest between performing their duties and being represented by a union.

The union emphasizes that the employer bears the burden of showing the disputed positions should be excluded from the bargaining unit. It notes that, in order to be excluded from the bargaining unit, a "labor nexus" must be shown to exist with respect to functions performed by the employee at issue, as opposed to routine personnel functions or access to records which are not subject to exemption from public disclosure. Moreover, the union urges that the "confidential" duties must be necessary and ongoing. The union maintains there has been no change of circumstances, because the functions of both disputed positions have been performed by bargaining unit employees for many years. Accordingly, the union asserts that the employer has not set forth grounds for changing the historical placement of the duties of these positions within the bargaining unit. The union contends that the employer has a sufficient number of employees who are excluded from the bargaining unit as "confidential" to perform all necessary secretarial or clerical duties of a confidential nature within the meaning of the statute. Lastly, the union contends that subjective evaluation by the disputed employees concerning conflicts presented by their being included in the bargaining unit must give way to what an objective analysis of the positions demonstrates.

DISCUSSIONThe "Confidential Employee" Exclusion

Both the exclusion of confidential employees from bargaining rights and the "labor nexus" test for evaluating such exclusions are deeply rooted in Washington law:

RCW 41.56.030 DEFINITIONS. As used in this chapter:

...

(2) "Public employee" means any employee of a public employer except any person ... (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 by **bold** supplied.]

The Supreme Court of the State of Washington interpreted that definition more than 20 years ago, stating:

We begin by discussing the meaning of the phrase confidential relationship in the context of the Public Employees' Collective Bargaining Act. That phrase ordinarily means a fiduciary relationship. [citation omitted] This relationship arises when continuous trust is reposed by one person in the skills or integrity of another. ...

Those in whom such trust is continuously reposed could and perhaps would participate in the formulation of labor relations policy. They would be especially subject to a conflict of interest were they to negotiate with an employer on their own behalf. By excluding

from the provisions of a collective bargaining act persons who work closely with the executive head of the bargaining unit, and who have, by virtue of a continuous trust relation, assisted in carrying out official duties, including formulation of labor relations policy, such conflict is avoided. And, public trust is protected since officials have the full loyalty and control of intimate associates. **When the phrase confidential relationship is used in the collective bargaining act, we believe it is clear that the legislature was concerned with an employee's potential misuse of confidential employer labor relations policy and a conflict of interest.**

This concern is clearly expressed in the Educational Employment Relations Act, RCW 41.59. Although not controlling here, it contains an instructive definition of the confidential employee. It reads:

(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, 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

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

RCW 41.59.020(4)(c)(i) and (ii).

Were we to significantly alter this definition in interpreting RCW 41.56.030(2), an anomalous result would occur. ... By a consistent interpretation of the two statutes this result would be avoided. Indeed, this has been recent administrative practice. [Edmonds School District, Decision 231 (PECB, 1977)].

Finally, ... over the years the term confidential, when used with reference to employees, has become something of a term of art in the law which developed from that act. The meaning it has acquired in labor law, including public employment law, accords both with

that given it by Washington's legislature in RCW 41.59.020(4)(c) and the interpretation we give to RCW 41.56.030(2).

We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

IAFF v. City of Yakima, 91 Wn.2d 101 (1978) at 105-107. [emphasis by **bold** supplied].

The criteria for "confidential" exclusions have been restated in numerous Commission decisions over the years, and highlight the necessity of a "labor nexus." For example:

The "confidential" exclusion specifically protects the collective bargaining process, **protecting the employer (and the process as a whole) from conflicts of interest and divided loyalties in an area where improper disclosure could damage the collective bargaining process.** Possession of other types of information that are to be kept from public disclosure is not a threat to the collective bargaining process, and **a showing that an employee holds a position of general responsibility and trust does not establish a relationship warranting exclusion** from collective bargaining rights, where the individual is not privy to labor relations material, strategies, or planning sessions. Bellingham Housing Authority, Decision 2140-B (PECB, 1985); Benton County, Decision 2719 (PECB, 1989).

City of Chewelah, Decision 3103-B (PECB, 1989) [emphasis by **bold** supplied].

And:

It is clear that **an employer will be allowed some reasonable number of excluded personnel to perform the functions of the employer in the collective bargaining process.** Clover Park School District, Decision 2243-A (PECB, 1987). At the same time, because status as a confidential employee deprives the individual of all rights under the statute, the party that seeks exclusion of an employee as confidential has a heavy burden of proof. City of Seattle, Decision 689-A (PECB, 1979).

City of Dupont, Decision 4959-B (PECB, 1995) [emphasis by **bold** supplied].

An employee does not have to work exclusively, or even primarily, on "confidential" material, 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). Sporadic exposure, however, to employer meetings where confidential labor relations matters are discussed or use of an employee as a sounding board for management positions on labor relations matters where no showing has been made for the necessity of such discussion will not result in the exclusion of an employee from a bargaining unit. City of Aberdeen, Decision 4174 (PECB, 1992). In like manner, isolated instances of filling in for an absent confidential employee does not extend the exclusion to the replacement. Kennewick School District, Decision 6957 (PECB, 2000). Mere access to personnel files and current payroll data does not establish confidential status. Snohomish County, Decision 346 (PECB, 1981); City of Lacey, Decision 369 (PECB, 1978); City of Olympia, Decision 4736 (PECB, 1994); Darrington School District, Decision 5573 (PECB, 1996).

Within the bounds of reasonableness, an employer may structure its organization as it sees fit. Puyallup School District, Decision 5764 (PECB, 1997). The amount of work qualifying for the "confi-

dential" exclusion is limited, however. Where confidential work can be assigned, in the future, to employees already excluded as confidential, it would be unreasonable for the employer to deprive additional employees of their statutory bargaining rights. Clover Park School District, supra.

Commission decisions have denied a confidential exclusion unless a real conflict is presented by the disputed employee having necessary and ongoing access to information regarding labor relations policy and strategy of the employer, where premature disclosure of the information would work to the employer's detriment. Tacoma-Pierce County Health Department, Decision 4664 (PECB, 1994). Thus, "confidential employee" status was denied as to a personnel office secretary who had access to personnel files, had responsibility for orientation of new employees, took notes at bargaining sessions, and conducted salary and benefit surveys of other public employers, where the data collected was information the public is entitled to see and the individual did no analysis or cost calculations for bargaining. North Franklin School District, Decision 6499 (PECB, 1998). At the same time, an individual was excluded as a confidential employee where the employer had no human resources department, and relied upon its budget/payroll supervisor to: provide contract interpretations and counter proposals in contract negotiations; cost union and employer proposals; and participate in formulation of labor policies involving six bargaining units. Franklin County, Decision 6350-A (PECB, 1998).

Application of Standard

Timeliness of the Petitions -

In City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), the Commission made it abundantly clear that stability has a high priority in unit determination:

Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate bargaining unit by agreement of the parties or by certification will not be disturbed.

A question arises in this case as to why either of the positions remaining at issue should be before the Commission at this time:

- There is overwhelming evidence that the work of the position now titled "human resources classified specialist" has been performed within the existing bargaining unit for at least 12 years. The testimony of the incumbent in that regard was corroborated by the human resources director.
- The history of the position now titled "certified placement coordinator" is not as precisely established in this record, but it is clear that major elements of that job have been performed by bargaining unit employees. Again, the testimony of the incumbent in that regard was corroborated by the human resources director.

No single factor cited by the employer as a change of circumstance is conclusive here.

In combination, several arguments advanced by the employer warrant a fresh examination of the unit placement of these positions. In the context of WAC 391-35-020(1), which allows "confidential" issues to be raised at any time, changes that are particularly compelling in this case are:

- The additional labor relations responsibilities of the employer's human resources staff which accompany its expanding role in collective bargaining negotiations; and
- The transition to interest-based bargaining procedures, which have apparently devolved, as a practical matter, into continual negotiations during the life of the collective bargaining agreements.

The circumstances have changed to a sufficient degree that the validity of the unit placement of the two positions may be brought into question. At the same time, the Commission will not lightly disregard or set aside arrangements agreed upon and implemented by the parties for a substantial time, such as the 12-year history for one of the positions at issue in this case. Olympia School District, Decision 4736 (PECB, 1994); Walla Walla School District, Decision 5860-A (PECB, 1997).

Opinions/Desires of Employees Not Controlling -

While disputed employees may express a feeling that a conflict of interest exists, it is often difficult to separate their perceptions in that regard from their individual views about collective bargaining in general, or about the particular union which is the exclusive bargaining representative of the bargaining unit involved. Under Walla Walla School District, supra and Franklin County, supra, such concerns are only relevant where supported by objective considerations, indicating the work in question is of a nature that warrants exclusion from the bargaining unit. Kennewick School District, supra.

Disputed Positions Lack Labor Nexus to Warrant Exclusion -

When closely examined, the changes in the employer's human resources staff have not materially altered the situations of the

employees remaining in dispute. Their work unit undoubtedly has a greater involvement with confidential labor relations matters in the past, but their particular work continues to lack the labor nexus necessary to classify either of them as a "confidential employee" excluded from the coverage of the statute.

The "Classified Specialist" -

There is no current job description for Graham's position. Her primary duties have historically been, and continue to be, the processing of routine hiring and termination paperwork, preparation of bargaining unit seniority lists, and submission of various budget-related or state-mandated employment reports. Graham has performed those functions throughout her tenure with this employer, and has been included in the bargaining unit up to this time without objection from the employer.

Graham detailed her major functions in relation to the hiring of classified employees, as follows: She has access to criminal records checks, creates personnel files, assigns salary and budget codes, obtains signed employment contracts, conducts new employee orientations, and updates seniority lists. With respect to each new hire, she spends approximately two to two-and-one-half hours in these activities. This work occupies most of her time in the months of August and September, and is a significant on-going function during the year because of employee turnover.

Graham prepares a state-required report which indicates the number of classified employees (expressed as full-time-equivalency, or "FTE"), along with their salaries, budget codes, and the sources from which they are funded. The first report for each school year is filed in November, and requires significant preparation time. That report must be updated and resubmitted three times during the school year.

Graham prepares a monthly report comparing the actual FTE for classified employees to the employer's budget. Beginning in March of each year, and continuing until the budget is finalized in August, Graham works with the associate superintendent to prepare staffing reports used in budget preparation. At the time of the hearing, Graham was preparing a report enumerating the classified employees at each pay level and projecting the anticipated movement of employees from probationary status to the regular pay schedule. Graham testified that she reviews the computations for new salary schedules after collective bargaining agreements are negotiated, and she reports any apparent discrepancies to the human resources director.

Blasio corroborated Graham's testimony regarding her reporting responsibilities. Blasio expanded upon Graham's testimony, to include Graham's maintenance of data concerning licensing, certification and college credits, and to indicate that Graham has responsibility to ensure that employees are properly compensated.

Access to personnel files and reports is not, by itself, determinative. While Graham does have access to bargaining employees' personnel files in performance of her duties, such access does not warrant exclusion from bargaining rights. Similarly, access to or preparation of reports which are a matter of public record does not warrant an exclusion under RCW 41.56.030(2)(c).

Participation in regional activities, such as attendance at regional meetings of a statewide school district human resources group (IPANCO), and service on IPANCO subcommittees, is asserted by the employer as a basis for excluding Graham from the bargaining unit.⁴ Even if there is some discussion of collective bargaining

⁴ Graham did not mention this function in her testimony.

trends or strategies at such meetings, they are remote from the collective bargaining process protected by RCW 41.56.030(2).

Graham's contacts with the collective bargaining process is a subject of some conflict in the testimony:

- Graham testified that she has submitted suggestions to the human resources director regarding ways in which collective bargaining agreements could be modified to simplify the salary reporting process, but testified that her only participation in a discussion of bargaining proposals were limited to: (1) she was present in a meeting of the associate superintendent and two or more directors,⁵ when the type of wage increase to provide the new bargaining unit of coaches was referenced; and (2) she described a brief conversation with Blasio regarding the impact of a union proposal to buy back vacation leave.
- Contradicting Graham's testimony that she had never been requested to cost-out anticipated contract proposals, Blasio stated that Graham computed costs for a proposed reorganization of maintenance employee responsibilities tied to a change in the pay schedule, and that Graham prepared and analyzed turnover data used in contract negotiations to ultimately negotiate changes in benefits for low-seniority employees in that bargaining unit. Blasio asserted that over 50% of Graham's time is spent on matters related to collective bargaining, and that Graham: (1) constructs contract proposals; (2) prepares bargaining data surveys of other school districts which are used by the employer in contract negotiations; (3) reviews union proposals and possible employer contract proposals, for discussion with Blasio; (4) has done

⁵ This meeting was an outgrowth of Graham's inquiry about what her role would be in preparing labor contracts.

research concerning requirements to exempt employees from bargaining units; and (5) has met with the associate superintendent, assistant superintendent, and various directors to review issues involved in contract negotiations. Blasio opined that Graham expedites the bargaining process by providing insights on the feasibility of various contract proposals and, absent such participation, the process could be delayed and flawed proposals advanced.

Both the Associate Superintendent and Graham indicated that Graham's responsibilities as a confidential secretary had ceased only a few months before the hearing,⁶ and Graham's testimony about her actual experiences is credited. In particular, her testimony about having had minimal involvement in the collective bargaining process such as reviewing already-negotiated salary schedules to verify the accuracy of computations and providing input as to technical changes concerning pay progressions describe routine nuts and bolts matters which do not rise to the level of labor relations policy or strategy. Many of the surveys and materials cited by the employer are in the public domain, and therefore are not of the nature considered to be confidential under the labor nexus test. In more than 12 years, Graham has only been present during one brief discussion with employer negotiators where the type of wage increase to be proposed was discussed, and that was only a passing comment about the first contract for the extracurricular unit. That level of exposure clearly does not rise to the level of necessary, regular, or on-going activity of a sensitive "labor nexus" nature mandating that an employee be deprived of the statutory right of union representation.

⁶ The arguably "confidential" duties which Graham performed in the past have been transferred to another individual whose position has been excluded from the bargaining unit by agreement of the parties.

Juxtaposed to the testimony of the affected employee is the testimony of her supervisor, who envisions Graham having a role in preparing reports in anticipation of contract negotiations, fashioning contract proposals, surveying other school districts for data on bargaining unit salaries, costing-out proposed changes in collective bargaining agreements, attending and providing input at meetings of employer officials where contract proposals are developed, and attending meetings with representatives of other school districts. To a degree, the divergence between the testimony of Graham and that of her superior can be rationalized along the lines of actual versus speculation about the future utilization of the position. Apart from giving credence to the testimony of the employee who is most familiar with the actual duties, testimony about a future situation does not satisfy the requirement that confidential duties be regular and ongoing before an exclusion can be ordered.

While an employer may, within reason, structure its organization as it sees fit, it appears that an exclusion of the human resources classified specialist would only have been appropriate if there had been significant changes of the duties of that position. With the changes of duties and agreed exclusion of other employees in the human resources staff as "confidential", the employer has not sustained the heavy burden of proof to establish that this relatively unchanged position has acquired a labor nexus. To the extent any minimal functions of the classification might bring this position into contact with confidential labor relations matters, that certainly cannot be described as "necessary".

The "Certificated" Coordinator -

Martinez appears to have the same general duties and responsibilities regarding certificated employees as Graham has with respect to classified employees. The bulk of the work effort is expended in

ascertaining and inputting computer data concerning employees' work experience, college credits, and certifications; expediting the collection of information from certificated employees to ensure their proper placement on the salary schedule; and applying state requirements and bargaining agreement provisions with respect to salary placement. In the performance of her duties, Martinez helps determine whether there are inconsistencies between state requirements and provisions of the collective bargaining agreement, and she may recommend technical changes to conform the labor agreement to requirements of the state salary allocation model for certificated employees.⁷

As with the other disputed job classification, the employer provided testimony about job functions not mentioned by the employee, including: developing a cost allocation revenue model requested by the exclusive bargaining representative of the certificated employees, estimating the cost of providing additional compensation to special education employees for their paperwork responsibilities, and participating (along with Graham) in meetings of an employer association. Additionally, Blasio projected a need for involving Martinez in preparation for contract negotiations, and indicated areas where Martinez would have such involvement in the future.

As with the other disputed position, the possibility of future involvement in "confidential" functions is not sufficient to warrant the present exclusion of an employee from statutory bargaining rights. On balance, Martinez is responsible for clerical functions designed to ensure compliance with state requirements and appropriate placement of certificated employees on

⁷ The employer and the exclusive bargaining representative of the certificated employees have recently adopted the state salary model as the local salary schedule.

the existing salary schedule. Her recommending technical changes to smooth that process does not rise to the policy or strategy level. The inclusion of a reference to labor relations responsibilities in the position announcement for this job classification is not deemed to be significant, in view of the actual work being performed. To the extent that the classification has any involvement with such activities, the employer can, without undue disruption of its operations, reasonably be expected to adjust its assignments to utilize the employees agreed by the parties to be confidential to accomplish its objectives. The position lacks the labor nexus that is required by the statute and precedent for an exclusion from all collective bargaining rights.

Desires of the Employees Not a Factor -

The "desires of employees" is one of the factors to be considered by the Commission in making unit determination decisions under RCW 41.56.060, and the Commission routinely conducts unit determination elections under WAC 391-25-530(1) where two or more appropriate bargaining unit configurations are sought by prospective bargaining representatives of overlapping groups of employees. The unit determination criteria set forth in RCW 41.56.060 are inapposite, however, to this controversy concerning whether two individuals are or ought to be excluded from the definition of "public employee" under RCW 41.56.030(2). While testimony as to actual conflicts of interest might be entitled to consideration, or even substantial weight, in determining the propriety of a "confidential employee" exclusion, the same cannot be said for testimony about the subjective feelings of employees at issue. To pose a conflict warranting exclusion from the bargaining unit, an employee's position must give the individual access to information concerning the employer's bargaining policy or strategy whose premature disclosure would prejudice the employer and the employee, if a member of the bargaining unit, might thereby be influenced to

disclose such information to collective bargaining representatives. No such evidence was produced in this case.⁸ Similarly, the expressed concern of the certificated placement coordinator that her inclusion in the office-clerical bargaining unit would inhibit dialogue between herself and her supervisor would be of import only if such communication involved confidential labor relations matters. Such communications are sporadic at best, and are not necessary to the effective functioning of the employer's labor relations function.

Conclusion -

With respect to both positions, the employer has not met its burden of proof to warrant exclusion of the employees from rights and benefits conferred by statute upon public employees. The employees do not have ongoing regular and necessary access to the development or implementation of the employer's labor relations strategy or policy. The employer can, without unreasonable infringement upon its management prerogatives, adjust its work assignments to avoid involvement of these employees with "labor nexus" materials. Both positions are deemed to be appropriately included in the bargaining unit.

FINDINGS OF FACT

1. The Yakima School District is operated under Title 28A RCW, and is a "public employer" as defined in RCW 41.56.030(1).
2. Yakima Educational Office Professionals, a "bargaining representative" as defined in RCW 41.56.030(3), is the

⁸ The concerns expressed in this case related to having access to collective bargaining agreements or other materials which are a matter of public record, or to the administration of collective bargaining agreements.

exclusive bargaining representative of a bargaining unit of classified employees of the Yakima School District that includes a variety of office-clerical positions and has been such representative for over 20 years.

3. The employer and union are parties to a collective bargaining agreement that is effective from September 1, 1998 through August 31, 2001.
4. The classifications titled "human resources classified specialist" and "certificated placement coordinator" are not necessarily involved, on a regular and ongoing basis, in the formulation, effectuation or implementation of the employer's labor relations policies and practices. They are not privy to confidential information concerning the employer's labor relations policies and practices.
5. To the extent that either position may have had access to, or responsibilities for, matters which may have a "labor nexus" under established precedent, such contacts have been only sporadic. The assignments of such matters in the future to a recently-expanded list of persons excluded from the bargaining unit by agreement of the parties will not unreasonably restrict the employer's operations or perogatives.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Employees in the job classifications of "human resources classified specialist" and "certificated placement coordinator" are public employees as defined in RCW 41.56.030(2), and

are not "confidential" employees within the meaning of RCW 41.56.030(2)(c).

ORDER

The employees holding the job titles of "human resources classified specialist" and "certificated placement coordinator" shall be included in the existing bargaining unit involved in this proceeding.

ISSUED at Olympia, Washington, this 21st day of July, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Hearing Officer

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.