

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
LONGVIEW CLASSIFIED PUBLIC)	CASE 17802-C-03-1106
EMPLOYEES ASSOCIATION/WASHINGTON)	
EDUCATION ASSOCIATION)	DECISION 9200 - PECB
)	
For clarification of an existing)	
bargaining unit of employees of:)	ORDER CLARIFYING
)	BARGAINING UNIT
LONGVIEW SCHOOL DISTRICT)	
<hr/>)	

Harriet Strasberg, Attorney at Law, for the union.

Vandeberg Johnson & Gandara, by *William A. Coats*,
Attorney at Law, for the employer.

Longview Classified Public Employees Association/Washington Education Association (union) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission on August 26, 2003, seeking to have an unrepresented position included in a bargaining unit of office-clerical employees of the Longview School District (employer). The employer educates approximately 7,300 students and employs about 850 full-time and part-time employees. Three unions represent employees in four bargaining units.¹ The office-clerical unit numbers about 60 employees, and was severed from a larger bargaining unit of classified employees in 1986.

¹ Local organizations affiliated with the Washington Education Association represent separate bargaining units of certificated and classified employees, but they bargain jointly with the employer.

The union's original petition concerned an "accounting technician V - lead accountant" position. The union filed an amended petition on October 13, 2004, seeking to have four additional positions included in the unit: "administrative assistant to executive director - finance and technology," "administrative assistant to deputy superintendent," "administrative assistant to executive director - human resources and employee relations (certificated)," and "assistant secretary to executive director - human resources and employee relations (classified)."

Hearing Officer Vincent M. Helm held a hearing on June 14 and 15, 2005. Apart from supporting exclusion of all five disputed individuals as confidential employees, the employer claimed the "accounting technician V - lead accountant" is also excludable as a supervisor, and that the "administrative assistant to executive director - finance and technology" lacks a community of interest with the bargaining unit. Both parties submitted briefs.

ISSUES

1. Should any or all of the disputed individuals be excluded from the bargaining unit as confidential employees?
2. Should the "accounting technician V - lead accountant" be excluded from the bargaining unit as a supervisor?
3. Should the "administrative assistant to executive director - finance and technology" be excluded due to absence of a community of interest with bargaining unit employees?

The Executive Director rules that the "accounting technician V - lead accountant" and "administrative assistant - human resources - certificated" are confidential employees, but that the other three positions should be included in the bargaining unit.

ISSUE 1 - ARE THE DISPUTED INDIVIDUALS "CONFIDENTIAL" EMPLOYEES?

The employer contends that the five disputed individuals are all confidential employees. Notwithstanding its past acquiescence, the union now contests those claims of confidential status.

Applicable Legal Standards

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Apart from a reference in RCW 41.56.030(2)(c), the exclusion of "confidential" employees is the subject of a Commission rule codifying judicial precedent.

WAC 391-35-020 TIME FOR FILING PETITION--LIMITATIONS ON RESULTS OF PROCEEDINGS.

TIMELINESS OF PETITION

(1) A unit clarification petition *may be filed at any time, with regard to:*

. . . .
(e) Disputes under WAC 391-35-320 concerning status as a *confidential employee*.
. . . .

WAC 391-35-320 EXCLUSION OF CONFIDENTIAL EMPLOYEES. 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.

(emphasis added). WAC 391-35-320 is copied from RCW 41.59.020-4(c), which the Supreme Court of the State of Washington cited (with approval) and applied in setting the standard for determining confidential status, stating:

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.

. . . .
[O]ver 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 added). That rationale has been reiterated in numerous Commission decisions issued in the 27 years that have transpired since 1978.

Employers are allowed some reasonable number of excluded personnel to perform the employer functions 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 seeking exclusion of an employee as confidential has a heavy burden of proof. *City of Seattle*, Decision 689-A (PECB, 1979).

Facts Applicable to All of These "Confidential" Claims

The employer's labor relations functions are administered by Executive Director - Human Resources and Employee Relations John O.

Vencill, who acts as the employer's principal negotiator in collective bargaining.² Executive Director - Finance and Technology Gary Goreth is responsible for compiling financial data for all collective bargaining negotiations, and he also participates in all such negotiations. Deputy Superintendent Mark Rosin serves as a member of the employer's budget and contract negotiations committee, but does not participate directly in collective bargaining negotiations with any employee organization. Vencill, Goreth, and Rosin all report directly to Superintendent Nick Seaver.

The parties agree that four employees are properly excluded from the office-clerical bargaining unit as confidential employees: Secretary to the Superintendent Lynn Harper; Confidential Assistant - Certificated Linda Beer, who reports to Vencill; Confidential Assistant - Classified Susan Hardy, who reports to Vencill; and Director of Payroll Susan Shin, who reports to Manager - Fiscal/Nutrition Services Toni Anderson, who in turn reports to Goreth. In light of Commission precedents requiring that eligibility issues be decided on the basis of current facts,³ each of the disputed positions is the subject of separate analysis in this decision.

Analysis of "Accounting Technician V - Lead Accountant"

Tami Ingalls has held this position since February 2004. She was previously in the office-clerical bargaining unit while working as a substitute secretary in the Human Resources Department (for one and one-half years), then as an accounts payable clerk (for one year), and most recently as an accountant (for seven years).

² State and federal reporting/recordkeeping requirements led to creation of two of the disputed positions.

³ *Mount Vernon School District*, Decision 6858-A (PECB, 2000), citing *Colville School District*, Decision 5319-A (PECB, 1996).

Ingalls reports to Toni Anderson, who reports to Goreth. Ingalls is not directly involved in collective bargaining for the employer, so she is not excludable under WAC 391-35-320(1).⁴

Ingalls' job description expressly indicates that her duties include providing confidential reports and computerized budget models to be used by the employer in collective bargaining, along with cost analysis of proposals received in collective bargaining. She had actually spent about two weeks gathering bargaining data in the 16 months she held her current position up to the hearing. She has authorized access to the employer's general ledger, and she prepares reports detailing the cost of benefits. Goreth assigned her to prepare estimates of the local costs that would be associated with proposals the employer received in collective bargaining, she has prepared estimates on the cost of giving general wage increases, and she prepared estimates on the cost of wage increases limited to state-funded positions. Ingalls is necessarily privy to information about possible employer proposals in advance of their presentation at the bargaining table. The record indicates that other employees already excluded as confidential lack familiarity with accounting functions and resources,⁵ and Ingalls' supervisor has a heavy workload, so there is no reasonable alternative to having Ingalls provide data needed by the employer for bargaining.

An employee need not work exclusively, or even primarily, on "confidential" material to warrant exclusion as a confidential employee, so long as the assignments can be described as "neces-

⁴ She neither attends collective bargaining negotiations, nor participates in meetings where employer officials formulate their bargaining strategy.

⁵ The payroll director already excluded from the bargaining unit by agreement of the parties cannot readily obtain the data Ingalls provides for collective bargaining.

sary," "regular," and "on-going." *Oak Harbor School District*, Decision 3581 (PECB, 1990). Ingalls is the employer's current go-to person for bargaining data, and she is properly excluded from the bargaining unit as confidential under WAC 391-35-320(2).

Analysis of Administrative Assistant - Finance and Technology

Mary Crawford has held this position for about 23 years. She reports to Goreth. She is not directly involved in collective bargaining, and so is not excludable under WAC 391-35-320(1).⁶

Crawford's primary responsibilities involve functions that are not relevant to this case. She maintains records on investments, interacts with the county treasurer on transfers of funds to cover the employer's financial obligations, prepares financial and personnel reports for the employer, monitors vendor contracts, and tracks various income and expense items. Crawford also spends up to 10 percent of her time performing typical secretarial duties.

Crawford's duties do include three items that at least touch on collective bargaining, but close analysis yields a conclusion that they are insufficient to warrant exclusion:

- Budget presentations that Crawford helps to prepare may be used by the employer's negotiators in collective bargaining, but that does not overcome the fundamental fact that public employer budgets are public record. Moreover, the Supreme Court of the State of Washington ruled in *Spokane Education Association v. Barnes*, 83 Wn.2d 366 (1974) that the budgets of public employers are not subjects of collective bargaining.

⁶ She neither attends collective bargaining negotiations on behalf of the employer, nor participates in meetings where employer officials formulate their bargaining strategy.

- Employer officials may consider reports that Crawford prepares concerning cash flow analysis and restricted or unrestricted reserves, but that does not overcome the fundamental fact that the information appears to be of a type anyone could obtain by means of a public records request under Chapter 42.17 RCW.⁷
- Crawford is said to obtain and prepare other information relating to collective bargaining, but the specific example given in this record is that she obtained data from an internet site maintained by the state Office of Superintendent of Public Instruction. Accepting that the purpose of the inquiry was to compare the salaries paid by this employer with the salaries paid by other school districts, the information itself was clearly a matter of public record. The fact that those charts were given to Goreth for use in preparing for collective bargaining negotiations is not conclusive, because assessment of raw data on comparability does not fore-ordain or disclose any particular employer policy or proposal in collective bargaining.

⁷ The employer's claim that Crawford's reporting of the employer's cash position was in response to Goreth's request made in advance of formulating "what if" proposals for use in collective bargaining would have produced a more difficult conceptual question if it had been substantiated by evidence. Instead, the only evidence offered was Goreth's speculation that he might ask Crawford to compare costs of increasing the employer's share of a "carve-out" amount, because he thought Crawford was more familiar than others with the carve-out issue. Even if the evidence on the one example rose above speculation, sporadic use of an employee as a sounding board for management positions on labor relations matters or occasional comments to the employer's labor relations policy makers concerning the impact of various contract proposals will not result in the exclusion of an employee from a bargaining unit. *City of Aberdeen*, Decision 4174 (PECB, 1992); *King County*, Decision 4004-A (PECB, 1992).

The conclusion on Crawford is that this record does not support her exclusion as a confidential employee under WAC 391-35-320(2). Accepting that Crawford occupies a position of trust on other matters, the evidence does not establish that she routinely acts on confidential information which, if prematurely disclosed to the union, would damage the collective bargaining process. An exclusion must be denied on ambiguous or contradictory evidence. *Pateros School District*, Decision 3911-B (PECB, 1992).

Analysis of Administrative Assistant to Assistant Superintendent Barbara Jewell has held this position for about 13 years with no change of duties, and is the only employee supervised by the assistant superintendent. Even with a recent update in preparation for the hearing in this case, her job description does not indicate any responsibilities relating to collective bargaining matters. Thus, she is not eligible for exclusion under WAC 391-35-320(1).

The assistant superintendent has limited labor nexus, based on his participation in meetings where confidential labor relations policies are formulated and discussed. He does not have any direct involvement in contract negotiations with the organizations representing either classified and certificated employees, however. There is no evidence in this record establishing either actual practice or necessity for Jewell to handle any confidential labor relations materials.

Discussions between the employer and its administrators are neither characterized as nor shown to be collective bargaining under either Chapter 41.59 RCW applicable to certificated employees,⁸ or Chapter

⁸ Supervisors and principals/assistant principals can exercise limited collective bargaining rights under that statute, but it expressly excludes other administrators.

41.56 RCW applicable to classified employees.⁹ Rosin meets with administrators directly, without recognition or intervention of an organization as exclusive bargaining representative. Accordingly, tasks performed by Jewell in preparation for those discussions do not qualify as "labor nexus" activities.

Sporadic assistance to grievance processing does not qualify for exclusion. Two examples were given of Jewell gathering information for use by the assistant superintendent in connection with discipline of represented employees, but the involvement of the assistant superintendent in one of those seems to have been at the request of the employee and the organization that represented her, rather than at the behest of the employer. Commission precedent requires evidence of a genuine potential for conflicts of interest presented by the disputed employee having necessary, regular, and ongoing access to the labor relations policies and strategies of the employer. *City of Chewelah*, Decision 3103-B (PECB, 1989); *Tacoma-Pierce County Health Department*, Decision 4664 (PECB, 1994); *City of Redmond*, Decision 7814-B (PECB, 2003).

Substitution is not sufficient on the basis of this record. When the superintendent's secretary is away, Jewell may assume some duties of that position. Jewell has never been exposed to any confidential labor relations material on such occasions, however. Isolated instances of filling in for an absent confidential employee does not warrant exclusion of the replacement. *Kennewick School District*, Decision 6957 (PECB, 2000).

⁹ Classified supervisors can bargain under *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977), but are routinely placed in separate bargaining units under *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

The conclusion on Jewell is that this record does not support her exclusion as a confidential employee under WAC 391-35-320(2). Accepting that Jewell occupies a position of trust on other matters, the evidence does not establish that she routinely acts on confidential information which, if prematurely disclosed to the union, would damage the collective bargaining process.

Analysis of Administrative Assistant - Human Resources-Certificated Susan Farquhar has held this position since about January 2003. She was previously in the office-clerical bargaining unit while working half-time as a "sub-service specialist secretary" (for about 11 years), while simultaneously working outside the bargaining unit as confidential secretary to the employer's executive director - human resources and employee relations. When her current position was established, the union initially agreed to her exclusion from the bargaining unit, based upon employer representations as to the confidential nature of her work. Farquhar does not have any direct involvement with collective bargaining, and so is not eligible for exclusion under WAC 391-35-320(1).

Farquhar performs routine personnel office functions, such as administering various types of supplemental pay for certificated employees, assists in related matters such as receiving and transmitting letters of intent and, based upon those documents, compiling data related to staffing requirements, and sees the evaluations of certificated employees. She posts position vacancies, compiles employment applications, verifies experience and education, and furnishes the results to Vencill. Such routine personnel office recordkeeping is irrelevant to this case, however. Nothing in the statute, and nothing in any Commission or judicial precedent cited or found, indicates that employers have some inherent right to exclusion of everybody who works in their personnel offices.

Evidence that Farquhar has "access" to grievance information is ambiguous, at best: Grievance processing at initial levels is a supervisor (rather than confidential) function. Other evidence indicates Confidential Secretary - Certificated Linda Beers prepares employer proposals for collective bargaining negotiations, and does the bulk of the office-clerical work associated with grievance processing. Beers formerly performed all aspects of Farquhar's current job, and so is familiar with those tasks, but infrequent substitution by Farquhar for Beers does not necessitate a finding that Farquhar is a confidential employee.

Farquhar does perform some collective bargaining support tasks that are of interest here. Responding to requests from Vencill, she provides data on supplemental pay and time-responsibility-incentive (TRI) pay, and evaluates the cost impact of proposals that are received by or being considered by the employer in collective bargaining.¹⁰ Although his testimony was sparse as to specifics, Vencill testified that Farquhar has costed employer proposals before they were offered to the union. To the same end, the record indicates she has applied her experience in tracking teacher overload requirements to draft clarifying language for inclusion in the collective bargaining agreement covering the employer's certificated employees. Moreover, Vencill reviews all employer proposals for both certificated and office-clerical bargaining units with Farquhar prior to their presentation in bargaining. These facts satisfy the employer's heavy burden of proof.

The conclusion on Farquhar is that she marginally performs sufficient labor nexus work to warrant her exclusion as a "confidential" employee.

¹⁰ In both areas, Farquhar has more detailed data than could be obtained through the employer's payroll system.

Analysis of Administrative Assistant - Human Resources-Classified
Irina Pisarchuk has been employed in her current position since it was created in January 2003. She works four hours per day, five days per week. As was the case with Farquhar, Pisarchuk's job was formed by carving out some of the job functions performed by Confidential Secretary - Classified Susan Hardy, who is excluded by agreement of the parties.

Office accommodations are not compelling evidence of confidential status. It is undisputed that Pisarchuk's desk is in an open area within a few feet of the employees in the department who are agreed or found to be confidential employees,¹¹ but employers are expected to take reasonable precautions to preserve the confidentiality of their labor nexus information. *Cape Flattery School District*, Decision 1249-A (PECB, 1982).

Pisarchuk performs routine personnel office functions, such as processing classified employee evaluations, credit checks and fingerprint reports on applicants, and conducting pre-employment tests. Such duties are irrelevant in this case.

Evidence that Pisarchuk has grievance information is ambiguous or irrelevant. Although Pisarchuk has prepared packets on two grievances, grievance processing at initial levels does not warrant exclusion as a confidential employee. Although Pisarchuk took minutes at what has been described as one "Loudermill" hearing, the employer's compliance with the due process requirements imposed by *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) is

¹¹ An alternate description of the geography is that her desk is located between the desks of the "receptionist/secretary sub-service" and "confidential secretary to the executive director - human resources and employee relations (classified)" positions.

separate and apart from the collective bargaining process under Chapter 41.56 RCW.

Pisarchuk's collective bargaining support tasks are ambiguous, at best. Typing updates to collective bargaining agreements already negotiated by the employer is irrelevant even if that task is assigned to her by Vencill, because there is nothing "confidential" about the material being handled. Although there was evidence that she has provided Vencill some data regarding historical usage and costs of pooled in-service hours for bus drivers, costs if paraeducators had degrees, and costs if the employer moved existing substitute bus drivers to a different step, all of those merely involved applying data on existing employees. Vencill also testified that he obtains bargaining data on in-service hours from Director of Payroll Susan Shiu, who is excluded from the bargaining unit by agreement of the parties. Moreover, even if Pisarchuk has costed some proposals received by the employer in collective bargaining, Vencill does not use Pisarchuk to cost possible employer proposals.¹² Although Pisarchuk obtained copies of collective bargaining agreements from other employers for the purpose of comparing wage and benefit costs, those documents would seemingly have been matters of public record and there is no indication that Pisarchuk actually performed the comparability calculations. Although Vencill testified that Pisarchuk has typed employer contract proposals prior to their presentation in collective bargaining, Pisarchuk did not mention such work in her testimony. Finally, this record provides basis to infer that

¹² Pisarchuk indicated she was aware of employer proposals before they are presented in collective bargaining, but her assertion was based on her own inferences and was somewhat contradicted by Vencill's testimony. To the extent Vencill testified he has "informed" Pisarchuk of employer proposals in advance of their presentation, his testimony was vague and fails to show necessity.

Pisarchuk's only opportunity to handle bargaining material has been confined to the two weeks each year when Hardy is on vacation.

The conclusion on Pisarchuk is that she does not perform confidential duties of a nature that warrant her exclusion from the bargaining unit. The ambiguous and inconsistent evidence in this record fails to meet the heavy burden imposed on the employer to deprive the individual of her statutory bargaining rights. At the same time, the evidence suggests the employer can obtain the same information Pisarchuk might prepare through others already excluded as confidential employees.

ISSUE 2: SHOULD INGALLS BE EXCLUDED AS A SUPERVISOR?

In light of the ruling that Tami Ingalls is a confidential employee, it is not necessary to reach or decide the issue as to whether she is a supervisor of employees in the bargaining unit.

ISSUE 3: DOES CRAWFORD LACK A COMMUNITY OF INTEREST WITH THE UNIT?

In the alternative to claiming Mary Crawford is a "confidential" employee, the employer argues that she lacks a community of interest with the other members of the office-clerical bargaining unit. The union has agreed to exclude Crawford from the bargaining unit in the past, but no longer concurs in that exclusion.

The Applicable Legal Standards

The determination and modification of appropriate bargaining units is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills,

and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. . . .

The Commission makes unit determinations on a case-by-case basis, grouping together employees who have sufficient similarities (community of interests) to establish they are able to bargain collectively with their employer. Even then, the Commission need not certify the most appropriate bargaining unit configuration in any case. *City of Winslow*, Decision 3520-A (PECB, 1990). Of particular importance here, agreements made by parties on unit matters are outside of the usual mandatory/permissive/illegal scope of bargaining analysis, and are not binding on the Commission. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

None of the four factors listed in the statute overrides or controls the others. *Bremerton School District*, Decision 527 (PECB, 1979). Further, all four factors need not arise in each and every unit determination case.

- Analysis under the "duties, skills and working conditions" component is likely in each case. Separation of employees on a title-by-title basis is not required, and similarities/differences are considered in allocating employees or positions among multiple bargaining units within an employer's workforce. *Educational Service District 113*, Decision 7361-A (PECB, 2002). Both "horizontal" units (cutting across an employer's table of organization to include all employees who perform similar duties or have similar skills) and "vertical" units (grouping employees together based on their commonality of working conditions within a branch of the employer's table of organization) have been found appropriate.

- Analysis under "history of bargaining" component is inapposite for unrepresented employees, but history develops with each passing day that a bargaining relationship exists. Changes of circumstances are properly addressed through unit clarification proceedings under Chapter 391-35 WAC, and it is entirely appropriate to revisit past exclusions when a new confidential position (such as the one now occupied by Ingalls) is created.¹³ Also, confidential exclusions only remain appropriate as long as the individual performs labor nexus work.¹⁴
- Analysis under the "extent of organization" component includes avoidance of strand individuals without meaningful access to their statutory collective bargaining rights,¹⁵ and avoidance of unnecessary fragmentation of employer workforces.¹⁶
- Analysis under the "desires of employees" component is limited to conducting a unit determination election, but that only occurs in representation proceedings under Chapter 391-25 WAC, and then only where either of two or more unit configurations sought by employee organizations could be appropriate.

The first three of those components all have application in this case.

¹³ In *Wapato School District*, Decision 788-A (PECB, 1980), the Commission reversed a decision in which the Executive Director denied exclusion of a new position based on the existence of other agreed exclusions.

¹⁴ In *Richland School District*, Decision 2208-A (PECB, 1985), the Commission affirmed an Examiner decision returning an employee to the bargaining unit after her former labor nexus duties were transferred to a new position.

¹⁵ See *City of Blaine*, Decision 6619 (PECB, 1999).

¹⁶ See *City of Auburn*, Decision 4880-A (PECB, 1995); *Ben Franklin Transit*, Decision 2357-A (PECB, 1986).

Analysis of Community of Interest Argument

There is nothing in Crawford's current job duties that compel a conclusion that her duties, skills, or working conditions are so unique that she would not have a community of interest with employees in the bargaining unit. In preparing reports, she works with data compiled by bargaining unit employees, and performs tasks within the office-clerical generic type. No evidence was introduced to show that her hours of work or compensation differed substantially from bargaining unit employees.

Crawford has been excluded from the bargaining unit for a long time, and there is no indication of changed circumstances involving her role in the organization, but the employer appears to have opened up a question as to the propriety of confidential exclusions when it sought to create new excluded positions. The evidence in this record clearly indicates that Ingalls is now the employer's "go-to" person for financial information used in collective bargaining. Even the somewhat marginal labor nexus tasks now performed by Farquhar are substantially greater than any labor nexus tasks currently attributed to Crawford.

Exclusion of Crawford from this bargaining unit on "community of interest" grounds would effectively strand her without any opportunity to exercise her statutory collective bargaining rights. She could not be grouped with the five employees excluded from the office-clerical unit by stipulation of the parties, with Ingalls, or with Farquhar, because their "confidential" status deprives them of all collective bargaining rights.

The conclusion on the community of interest claim is that no rational basis exists for the continued exclusion of Crawford from the bargaining unit encompassing all employees of the employer who perform office-clerical and related functions.

FINDINGS OF FACT

1. The Longview School District is a "public employer" within the meaning and coverage of RCW 41.56.030(1).
2. Longview Classified Public Employees Association / Washington Education Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of office-clerical employees of the Longview School District.
3. During and since 2003, the employer has created new positions which, it asserted, were properly excluded from the bargaining unit as "confidential" employees.
4. The union filed a petition and amended petition under Chapter 391-35 WAC, seeking rulings on the bargaining unit status of five persons the employer claimed were properly excluded from the bargaining unit as "confidential" employees. The employer responded with claims that one of those named by the union is also excludable as a supervisor, and that another of those named by the union is excludable as lacking a community of interest with the bargaining unit.
5. Accounting Technician V - Lead Accountant Tami Ingalls has held that position since it was created in February 2005. She reports via one intervening manager to an employer official who participates directly in collective bargaining negotiations with organizations representing four bargaining units, and she is responsible for developing cost data concerning proposals made and received by the employer in collective bargaining, as well as preparing data used in developing the employer's bargaining policies and strategies. The data used

by Ingalls in preparing computerized budget models cannot be readily obtained through the services of other employees agreed to be confidential.

6. Administrative Assistant to the Executive Director - Finance and Technology Mary Crawford is responsible for maintenance of records on employer investments, preparation of financial and personnel reports, monitoring/tracking various income and expense items, and obtaining disbursements from the County Treasurer. She has had limited involvement with collection of data that might eventually be used in collective bargaining, but at least some of that data is a matter of public record. Although the incumbent has held her position for approximately 23 years and has been excluded from the bargaining unit in the past, the evidence does not disclose that she currently has any regular or ongoing involvement in preparation of materials for the employer in relation to collective bargaining.
7. Administrative Assistant to the Assistant Superintendent Barbara Jewell has occupied that position for about 13 years. She has no regular and ongoing duties involving the collective bargaining process, and no access to confidential labor relations materials where premature disclosure could jeopardize the collective bargaining process.
8. Administrative Assistant to Executive Director Human Resources and Employee Relations - Certified Susan Farquhar has held that position since it was created in 2003. She now performs some of the work previously performed by an employee who the parties agree to be excluded from the bargaining unit as a confidential employee. Farquhar is primarily responsible for administration of various supplemental pay items for certificated employees and is highly involved in staffing of certifi-

cated positions. She has completed assignments to prepare cost estimates on various supplemental pay proposals made or received by the employer in collective bargaining, has made cost projections on possible employer proposals in advance of their presentation in collective bargaining, has drafted an ultimately-successful proposal for contract language to clarify a provision in a collective bargaining agreement, and has been privy to employer proposals prior to their presentation in collective bargaining.

9. The Administrative Assistant to Executive Director, Human Resources and Employee Relations - Classified Irina Pisarchuk has held that position since 2003. The duties of this position were previously performed by the Confidential Secretary - Classified, who is excluded from the bargaining unit as a confidential employee. Pisarchuk works 20 hours per week, and is primarily responsible for employment processing of classified employees. She performs limited work related to the processing of grievances, and has had limited involvement with collection of public record data that might eventually be used in collective bargaining. The record does not establish the necessity to have Pisarchuk be privy to confidential information concerning the employer's labor relations policies or strategies. In the absence of evidence that her work area necessarily exposes her to confidential materials that could not, with reasonable effort, be protected by the employer, the proximity of her work station to the work areas occupied by confidential employees does not, in and of itself, warrant her exclusion as a "confidential" employee.
10. Mary Crawford performs work within the office-clerical generic type, and would be stranded if she were to be excluded from the bargaining unit at issue in this case.

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. On the basis of the facts set forth in paragraph 5 of the foregoing findings of fact, Accounting Technician V - Lead Accountant Tami Ingalls is a confidential employee within the meaning of RCW 41.56.030(2)(c), and is properly excluded from all bargaining units under Chapter 41.56 RCW.
3. On the basis of the facts set forth in paragraph 8 of the foregoing findings of fact, Administrative Assistant to Executive Director Human Resources and Employee Relations - Certificated Susan Farquhar is a confidential employee within the meaning of RCW 41.56.030(2)(c), and is properly excluded from all bargaining units under Chapter 41.56 RCW.
4. On the basis of the facts set forth in paragraphs 6, 7, and 9 of the foregoing findings of fact, Administrative Assistant to the Executive Director - Finance and Technology Mary Crawford, Administrative Assistant to the Assistant Superintendent Barbara Jewell, and Assistant Confidential Secretary to Executive Director Human Resources and Employee Relations - Classified Irina Pisarchuk are public employees within RCW 41.56.030(2), and are not confidential employees within the meaning of RCW 41.56.030(2)(c).
5. On the basis of the facts set forth in paragraphs 6 and 10 of the foregoing findings of fact, Administrative Assistant to the Executive Director, Finance and Technology Mary Crawford has a community of interest with the other office-clerical employees of the employer, and is properly included under RCW

41.56.060 in the existing bargaining unit represented by the union as described in paragraph 2 of the foregoing findings of fact.

ORDER

1. The positions of "accounting technician V - lead accountant" and "administrative assistant to executive director human resources and employee relations - certificated" are excluded from the existing bargaining unit represented by the union.
2. The positions of "administrative assistant to executive director - finance and technology" and "administrative assistant to assistant superintendent" and "assistant confidential secretary to executive director, human resources and employee relations" are included in the existing bargaining unit represented by the union.

Issued at Olympia, Washington, on the 23rd day of December, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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