

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	CASE NO. 4442-E-83-821
CLASSIFIED PUBLIC EMPLOYEES)	
ASSOCIATION/WEA/NEA)	DECISION NO. 1609-B - PECB
Involving certain employees of)	
SHELTON SCHOOL DISTRICT NO. 309)	ORDER DETERMINING
)	ELIGIBILITY ISSUES

Faith Hanna, Staff Attorney, Washington Education Association, appeared on behalf of the petitioner.

Ditlevson, Rodgers, Hanson, & Jarrett, P.S., by Craig W. Hanson, Attorney at Law, appeared on behalf of the employer.

On January 21, 1983, Classified Public Employees Association (CPEA) filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation of certain employees of Shelton School District No. 309. CPEA initially sought to replace Teamsters Local 378 as exclusive bargaining representative of an existing bargaining unit of maintenance, custodial, cafeteria, secretarial and aide employees, but it later amended its petition to claim a unit limited to secretarial, clerical and payroll employees of the district. Teamsters Local 378 thereupon disclaimed representation rights as to the secretarial, clerical and payroll employees. Based on a conclusion that the only remaining issues pertained to the eligibility of certain individuals for inclusion in an appropriate office-clerical bargaining unit, an order was issued on March 31, 1983, directing that a secret ballot election be conducted among employees in a bargaining unit described as:

All full-time and regular part-time office-clerical employees of Shelton School District No. 309, excluding confidential employees, supervisors, certificated employees and all other classified employees.

Shelton School District, Decision 1609 (PECB, 1983)

The eligibility disputes were reserved for post-election determination. An election was conducted on April 29, 1983, at which time eleven votes were cast in favor of CPEA and no votes were cast for "no representation". The employer challenged the ballots cast by Accounting Assistants Alison Nutt, Carol Goodburn and Shirley Stites, Secretary-Receptionist Alice Smith, and Migrant Home Visitor Record Clerk Carol Johnson.

The results of the election were such that a count of the challenged ballots would not change the outcome. Consequently, there is no need for the ballots to be opened. An interim certification, Decision 1609-A EDUC, was issued on May 9, 1983, designating CPEA as exclusive bargaining representative of the bargaining unit. The case was held open to resolve the eligibility issues reserved in the direction of election. Between the date of the election and the date of the hearing, the employer had experienced substantial turnover in its workforce. The parties continued, however, to dispute the inclusion in the bargaining unit of the positions which had been held by the voters challenged at the election. A hearing was held on October 7, 1983, before Katrina I. Boedecker, Hearing Officer. The parties submitted post-hearing briefs.

BACKGROUND

The Shelton School District has employees represented in four separate bargaining units. Certificated employees of the district are represented by the Shelton Education Association (WEA/NEA). Teamsters Local 378 continues to represent a combined unit of maintenance, custodial, cafeteria and aide employees of the district, as well as a separate bargaining unit of transportation employees. The office clerical unit involved in these proceedings is the fourth unit.

The administration of the school district is headed by the superintendent of schools. The district has one assistant superintendent. At the time of the hearing, it had no "business manager", but used the title of "director of finance and grants" for the individual charged with management of its financial affairs.

Working under the title "administrative coordinator", Ann Miller does some personnel work (including employee recruiting, job description development, and teacher contract administration), prepares materials for the school board, directs office operations, and has participated with the management team in collective bargaining negotiations. While the record is sketchy as to either the scope or details of Miller's job function, it is clear that she does her own typing of materials which she produces. The CPEA does not seek inclusion of this position in the bargaining unit.

The employer has one employee working under the title of "payroll officer". The individual reports to the director of finance and grants, and has primary responsibility for payroll accounting. This position was originally included in the bargaining unit when it was represented by the Teamsters. The employer approached the Teamsters about exclusion of the position from the bargaining unit as a "confidential" employee involved with the preparation of financial data for the superintendent's use in collective

bargaining, and the position was excluded from the unit as "confidential" during or about 1980. The CPEA does not seek inclusion of this position in the bargaining unit.

All of the disputed positions have work stations located in school district administrative office buildings which have no classrooms.

The district is represented in collective bargaining by a consultant hired through the Washington State School Directors' Association. The consultant does not maintain an office at, or utilize the office clerical staff of, the district. The district has assembled a labor relations management team consisting of the outside labor relations consultant, the district's superintendent, assistant superintendent, administrative services coordinator and other supervisors as needed.

POSITIONS OF THE PARTIES

The school district contends that the district headquarters secretary-receptionist and the accounting assistants are involved in the collective bargaining process, and serve in confidential positions which should not be included in the bargaining unit. The district also contends that the accounting assistants and migrant program position do not share common duties, skills and working conditions with the office clerical employees, and so cannot appropriately be assigned to a generic clerical unit.

CPEA argues that the job functions of the secretary-receptionist and accounting assistants are such that they do not have an intimate fiduciary relationship with management regarding labor relations, and that the heavy burden of proof of confidentiality has not been met. CPEA takes the position that the disputed secretary-receptionist and accounting assistants are office-clerical employees who should be included in the bargaining unit. The association argues that the migrant program position performs a broad range of duties that are generally similar to the clerical functions carried out by school secretaries, and that any aide work (which it distinguishes from office-clerical work) has been a minor part of the overall duties.

DISCUSSION

New job descriptions were adopted for disputed positions during the pendency of these proceedings, adding statements concerning confidential labor relations materials to the assignments of the employees hired to replace the employees who cast challenged ballots in the election. Certain of the incumbents at the time of the hearing had held their positions for only a

very brief time. These circumstances, and the speculative nature of much of the testimony adduced at the hearing, were well understood by the parties at the time of the hearing.

The Secretary-Receptionist

Secretary-receptionists are employed throughout the school district. Depending on the specific position held, employees in this classification have work hours, days and years which vary from part-time during only the school year to full-time for the full calendar year. Some are assigned to school buildings and report to the building principal; others are assigned to departments and report to the respective department heads or directors. The disputed position, secretary-receptionist at the district headquarters, is a full-time, calendar year position. The district office secretary-receptionist reports directly to the coordinator of administrative services.

The district office secretary-receptionist position has historically provided secretarial services for the district's board of directors, superintendent, assistant superintendent, curriculum director, coordinator of administrative services, and other members of management. The duties include typing, processing mail, handling personnel applications and transcribing dictation. The disputed position had been included in the Teamsters bargaining unit in the past, and the employer generally avoided allowing the secretary-receptionist to come in contact with confidential labor relations matters. Such materials have heretofore been personally handled by the coordinator of administrative services. The job description is one of those which was revised during the pendency of these proceedings, and a new employee had been placed in the position. It was the testimony of the district's superintendent that the new incumbent, in the regular performance of her duties, would be expected to provide direct secretarial support to the superintendent for all matters, including confidential labor relations. Included in this projected scope of responsibilities was that the employee would have access to and prepare correspondence setting forth bargaining positions, recommendations, negotiation proposals and memoranda, take notes in negotiations, and participate in grievance processing.

RCW 41.56.030 defines "public employee" and states, in pertinent part:

"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

The Washington State Supreme Court adopted a "labor nexus" test for the confidential exclusion in International Association of Firefighters v. City of Yakima, 91 Wn.2d 101 (1978), where the court stated:

We hold that in order for an employee to come within the exemption 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.

Thus, the exclusion depends on the particular relationship, rather than on any arbitrary test of proximity of title, position on organization chart or role. In adopting a similar "labor nexus" test under the National Labor Relations Act, the Supreme Court of the United States extended the rights of the NLRA to an individual who had been employed as the secretary to the general manager (the highest official of the employer at the facility). NLRB v. Hendricks County Rural Electric Membership Corp., 454 US 170 (1981). The approach taken by both supreme courts also distinguishes the administration of this exception from the approach taken in RCW 41.06.070(7), (8) and (9), where the statute automatically excludes one secretary in each agency from the coverage of the state civil service law.

The labor relations process itself is benefitted by protecting information that could be damaging to the collective bargaining process if divulged. A secretary placed in a position of trust regarding management labor relations information should not be confronted with a conflict of interest such as would arise if she was included in the bargaining unit. The Public Employment Relations Commission has decided a number of cases on the "confidential" exclusion. There is no question that a school district management will have some labor relations materials and related communications, the substance of which it does not want divulged without management consent. Thus, in San Juan School District, Decision 1321 (PECB, 1982), a secretary who, as part of normal office routine, received, typed, and filed letters, memorandums, and documents for the superintendent of schools dealing with management labor relations policies was found to be a confidential employee excluded from the bargaining unit. Accord: Pe Ell School District, Decision 1068-A (PECB, 1981). On the other hand, the exclusion is not universally or automatically applied to all persons working in the administrative offices of a public employer. For example, in Cowlitz County, Decision 1651 (PECB, 1983) the employer sought exclusion of a secretary-receptionist and an assistant clerk to the employer's elected board of commissioners. An administrative coordinator position was already excluded from the coverage of the statute as "confidential". The employer's indication that both disputed employees would be used in a confidential capacity in future collective bargaining negotiations was found to be speculative and insufficient to establish necessity in light of the existing and continuing exclusion of other confidential employees. Similarly, in Crescent School District, Decision 1572 (PECB, 1983), a requested

"confidential" exclusion was denied based on a record of future intentions of the employer, where the employer enjoyed the continued availability of two other confidential employees.

As prospectively described by the school district, the secretary-receptionist at issue in the instant case would serve in a function distinct from that of the other secretary-receptionists in the bargaining unit, inasmuch as this person was to be the choice of school district management to perform, in the regular course of business, the confidential secretarial function related to labor relations policy. The problem with this case, on the present record, is in bridging the gap between intentions and actions. The burden on an employer seeking a "confidential" exclusion is a heavy one. City of Seattle, Decision 689-A (PECB, 1980). It is difficult to credit the existence of the required "intimate fiduciary relationship" where it exists only in a recently-amended job description and not in the actions of the persons involved. Further, and contrary to the district's claim that it did not have a secretary on whom it could rely to take notes and perform other support functions for labor relations, the record establishes that the district has had one classified employee excluded as a confidential employee because of performing assignments of a confidential nature for the superintendent. The evidence establishes that such tasks have been accomplished in the past, and that they have been performed by the "administrative coordinator" sketchily defined in this record. The district has not come forth with evidence of any change of circumstances or assignments limiting the availability of the administrative coordinator to continue to perform the confidential work she has performed in the past. Under these circumstances, the record is found to be insufficient to warrant depriving the district office secretary-receptionist of the rights conferred by the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. In reaching this conclusion, it is recognized that there may have been changes during the time since the close of the hearing which are not reflected in this record. There has been no motion to re-open the hearing. If the actions of the employer now support the earlier intentions, the parties will be in a position to consider those facts in bilateral discussions and, if necessary, to present them in future unit clarification proceedings filed and pursued under Chapter 391-35 WAC.

The Accounting Assistants

The district has generally had two full-time accounting assistants working the full calendar year, although at the time of the hearing it was at least temporarily employing a third employee as a part-time accounting assistant. Their duties are to maintain computerized or manual financial records, maintain payroll records and process payroll adjustments, make computations and projections for budget requests, prepare electronic data processing

input and output, assist in preparation and issuance of periodic fiscal statements, prepare reports for payrolls, special funds or grants, process accounts payable and receivable, work with the state school accounting system, and perform other specialized accounting activities. They operate electronic video display and teletype computer terminals and report to the payroll officer and to the director of finance and grants. Different accounting functions have been delegated to the respective assistants. One employee has been assigned to assist the payroll officer already excluded from the bargaining unit as a "confidential" employee. The other accounting assistant works primarily with accounts payable, but her work station is immediately adjacent to that of the excluded payroll officer. One of these positions has historically been classified as secretarial and had been included in the Teamsters bargaining unit. The other full time position had been excluded from the Teamsters unit, perhaps only by historical accident.

The accounting workforce had been particularly affected by turnover during the summer of 1983, with one individual moving up to the excluded position and then resigning while another individual moved from the part-time position to a full-time position and ultimately to the excluded payroll officer position. The latter person attended union contract negotiation sessions for the purpose of taking notes for management prior to assuming the excluded position, but during the period of turnover. Her exclusion as a confidential employee (in her present capacity) is conceded by CPEA.

The job descriptions were amended during the month prior to the hearing to include: "prepare and maintains confidential reports for the superintendent and board regarding potential negotiation positions for the district." Preparing reports on the economic impact of potential collective bargaining positions is an activity commonly protected by the "confidential" exclusion. On the other hand, the administration of payroll under contract terms already agreed upon is quite a different matter. City of Ocean Shores, Decision 2064 (PECB, 1984). The mathematical function of calculating and projecting of salaries can be a routine process that is separate and distinct from the development, formulation or communication of a confidential bargaining position. In Brodart Inc. and District 65 Autoworkers, 257 NLRB 380 (1981), it was held that payroll employees are not confidential merely because they have access to payroll records and raw financial data that the employer may use in a more composite form to determine the nature of its economic package proposals in labor negotiations. A Shelton School District accounting assistant assisted the payroll officer in developing current and projected salary levels which management was considering for negotiation positions. Such involvement, however, was limited to a double-check process during the period of turnover in the employer's accounting workforce, and was not shown to be other than of a minor and sporadic nature, not a part of the accounting assistant's ongoing regular duties.

Because one of the accounting clerks has her work station adjacent to the excluded payroll officer's desk, the employer believes that it is difficult to maintain confidentiality with regard to materials in the possession of the payroll officer. In Cape Flattery School District, Decision No. 1249-A (PECB, 1982) the school district administration was housed in a small office "in which the employee in question might overhear the superintendent's conversation on confidential matters". The district sought confidential exclusion, and the Commission held:

While this type of working arrangement is not desirable, we cannot equate circumstances of a job with its duties when the circumstances have little or no effect on the employee's duties We cannot condone a position being treated as confidential largely because the employer does not provide reasonable and customary means for safeguarding the confidentiality of information.

As with the secretary-receptionist, the record in this proceeding is found to be speculative and insufficient to base a finding that the accounting assistants are now or will continue to be "confidential" employees.

The district's unit determination arguments concerning the accounting assistants focus on perceived differences of their duties, skills and working conditions, but would have the effect of creating an additional bargaining unit among the office-clerical employees of the district. Their duties, although perhaps of increasing technicality with the growing use of computers, are still found to be generally within the range of office-clerical work. Port of Seattle, Decision 890 (PECB, 1980) and South Kitsap School District, Decision 1541 (PECB, 1983) are precedent for declining to fragment the office-clerical and related employee workforce of the employer.

The Migrant Program Position

The migrant home visitor record clerk position has been in existence since the 1980-81 school year. Carol Johnson was the first person employed in the position, and she remained in it through the 1982-83 school year. Another employee took the position shortly before the hearing in this matter. The position calls for a six and one-half hour work day for the duration of the school year. The position reports to the special services director. Prior to the creation of the separate office-clerical bargaining unit the position was classified as an aide in the Teamsters bargaining unit.

The incumbent in this position is expected to travel to all parts of the district, contacting parents of migrant children to determine if they are eligible for participation in state and federal migrant aid programs. Duties include recruiting, enrolling and withdrawing students, contacting teachers, school nurses, and other appropriate parties to update needed information

and reports, advising parents about benefits of school and student programs such as insurance, subsidized meals, available social services, and advising about special problems that develop. The incumbent in this position performs a record keeping and reporting service, recording student education and health data and transmitting information to the Washington State Migrant Student Center located at Sunnyside, Washington, for forwarding to the student's next school.

Prior to the 1983-84 school year, the migrant program team had consisted of a teacher, a teacher aide and the migrant home visitor record clerk. Carol Johnson performed no student tutoring during the first year of the program. During her second year, she worked with one multiple-handicapped student, assisting with feeding skills during the meal period. During the third year of the program, the clerk tutored four, then three, students for a maximum of one-half hour a day. In the event that other requirements had to be met, tutoring would be cancelled. The teacher aide assisted during the third year with maintaining records, and collecting data. Due to funding cuts, the teacher aide position has been eliminated.

When a new employee transferred to the disputed position at the beginning of the 1983-84 school year, she was advised that she would be performing some work as an instructional aide. The duties to be performed, or amount of time to be spent in the aide function, were not specified, except that it would take place in the afternoon. At the time of the hearing, the new employee had not performed any instructional aide work, because the ongoing performance of the recordkeeping duties had priority.

The school district has characterized the migrant home visitor record clerk as an aide. At issue in this proceeding is whether this position is a teacher-aide position, and as such should be a part of the Teamsters bargaining unit, or if the position has duties, skills and working conditions which more closely resemble those of the office-clerical bargaining unit.

The fundamental duties of the disputed position involve performing such tasks as collection of data, compilation of records, correspondence, filing and other matters incidental to the administration of state and federal migrant student programs. A paramount function is to see to it that student records are properly compiled and transmitted. In contrast, an instructional aide's paramount function is to assist classroom teachers, as directed, to help students learn and develop. The disputed employee does not work under the direction of a teacher, as is the normal case for an educational aide. In Franklin Pierce School District, Decision No. 78-B (PECB, 1977) under somewhat similar circumstances it was determined:

... that instructional assistants do at times perform clerical tasks, the thrust of their work is aimed directly at the instruction of students

In view of the foregoing, I find that the clerical employees have a sufficiently distinct and separate identity from the instructional assistants to support their severance.

These findings were upheld by the Commission. Franklin Pierce School District, Decision 78-D (PECB, 1977).

The disputed employee has no common or shared group participation with aides, and does not perform the same primary work assignment with the aides. The work day and work year are the same as those of a number of office-clerical employees who presently are a part of the CPEA bargaining unit. It is thus concluded that the duties, skills and working conditions of the migrant program position, predominantly involving compilation and transmission of information, are distinct and separate from those of the educational aides. The position functions, primarily in support of the administration of the district, warrant inclusion in the office-clerical bargaining unit.

FINDINGS OF FACT

1. Shelton School District No. 309 is a school district of the state of Washington, organized and operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).
2. Classified Public Employees Association, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely and sufficiently supported petition for investigation of a question concerning representation of certain employees of Shelton School District No. 309.
3. Decision 1609 (PECB, 1983), issued on March 31, 1983, directed that an election by secret ballot be conducted under the direction of the Public Employment Relations Commission among employees of Shelton School District No. 309 in a bargaining unit described as:

All full-time and regular part-time office/clerical employees of Shelton School District No. 309, excluding confidential employees, supervisors, certificated employees and all other classified employees.

The position of "administrative coordinator", working directly subordinate to the superintendent of schools, and the position of "payroll officer", working directly subordinate to the director of finance and grants, have historically been and now are stipulated to be confidential employees excluded from the bargaining unit. There is no

evidence of any change of circumstances limiting the continued availability of those persons to perform confidential labor relations functions which they have historically performed.

4. A representation election was conducted on April 29, 1983. Ballots cast by Alice Smith, Alison Nutt, Carol Goodburn, Shirley Stites and Carol Johnson were challenged by the employer.
5. Alice Smith was replaced as the district office secretary-receptionist prior to the hearing on challenged ballots, but the parties continue to dispute the inclusion of that position in the bargaining unit. Smith had been included in a bargaining unit with other office-clerical employees of the district prior to the onset of these proceedings. Under a job description revised between the date of the election and the date of the hearing on the challenged ballots, the new incumbent of the disputed position was to be charged in the future with responsibility for providing secretarial services to the superintendent of schools and other officials in the school district's management on matters including processing and preparation of correspondence and memorandums setting forth bargaining positions, recommendations, negotiations proposals, note taking in labor relations conferences and participation in grievance processing. Testimony regarding the performance of such duties was largely prospective in nature.
6. Accounting assistants Alison Nutt, Carol Goodburn and Shirley Stites each had some change of employment status prior to the hearing on challenged ballots, but the parties continue to dispute the inclusion of the accounting assistant positions in the bargaining unit. One of the accounting assistant positions had been included in a bargaining unit with other office-clerical employees of the district prior to the onset of these proceedings. Goodburn moved from a part-time accounting assistant position to a full time position and then to the excluded payroll officer position during the period between the election and the hearing on challenged ballots. Under a job description revised between the date of the election and the date of the hearing on the challenged ballots, the new incumbents of the accounting assistant positions were to be given access to confidential labor relations materials. The accounting assistants maintain accounting records, prepare budgetary reports and projections, operate electronic-video display and teletype computer terminals and perform other specialized accounting functions as directed. The employees in the disputed positions have not historically performed confidential functions in support of labor relations, except during a period of transition and turnover of personnel immediately preceding the hearing on challenged ballots.

7. Carol Johnson was replaced as migrant home visitor record clerk prior to the hearing on challenged ballots, but the parties continue to dispute the inclusion of that position in the bargaining unit. Johnson had been included in a bargaining unit with other office-clerical and aide employees of the district prior to the onset of these proceedings, and was classified as an aide in that bargaining unit. Another migrant program position, that of "migrant aide", was eliminated between the time of the election and the time of the hearing on challenged ballots. The migrant clerk reports to the district special services director and is required to travel throughout the school district, contacting parents of migrant children to determine eligibility for participation in state and federal migrant aid programs. The migrant clerk acts as the district's liason with the migrant families, collects student data, compiles records, drafts correspondence, transmits data to the state Migrant Student Center and performs other tasks incidental to the implementation of the migrant student program. The position performs work in support of the administrative functions of the school district rather than in support of direct instruction to students.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The persons holding positions of district office secretary-receptionist and accounting assistant are public employees within the meaning of RCW 41.56.030(2), and are not confidential employees excluded from the coverage of the Public Employees Collective Bargaining Act by RCW 41.56.030(2)(c).
3. The positions of accounting assistant and migrant home visitor record clerk perform clerical and related work in support of the administrative functions of the employer and have duties, skills and working conditions similar to those of the office-clerical bargaining unit represented by the CPEA, such that their inclusion in that bargaining unit is appropriate pursuant to RCW 41.56.060.

ORDER

1. The positions of district office secretary-receptionist, migrant home visitor record clerk and accounting assistant are included in the appropriate bargaining unit referred to in paragraph 3 of the foregoing findings of fact.

2. The interim certification issued on May 9, 1983, designating CPEA as exclusive bargaining representative of the employees involved, shall stand as the final certification in the matter.

DATED at Olympia, Washington, this 2nd day of November, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590(2).