

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS LOCAL 760)	CASE 16842-C-02-1062
)	
For clarification of an existing)	DECISION 8273 - PECB
bargaining unit of employees of:)	
)	
CITY OF QUINCY)	ORDER CLARIFYING
)	BARGAINING UNIT
)	

Davies Roberts & Reid, by *Kenneth J. Pedersen*, Attorney at Law, for the union.

The Wesley Group, by *Roy Wesley*, for the employer.

On October 29, 2002, Teamsters Local 760 (union) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, under Chapter 391-35 WAC, seeking to include an administrative assistant position into a bargaining unit of regular full-time and part-time public works and office employees employed by the City of Quincy (employer). A hearing was held on June 18, 2003, before Hearing Officer Walter M. Stuteville. Both parties submitted briefs. Authority to determine this eligibility dispute has been delegated to the Hearing Officer pursuant to WAC 391-35-390.

Based on the arguments and evidence submitted in this proceeding, the Hearing Officer concludes the position of administrative assistant shall be included in the existing bargaining unit of public works and office employees.

BACKGROUND

The city of Quincy has a population of roughly 5,000 residents and employs 35 people. The city is governed by a multi-member council and a mayor, Dick Zimbelman. The employer includes, among others, a public works department directed by Daniel Frazier.

The Public Works Department contains employees represented by the local union.¹ The union and employer have been parties to a collective bargaining agreement since at least April 1, 1996, and are currently engaged in a contract which extends through December 31, 2004. This contract not only includes the public works employees, but the Quincy office employees as well.

The employer created an administrative assistant position in April of 2002,² which was filled by Rhonda Duff on August 1, 2002. When creating this position, the city established it as a second confidential position excluded from the public works/office assistants bargaining unit.³ The union disputed the city's determination of the administrative assistant's confidential status and filed a unit clarification petition with the Commission on October 29, 2002.

The administrative assistant position works under the direction of the mayor and the public works director. The duties and responsibilities of the administrative assistant included in the job description are as follows:

¹ The union also represents a separate bargaining unit of law enforcement officers in the city of Quincy. Twenty-nine employees are included in one of the two bargaining units.

² Exhibit 5.

³ The city has consistently maintained one confidential employee who, at the time of hearing, was the assistant finance officer.

1. Performs secretarial work and types form letters, memoranda, draft ordinances/resolutions, reports, and other materials from clear copy or rough draft and composes correspondence. Also designs and creates forms and procedures for information management.
2. Assist the Public Works Director in human resource management including posting job openings, reviewing applications, evaluating written responses and performing employment verification.
3. Type confidential correspondence for the Public Works Director, Mayor or Councilmembers regarding union negotiations, grievance responses, employee disciplinary actions or personnel issues.
4. Represent or accompany representative from the City at labor negotiations with union representatives.
5. Gather confidential labor relations intelligence and make strategic recommendations to the Public Works Director concerning labor management practices.
6. Responsible for the development and maintenance of records and files and ensures public notices and requests for proposals or bids are properly advertised.
7. Assists the Public Works Director in the management of state and federal grants.
8. Responsible for the acquisition and release of various bonds related to Public Works construction.
9. Responsible for the maintenance of Public Works Small Works Roster.
10. Provides assistance in coordinating plan and project reviews between various City departments.
11. Collects and prepares data for reports; prepares and presents recommendations pertaining to specific subject matter as directed by the Public Works Director.
12. Assists the public, applicants, contractors, project proponents, and consulting engineers by checking routine records and files for requested information.
13. Processes permit applications for excavation within City right-of-way and schedules inspection of the work.

14. Provides initial review of land use applications for completeness.
15. Assists the Public Works Director and Backflow Prevention Specialist in the development and implementation of Water Department Backflow Prevention program.
16. Responsible for the development and maintenance of a system for monitoring the various time frames for public works projects, land use applications and other projects that are based on following a schedule.
17. Responsible for the development and maintenance of a uniform system for filing documentation for public works projects, state and federal grants, land use applications, and matters before the Planning Commission and City Council relating to public works projects.
18. Provide the Civil Service Board with secretarial service including attending meetings for the purpose of taking minutes.
19. Performs other duties as assigned.

The administrative assistant's job duties are performed to support the work of the mayor and the public works director. Both of these positions maintain duties regarding labor relations. The mayor has been directly involved in labor negotiations over the preceding years. The public works director has not been involved in labor negotiations in the past nor does his job description indicate this is part of his job duties. The public works director handles grievances, disciplines employees, and evaluates employees, among handling other various duties.

POSITIONS OF THE PARTIES

The employer contends a confidential labor nexus relationship exists between the disputed administrative assistant and both the mayor and public works director. The employer argues the disputed

position assists the public works director and mayor in a confidential manner. The employer maintains the disputed position is a member of the city's management team and is privy to confidential information and, therefore, should remain excluded from the bargaining unit.

The union contends the disputed administrative assistant position is not confidential as defined by WAC 391-35-320 and should be included in the current bargaining unit of public works and office employees. The union argues the employer failed to meet its burden of proof that the disputed position is confidential. The union further alleges the employer is attempting to skim bargaining unit work by excluding this position from the existing bargaining unit.

DISCUSSION

Applicable Legal Standard

In 2001, the Commission adopted WAC 391-35-320 to codify the "labor nexus" ruling of the Supreme Court of the State of Washington in *City of Yakima*.⁴ Under the labor nexus test, the Commission has limited the exclusion of confidential employees to those having access to confidential information regarding the employer's labor relation policies. WAC 391-35-320 states as follows:

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

⁴ *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101(1978).

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.

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Case Developed Standards -

The Public Employment Relations Commission has developed an extensive case history addressing the labor nexus test and the basis for excluding employees on a confidential standard as explained below.

- The "labor nexus" test does not include general personnel functions or assistance thereto that are common indicia of supervisory authority, such as contract interpretation, taking disciplinary actions that could be subjects of grievances, and processing grievances. *City of Seattle*, Decision 689-C, (PECB, 1981); *City of Yakima*, Decision 4625 (PECB, 1994). Similarly, occasional or incidental input to an employer's labor policy makers concerning the impact of various contract proposals is not sufficient. *King County*, Decision 4004-A (PECB, 1992).
- Decisions on exclusions of confidential employees are made on a case-by-case analysis of current facts. The actual duties of the position rather than job description or title of the position are controlling in making such determinations. An intimate fiduciary relationship qualifying an individual for the exclusion must be with a department head or other management official responsible for the formulation of labor policy, and the qualifying involvement with confidential material must

be necessary, regular and ongoing. *City of Cheney*, Decision 3639 (PECB, 1992).

- Employers will be allowed some reasonable number of personnel who are excluded from collective bargaining rights in order to perform the functions of the employer in the collective bargaining process. However, no guaranteed number or ratio of confidential employees exists. In the instance where no employees have performed such confidential duties, the Commission has reasonably allowed one employee to be excluded as confidential. *City of Mountlake Terrace*, Decision 3832-A (PECB, 1992).
- When confidential employees are available, management's intent to use an employee in a confidential manner does not necessarily exclude one from coverage unless the confidential act has been performed. *Southwest Suburban Sewer District*, Decision 8023 (PECB, 2003); *Shelton School District*, Decision 1609-B (PECB, 1984).

The party proposing confidential status bears a heavy burden of proving the necessity for excluding an employee from all of the rights conferred by the collective bargaining statute. *City of Seattle*, Decision 689-A (PECB, 1979). Application of that burden requires a decision against exclusion where the evidence offered in support of a confidential claim is ambiguous or contradictory. *Pateros School District*, Decision 3911-B (PECB, 1992).

Application of Standards

Direct Participation on Behalf of the Employer -

There is no evidence that the administrative assistant has performed the duties as described in numbers 3, 4 and 5 of the job description above:

3. Type confidential correspondence for the Public Works Director, Mayor or Councilmembers regarding union negotiations . . .
4. Represent or accompany representative from the City at labor negotiations with union representatives.
5. Gather confidential labor relations intelligence and make strategic recommendations to the Public Works Director concerning labor management practices.

Duff, the administrative assistant, testified her direct participation in human resources has been that of advertising employment, screening and interviewing applicants, and answering employment questions by bargaining unit members pertaining to leave policy and compensation.⁵ The administrative assistant's performance in this capacity does not involve confidentiality to the position. These duties are performed in a routine nature where no independent authority exists to set or influence labor relations policy. See *City of Lacey*, Decision 396 (PECB, 1978).

Number 18 of Duff's duties stated in the job description involves attending and taking minutes at the Civil Service Board. The meetings which are attended by Duff are public meetings.⁶ Therefore, the position's participation in the meetings are not considered confidential. Again, although confidential personnel matters may be discussed, this does not rise to a confidential labor nexus level.

Assisting in a Confidential Capacity -

Duff explained in her testimony that as part of her duties she attends meetings with the mayor. However, no explanation as to the

⁵ Frazier, the public works director, testified Duff interprets the collective bargaining agreement. However, further testimony revealed Duff does not formulate labor relations policy or assist in a confidential capacity.

⁶ Transcript 125-126.

types of meetings nor the content of such meetings was established. There is no evidence that the meetings attended with the mayor have revealed either the formulating of labor relation policy or negotiation strategy. Thus, Duff's assistance in such meetings with the mayor is not found to be confidential in nature.

Number 3 of Duff's duties stated in the job description involves handling grievances. However, her involvement here does not rise to the level of confidential status under Chapter 391-35 WAC. It is clear through testimony Duff prepares correspondence regarding grievances after consulting the mayor and public works director.⁷ However, assistance in preparing correspondence regarding grievances does not establish confidential status. No evidence established Duff was privy to any information relating to the formulating of labor relation policy or strategy. Although the preparation of such correspondence may involve confidential personnel information, this does not qualify as confidential under the statute.

Communication between the disputed position and the employer's attorney is shown to have been that of inquiry as to handling individual matters relating to the contract or passing along information regarding changing legislation. Information handled by Duff has not involved labor relations policy, information related to negotiations, or negotiation strategy. Therefore, a lack of evidence exists to show the disputed position as operating in a confidential capacity.

Speculation -

Although Duff may assist the mayor and public works director in personnel matters, the record does not show she meets the labor

⁷ There was no evidence to establish Duff has any authority or input in the result of the grievance.

nexus test. The record indicates management has the intent to add duties to the public works director to become involved in the collective bargaining process, which may create a confidential position. However, the action has yet to occur. This differs from *San Juan Island*, Decision 1321 (PECB, 1982), where the district provided the employee with confidential work to be performed and the employee refused. Here specific confidential work had not been assigned nor performed, although intended. An intention to assign confidential duties is not enough to establish such confidential status. *Southwest Suburban Sewer District*, Decision 8023 (PECB, 2003); *Shelton School District*, Decision 1609-B (PECB, 1984).

Necessity -

The Commission has placed a heavy burden on the party seeking a position's exclusion from collective bargaining. Necessity to create an additional confidential employee has not been proven here. The employer argues the mayor does not have the ability to handle all labor relation matters. Testimony reflects the city has consistently maintained one confidential employee throughout its relationship with the union. The city indicates it has had an increase in labor relations to the extent a second confidential employee is necessary. However, there was not substantial evidence to show such an increase in labor relations. During testimony it was admitted that the "confidential" assistant finance officer does not handle confidential labor relation material. The existence of a second confidential employee to be excluded from bargaining rights is inconsistent with Commission precedent.

FINDINGS OF FACT

1. The city of Quincy is a municipal corporation of the state of Washington and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Teamsters Local 760, a bargaining representative within the meaning of RCW 41.56.030(3), filed a petition with the Public Employment Relations Commission, seeking to include the position of administrative assistant into the current bargaining unit of regular full-time and part-time public works and office employees employed by the city of Quincy.
3. The employer and union have been parties to a series of collective bargaining agreements since at least 1996 and are currently parties to a contract extending from January 1, 2002, through December 31, 2004.
4. The employer created a position of administrative assistant working under the direction of the mayor and public works director. This position was filled on August 1, 2002, by Rhonda Duff.
5. The administrative assistant has not been directly involved in creating labor relations policy or strategy, or negotiations.
6. The administrative assistant has not provided assistance to the mayor or public works director in forming labor relations policy.
7. The administrative assistant's job description states this position will make strategic recommendations for labor management policy, represent or accompany the city at contract negotiations, and type confidential negotiation correspondence. The position has not performed any of those duties.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.

2. The administrative assistant is not confidential within the meaning of RCW 41.56.030(2)(c) or WAC 391-35-320.

ORDER CLARIFYING BARGAINING UNIT

The existing bargaining unit of regular full-time and part-time public works and office employees represented by Teamsters Local 760 is clarified to include the employee working under the title "administrative assistant."

Issued at Olympia, Washington, this 14th day of November, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, 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.