

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
YAKIMA SCHOOL DISTRICT)	CASE 18194-C-04-1169
)	
For clarification of an existing bargaining unit represented by:)	DECISION 9020-A - PECB
)	
YAKIMA EDUCATIONAL OFFICE)	
PROFESSIONALS)	
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In the matter of the petition of:)	
)	
YAKIMA EDUCATIONAL OFFICE)	CASE 18949-C-04-1215
PROFESSIONALS)	
)	DECISION 9021-A - PECB
For clarification of an existing bargaining unit represented by:)	
)	
YAKIMA SCHOOL DISTRICT)	DECISION OF COMMISSION
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Menke Jackson Beyer Elofson Ehrlis & Harper, LLP, by Rocky L. Jackson, Attorney at Law, for the employer.

Faith Hannah, Staff Attorney, Washington Education Association, for the union.

This case comes before the Commission on a timely appeal filed by the Yakima Educational Office Professionals (union) and timely cross-appeal filed by the Yakima School District (employer) each seeking review and reversal of certain Findings of Fact, Conclusions of Law, and Order Clarifying Bargaining Unit issued by Executive Director Marvin L. Schurke.¹ Each party opposes the respective appeal of the other.

¹ Yakima School District, Decision 9020 (PECB, 2005).

ISSUES PRESENTED

1. Did the Executive Director properly conclude that the deputy superintendent's administrative assistant was a confidential employee under the Commission's labor nexus test?
2. Did the Executive Director properly conclude that the associate superintendent's administrative assistant was not a confidential employee under the Commission's labor nexus test?
3. Was the union's petition for clarification of the food services supervisor position timely?
4. If the union's petition was timely, should employee Dot Benson be included in the bargaining unit?

For the reasons set forth below, we affirm the Executive Director's decision that the deputy superintendent's administrative assistant is a confidential employee, and therefore should not be in the bargaining unit. The evidence supports the findings and conclusions that the deputy superintendent has substantial involvement in the employer's collective bargaining process, and the employer has met its burden that the deputy superintendent's administrative assistant has a fiduciary responsibility to the employer with regard to confidential labor relations information. We also affirm the Executive Director's decision that the associate superintendent's administrative assistant should be in the bargaining unit. Although the associate superintendent provides some confidential labor relations information to the employer, the employer has not met its heavy burden demonstrating that it is necessary for the associate superintendent's administrative assistant to exclude that employee from collective bargaining

rights. Finally, we affirm the Executive Director's decision that the union's unit clarification petition was not timely under *Toppenish School District*, Decision 1143-A (PECB, 1981).

ANALYSIS

Standard of Review

This Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Executive Director's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002); *World Wide Video Inc. v. Tukwila*, 117 Wn.2d 382 (1991). The Commission attaches considerable weight to the factual findings and inferences made by its examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001).

ISSUES 1 AND 2 - CONFIDENTIAL EMPLOYEES

Applicable Legal Standard

This Commission, using established case precedent, applies a labor nexus test to determine the confidential status of employees to be included or excluded from a bargaining unit. That test, which originated in *International Association of Fire Fighters, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978), states that a confidential employee is an employee whose duties imply a confidential relationship which must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official.

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.*" *City of Yakima*, 91 Wn.2d 101, 106-107 (emphasis added). General supervisory responsibility is insufficient to place an employee within the exclusion. *City of Yakima*, Wn.2d at 107. This type of exclusion prevents potential conflicts of interest between the employee's duty to the employer and status as a union member. *Walla Walla School District*, Decision 5860 (PECB, 1997).

Application of Standard - Brenda Childers

The Executive Director found that Childers, who is the administrative assistant to Deputy Superintendent John Irion, was a confidential employee based upon the duties of Irion as well as Childers' current duties. We agree with that conclusion.

In reaching his decision, the Executive Director first analyzed Irion's duties, and found that he has an ongoing involvement in the collective bargaining process as a member of the employer's negotiating team. Thus, he found Irion to be a confidential employee under WAC 391-35-320(1).²

The Executive Director then turned his analysis to Childers' duties, and found that in addition to general secretarial duties, she also handles confidential labor relations materials and attends meetings involving collective bargaining issues that occur within the district. The Executive Director also found that Childers collected and compiled salary information from other school districts for use in negotiations.

² The Executive Director also correctly concluded that Irion is excluded from collective bargaining rights as a "chief administrative officer" under RCW 41.59.020(4)(c).

The union argues that the employer failed to meet its heavy burden in demonstrating that any of Childers' duties actually involve confidential collective bargaining information. To support its argument, the union claims that many of the meetings that Childers attended were joint union-management meetings where no confidential information was shared. Additionally, the union asserts that much of the information that Childers compiled on behalf Irion was not the sort of information that would be damaging to the employer if leaked.

Although we agree with the union that some of the meetings that Childers attended were joint labor-management meetings, and that some of the information that she handled was not confidential information, Childers has enough contact with sensitive information to warrant her exclusion. The record demonstrates that Childers attends management meetings where labor relations discussions occur, including discussions about personnel issues. The record also demonstrates that she processes documents and correspondence regarding personnel issues, grievances, correspondence regarding proceedings before this Commission, and has prepared and been privy to sensitive salary information and instructed to maintain confidentiality regarding that information.

We find that substantial evidence supports the finding that the employer met its heavy burden in demonstrating that Childers is a confidential employee under WAC 391-35-320(2).

Application of Standard - Marta Weaver

The Executive Director found that Weaver, who is the administrative assistant to Associate Superintendent Cheryl Mayo, was not a confidential employee based upon the duties of Mayo, as well as Weavers' current duties. We also agree with that conclusion.

Unlike Irion, the Executive Director found that Mayo was not a confidential employee under WAC 391-35-320, but her exclusion from collective bargaining rights derives solely from RCW 41.59.020(4)(c). The Executive Director based his conclusion on the fact that while Mayo may have been the employer's chief negotiator in the past, her current duties have her supervising the academic/educational operation of the employer, as well as overseeing the supervisory personnel.³

After concluding that Mayo would not qualify as a confidential employee under WAC 391-35-320(1) or (2), the Executive Director then examined the duties of Weaver, and also found that she did not qualify as a confidential employee under WAC 391-35-320(2). The record demonstrates that while Weaver may have typed confidential notes on behalf of Mayo, the employer failed to demonstrate that these notes included confidential labor relations material on a consistent basis. Furthermore, while Weaver may have been consulted about some issues, such as the office reorganization, there is no indication that she was asked to keep this information confidential, and there is no indication that the information that Weaver was communicating to Mayo about the reorganization involved communications about the employer's own sensitive labor relations materials, even if the employer bases its strategy on the employee's answer. See *Pierce County*, Decision 8892-A (PECB, 2006).

We find that substantial evidence supports the finding that the employer failed to meet its heavy burden in demonstrating that Weaver is a confidential employee under WAC 391-35-320(2).

³ The Executive Director correctly analyzed only the current duties of Mayo. See *State - Natural Resources*, Decision 8711-B (PSRA, 2006) (only the current duties of employees should be analyzed when determining the employees confidential status).

ISSUE 3 - TIMING OF UNION'S PETITION

The Executive Director found the union's petition for clarification of the food services supervisor position untimely based upon *City of Toppenish*, Decision 1143-A. The union argues that the Executive Director misapplied the process outlined in *City of Toppenish*, because the position at question is a new one, and therefore circumstances have substantially changed to permit the union's petition to go forward under WAC 391-35-(1)(a).

A mid-term unit clarification is available to exclude individuals from a bargaining unit covered by an existing collective bargaining agreement if: a) the petitioner can offer specific evidence of substantial changed circumstances that would warrant such exclusion; or b) if the petitioner can demonstrate that it put the other party on notice that it would contest the inclusion via the unit clarification procedure and filed a petition with the Commission prior to the conclusion of negotiations.⁴ WAC 391-35-020. This policy reflects this Commission's concern about the destabilizing effects of an attempt by one party to obtain a unit clarification ruling that upsets bargaining unit agreements. This policy has been applied equally to employee organizations which would seek to expand their bargaining unit during the term of a collective bargaining agreement. *Sedro Woolley School District*, Decision 1351 (PECB, 1982); *Cowlitz County*, Decision 2229 (PECB, 1985). The Commission has since codified this standard in WAC 391-35-020.

Here, we agree with the Executive Director that the union's petition for clarification of the food services supervisor position was untimely because the position at issue is an existing position,

⁴ This is in spite of the fact that the petitioning party signed a collective bargaining agreement covering the disputed position.

and the union failed to place the employer on notice that it would seek clarification of the position, as required by WAC 391-35-020(2)(a). The Executive Director examined the history of the position, and noted that the job has been in its present form since at least 2002, well before the expiration of the September 1, 2003, through August 21, 2004, collective bargaining agreement.

Because the Executive Director properly concluded that the union's unit clarification petition was untimely, we need not address the supervisory status of Dot Benson.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order Clarifying Bargaining Unit issued by Executive Director Marvin L. Schurke are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 17th day of July, 2007.

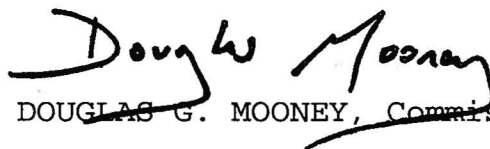
PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



DOUGLAS G. MOONEY, Commissioner