

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	CASE NO. 5759-E-85-1028
CLASSIFIED PUBLIC EMPLOYEES)	
ASSOCIATION/WEA)	DECISION NO. 2243-A PECB
)	
Involving certain employees of:)	
)	
CLOVER PARK SCHOOL DISTRICT)	ORDER DETERMINING
)	CHALLENGED BALLOTS
_____)	

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

Ronald J. Knox, Assistant Administrator for Personnel, appeared on behalf of the employer.

On April 4, 1985, Classified Public Employees Association (CPEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of Clover Park School District No. 400. A pre-hearing conference was held and the parties signed an election agreement stipulating the propriety of a bargaining unit described as:

All full-time and regular part-time office-clerical, aide, professional and technical employees of Clover Park School District No. 400, excluding certificated employees, confidential employees, supervisors, clinical instructors, substitutes and all other employees of the district.

While stipulating the exclusion of approximately 29 employees from that bargaining unit, the parties disagreed as to the voter eligibility of approximately 49 persons claimed by the employer to be confidential and/or supervisory employees. They entered into a supplemental agreement on those

positions pursuant to WAC 391-25-270. A representation election was conducted by the Commission on June 4, 1985. Of 367 employees stipulated as eligible to vote, 164 cast ballots in favor of CPEA and 65 cast ballots for "no representation". The incumbents in the disputed positions were permitted to cast challenged ballots, but the 37 challenged ballots cast were not sufficient to affect the results of the election. An interim certification, Clover Park School District, Decision 2243, was issued on June 12, 1985, designating CPEA as the exclusive bargaining representative of the bargaining unit. A hearing on the eligibility dispute was held on October 21, 22, 23 and 24, 1985, before Frederick J. Rosenberry, Hearing Officer. The parties filed post-hearing briefs.

BACKGROUND

The Clover Park School District is headquartered in the "Lakewood" portion of western Pierce County, Washington, to the south of Tacoma. The school district operates 19 elementary schools, four junior high schools, two high schools, one alternative instruction high school, one special education high school and a vocational-technical institute (VTI).

The employer has collective bargaining relationships with organizations representing nine separate bargaining units of its employees. Among those are a unit of supervisors organized under RCW 41.59.080(2),¹ and a unit of principals and assistant principals organized under RCW 41.59.080(3).²

The school district is operated under the policy direction of an elected board of directors. The superintendent of schools is the chief adminis-

¹ Notice is taken of the proceedings and decision in Clover Park School District, Decision 376, 376-A (EDUC, 1978), where a separate bargaining unit of school district certificated supervisors was created.

² Notice is taken of the proceedings and decision in Clover Park School District, Decision 235 (EDUC, 1977), where a separate bargaining unit of school district principals and assistant principals was created.

trative officer. The parties stipulated that the superintendent's secretary is to be excluded from the bargaining unit as a "confidential" employee.

The employer's labor relations functions are centralized at the administrative office of the school district under the direction of Melvin N. Neighbors, who holds the title of Administrator for Personnel and Collective Bargaining. Neighbors is the chief negotiator for the employer with respect to all of the school district's collective bargaining relationships. His position is also the employer official designated in all of the collective bargaining agreements to receive written grievances concerning interpretation or application of those contracts.³ Assistant Administrator Ronald J. Knox reports directly to Neighbors and assists Neighbors in collective bargaining matters. Dorcas Logan and Lucille Smith (both of whom are stipulated to be excluded from the unit as "confidential") report to Neighbors and serve as recorder and back-up recorder for the employer's teams in collective bargaining negotiations. The employer's bargaining teams may include other school district administrators, as needed.

At the pre-hearing conference in this matter, the parties stipulated to approximately nine additional "confidential" exclusions, including two other office clerical employees working under the direction of Neighbors in the district personnel office. Apart from the stipulated "confidential" exclusions, the parties have stipulated in this case to the exclusion of approximately 22 persons from the unit as "supervisors".

The employees at issue in this proceeding are dispersed throughout the employer's workforce, as head secretaries in conventional school buildings, as secretaries in special school facilities, as secretaries to administrators and program supervisors at the vocational-technical institute, and as secretaries in personnel, purchasing, and maintenance offices.

³ The administrator for personnel has seven days in which to attempt resolution of grievances. If not resolved at this level, grievances are referred to the district's superintendent of schools and ultimately to arbitration.

POSITIONS OF THE PARTIES

The employer contends that all of the secretaries that it seeks to exclude from the bargaining unit serve in confidential positions. It claims that there is a fiduciary relationship between its central administration and each of its building principals, VTI administrators and VTI program supervisors. From that premise, it argues that the head secretaries to each of those officials should be excluded from the bargaining unit. Specifically, the district relies on duties such as typing written input into the collective bargaining process, typing notes of collective bargaining discussions, attending such discussions and assisting with the effectuation of negotiated policies. The district further maintains that clerical employees in the district's central personnel office assist in the preparation of bargaining proposals and are privy to confidential information concerning bargaining decisions and/or strategy, grievance issues and staff complaints. The employer maintains that the secretaries to the directors of purchasing and maintenance should be excluded from the unit on the basis of confidentiality, because they assist in researching and typing confidential information. Finally, the employer claims that certain of those claimed excludable as "confidential" (i.e., the head secretaries in its junior high schools and senior high schools, its maintenance secretary and those elementary school head secretaries who have assistants) all perform substantial supervision of employees in the petitioned-for bargaining unit, so as to warrant their exclusion from that bargaining unit as supervisors.⁴

The union maintains that the employees in the disputed positions share a substantial community of interest with the office-clerical employees in the bargaining unit for which interim certification has been granted, and that none of them should be excluded from the bargaining unit. The union claims that none of the disputed positions meets the test for confidential exclusion, because they either perform no duties that can be called confidential

⁴ During the course of the hearing, the employer withdrew its claim that the position of head secretary to the administrator of transportation should be excluded from the bargaining unit.

or perform only occasional duties that relate to labor relations. The union points out that most of the disputed employees provide clerical assistance to persons who are themselves in collective bargaining units, and it reasons that since the "principals" and "supervisors" are not confidential employees, the secretaries who work for them cannot be subject to the confidential exclusion. While acknowledging that some of the disputed secretaries may be "lead" workers, the union claims that none of them have sufficient indicia of supervisory authority to exclude them from the bargaining unit.⁵

DISCUSSION

It has long been established that "supervisors" are employees within the meaning and coverage of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. Municipality of Metropolitan Seattle v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Our statute is thus distinguished from its federal counterpart, the National Labor Relations Act. Supervisors will be excluded from the bargaining unit(s) containing their rank-and-file subordinates, but that is accomplished under the unit determination criteria

⁵ At the outset of the hearing, the union made a motion to withdraw its pre-election stipulations by which it agreed to the exclusion of five named employees from the bargaining unit. The union claimed that it relied to its detriment on incomplete and inaccurate descriptions of the positions given by the employer at the pre-hearing conference. The individuals were: Gerry Williams (employed in computer services), Faith Page (employed in the word processing print shop), Phyllis Jorgensen and Carol Johnson (employed as secretaries in the main personnel office) and Genevieve Naranjo (employed as a secretary in the VII personnel office). The employer denied the accusations and objected to the motion to withdraw from the stipulation. The Hearing Officer took the motion under advisement.

The stipulations made by parties during the course of representation proceedings, including the stipulations made in election agreements, are binding upon the parties except upon good cause shown. Community College District No. 5, Decision 448 (COOL, 1978); Island County, Decision 2572 (PECB, 1986). The union did not make such a showing in this case. It suggested that a continuance could be granted to allow the parties to prepare evidence and argument on the motion, but it did not make an offer of proof in support of its motion or on the merits of the eligibility issues which it would thereby raise. The union did not address the matter in its extensive post-hearing brief. Its motion is denied.

of RCW 41.56.060 where the exercise by the supervisors of authority on behalf of the employer warrants separation to avoid a potential for conflict of interest within the bargaining unit. City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wa.App. 599 (1981); cert. den., 96 Wn.2d 1004 (1981).

The law on "confidential" exclusions is also clear. Employers are allowed some reasonable number of personnel who are exempt from the rights of the collective bargaining statute in order to perform the functions of employer in the collective bargaining process. The definition of "public employee" set forth in RCW 41.56.030(2)(c) thus excludes from the coverage of the Public Employees Collective Bargaining Act:

. . . any person . . . 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 controlling interpretive precedent includes City of Yakima v. IAFF, 91 Wn.2d 101 (1978), where the Supreme Court stated:

When the phrase confidential relationship is used in the collective bargaining act, we believe it is clear that the legislature was concerned with an employees potential misuse of confidential employer labor relations policy and a conflict of interest.

* * *

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. (emphasis supplied)

The Educational Employment Relations Act similarly excludes "confidential" employees. The term is defined in RCW 41.59.020(4)(c) as:

- (i) Any person who participate directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and,
- (ii) Any person who assists and acts in a confidential capacity to such person.

Thus, under both of the collective bargaining statutes applicable to this employer, a "labor nexus" is an integral element of the interpretation of the "confidential" exclusion.

The party seeking exclusion of an employee on the grounds of confidentiality has a heavy burden of proof. City of Seattle, Decision 689-A (PECB, 1979); San Juan County, Decision 1690-A (PECB, 1984); City of Seattle, Decision 1797-A (PECB, 1985). The moving party must present evidence that the affected employee has intimate contact with, and necessary knowledge of, the employer's labor relations policies and practices. A group of six clerical employees of a school district were excluded as "confidential" in Edmonds School District, Decision 231 (PECB, 1977)⁶, where they reported directly to the superintendent of schools or to administrators who had direct access to the superintendent. Stipulations were accepted in Tacoma School District, Decision 2250-A (PECB, 1986) for the exclusion of only five office clerical employees who reported directly to either the superintendent of schools or his immediate assistants. On the other hand, the exclusion has been denied (in the cases cited above) with respect to persons holding titles as high as "battalion chief" (i.e., second in command) in the fire departments of Yakima and Richland, "major" (i.e., third in command) in the police department in Seattle, and "deputy chief" (i.e., third in command) in the fire department in Seattle. In like manner, a confidentiality claim was rejected where the affected employee was in close contact with the superintendent of schools, but dealt only with routine personnel matters. Cape Flattery School District, Decision 1249-A (PECB, 1982). It is not enough to demonstrate that

⁶ Cited with approval by the Supreme Court in Yakima, supra.

the employee in question has access to "private" information concerning matters other than labor relations. Richland School District, Decision 2208 (PECB, 1985).

The Head Secretaries in K-12 Schools

Elementary schools -

Principals serve as the managers of the elementary school buildings to which they are assigned. This includes responsibility for instructional-curriculum leadership, parent-community liaison, direction of on-site personnel, the facility budget, and goal setting. Principals complete annual performance evaluations on their building staffs. These are reviewed individually with the employees involved and are then forwarded to the district personnel office. The principals have the authority to make recommendations to district personnel administrators concerning the hiring, discipline, promotion, and transfer of employees, but are not authorized to act independently on most personnel-related matters. The principals are the employer's representative at the first step in the grievance procedures in collective bargaining agreements covering the certificated staff and many other employees of the school district. That grievance processing entails discussion of a grievance raised on behalf of an employee. Such grievances are infrequent, however, and some principals have not had a grievance within recent memory. On their own initiative or by request, the principals occasionally provide suggestions to the superintendent or to the district's personnel administrators concerning personnel matters or collective bargaining goals. With the exception of a single, non-recurring occasion involving one individual, the elementary principals have not participated as representatives of the employer in its collective bargaining negotiations.

The employer's job description for elementary school secretaries describes the position as:

Secretary to the principal. Coordinates and oversees all procedures and operations of the school office: public relations, liaison, registrar, nursing, clerical and supervision of the work of assistant secretaries

Twelve of the elementary schools have only one secretary. In those schools, the office clerical employee serves as receptionist, typist and office machine operator, performs file maintenance, receives/prioritizes/distributes mail for the principal and building staff, maintains student records and attendance reports, maintains time cards for the building staff, assists in the preparation of staff handbooks, relays information between the administrator(s) and staff, provides medical aide in the absence of the school nurse, provides orientation information to substitute employees, handles associated student body funds, prepares a multitude of reports involving attendance, budget, inventory, work schedules, inspections, accidents, etc., assists in the scheduling of personnel and school functions, orders office and instructional supplies, processes lunch orders and receipts, promotes voter registration, and performs related secretarial duties.

In the seven remaining elementary schools, two or more secretaries are assigned. One is designated as head secretary and performs the same general functions as are described in the foregoing paragraph. Additionally, the head secretaries provide training to and oversees the work of the other clerical employee(s). They may provide information about job requirements and desirable attributes in candidates for employment, but do not sit in on employment interviews. Head secretaries may provide information to the principal for consideration in the evaluation of other clerical employees, but do not have authority to impose discipline or grant time off.

As a norm, the elementary school head secretaries do not sit in as witnesses or take notes at staff evaluation conferences, discipline meetings, or grievance meetings. Most of them do, however, type and file notes taken by the principals at these types of activities, type drafts of staff evaluations, and type private memoranda for the principals.

With the exception of a single, non-recurring incident involving one secretary, the record reflects that elementary school secretaries are not involved in the preparation of the employer's proposals for collective bargaining.

Junior High Schools -

The role, authority, and duties of the junior high school principals are the same as those of the elementary school principals, except that the scope of their building operation and number of subordinate employees is greater.

The district employs three secretaries at each of its junior high schools, one of whom is designated as the head secretary. Although the employer's job description for the head secretary position uses the title "Administrative Secretary, Office Manager", the head secretaries' basic duties are similar to those of the elementary school head secretaries. Additional functions associated with the older group of students include maintaining and coordinating the school activity calendars, publishing the daily bulletin for the school, coordinating staff and building schedules, assisting in the publication of student handbooks and principal's newsletters, and special assignments as required. The head secretaries serve as clerical support to the principals, including opening mail, typing the principal's staff evaluations, and typing correspondence, including memoranda to the superintendent or personnel administrators. The head secretaries assign and coordinate the work of the other office clerical employees and report to the principals on their work performance. The head secretaries may recommend the re-evaluation of clerical staff job assignments, but do not have authority to reprimand. There is a mixed practice with respect to these secretaries attending meetings concerning the discipline, evaluation or grievances of staff members. This has been done, but is not universal. Whether or not present at such meetings, the head secretaries may subsequently type related notes or memoranda or perform related filing.

The record reflects that none of the junior high school head secretaries have attended collective bargaining sessions on behalf of the employer or typed employer proposals for bargaining.

Conventional High Schools -

The school district's high school principals are responsible for the overall operation, curriculum, instructional program, personnel, payroll, campus

budget, maintenance and requisitions for their respective schools. The principals are the immediate supervisors of all building personnel and evaluate all of the building staff. They also authorize personnel actions such as granting of leaves. The discretionary authority of the principals is similar to that of the junior high school and elementary principals, except on an even further expanded scale. Each of the principals has the assistance of a vice-principal (who has responsibility for building maintenance, student discipline and activities, and personnel) and an assistant principal (who is responsible for personnel, student discipline, guidance and attendance). High schools principals have, on their own initiative or by request, provided suggestions to the superintendent or personnel administrators on matters relating to personnel or labor relations.

The district employs seven office clerical employees at each of its two conventional high schools. One of those is designated as the head secretary; three are designated as general secretaries; one is designated as data processor; one is secretary for the associated student body organization; and one is secretary in the school's guidance office.

The head secretary serves as personal secretary to the principal, opening and routing mail, typing private memoranda, grievance notes and staff evaluations, and (possibly) maintaining the principal's appointment calendar. The job description for the high school head secretary has basic duties similar to those described above, but identifies distinguishing duties such as supervising student workers, typing monthly newsletters to parents, typing minutes of faculty and department coordinators' meetings, preparing football and basketball programs, diploma order lists and graduation programs, assisting with graduation activities, preparing bulk mailings, maintaining calendar for building events and activities, and assistance to other office areas and functions as needed. The head secretaries may attend some private or grievance conferences at the building level. The head secretaries coordinate the work of, delegate the performance of special functions to, review work loads of, and provide evaluation input to the principal concerning other

clerical employees in the building.⁷ They may also make personnel recommendations, and coordinate leaves and vacations.

The record does not reflect that the secretaries ever sit in on behalf of the employer in collective bargaining negotiations or participate in the preparation of the employer's proposals for collective bargaining.

Special Education Facility -

The school district employs one secretary at the high school facility it maintains for special education students in grades seven through twelve. The secretary performs clerical duties as indicated above, commensurate with a small operation. Aides are used to cover when the secretary is absent. The secretary has no responsibilities in connection with the processing of grievances, and normally does not take notes for the program director at meetings. This employee does not attend collective bargaining meetings.

The Alternative School -

The district operates an alternative instruction school for students in the ninth through twelfth grades. The program is managed by a district administrator who is a member of the supervisors bargaining unit. The administrator directs the staff, serves as instructional leader, handles student affairs, and serves as liaison with the state Department of Social and Health Services and the courts on student-related matters. The administrator recommends personnel action to the district personnel department and performs staff evaluations. The administrator has processed only one grievance at the alternative school in the past five years. The administrator makes recommendations to the personnel department on modifications to collective bargaining agreements, but has not drafted proposals for collective bargaining or been a member of the employer's bargaining team.

⁷ The head secretaries operate within the context of the overall authority of the principals, however, and there is evidence of principals assigning work directly to the office clerical employees other than the head secretaries.

The district employs two secretaries and a clerical aide at the alternative instruction school. One of the secretary positions is designated as head secretary. The incumbent trains and assigns the other clerical employees, monitors their performance, schedules lunches and breaks, adjusts days off for illness, leave, etc., counsels employees for problems such as tardiness, and signs evaluations as the intermediate office supervisor.⁸ The head secretary provides orientation for substitute teachers, opens and distributes mail, types and files public and private correspondence, memoranda, and reports, performs general office work, takes notes at grievance meetings and assists in the preparation of the staff handbook.

Conclusions -

These school secretaries primarily provide clerical and operational support for the building managers. They do not formulate or implement labor relations policy or strategy as a part of their regular job duties.

It is clear that none of these head secretaries have direct contact with the superintendent of schools, or even with administrators having direct access to the superintendent. Their situation is thus distinguished from the situations in Edmonds and Tacoma, supra. In order to qualify for the "confidential" exclusion, their immediate superior would have to qualify for the "confidential" exclusion.

The exclusion, as a class, of "head building secretaries" as "confidential" was rejected in University Place School District, Decision 2584 (PECB, 1986) on a record substantially more favorable to the employer than is present here. In University Place, there was a history of building principals having an active role in collective bargaining on behalf of the employer. By contrast, the principals in Clover Park are not responsible for formulating labor relations policy or negotiating collective bargaining agreements.

⁸ The record reflects that, about six years ago, the head secretary initiated two reprimands against employees. Those were approved by the building administrator. There is some evidence that reprimands could be initiated without consultation with the building administrator, but this has never been done.

Further weakening the employer's argument in the instant case, both in general and by comparison to University Place, is the fact that Clover Park's building principals and certificated supervisors have exercised their statutory right to become "employees" for the purposes of collective bargaining, by forming bargaining units under Chapter 41.59 RCW. It would make a mockery of the "employee" rights of principals and supervisors under Chapter 41.59 RCW to suggest that the employer could have them excluded from the coverage of that statute as "confidential" by merely receiving their "input" and inflicting upon them information concerning the status of collective bargaining with other groups of school district employees.⁹

The activities of principals and supervisors in the evaluation of subordinates and processing of grievances are indicia of supervisory, rather than of "confidential", status. City of Seattle, Decision 689-C (PECB, 1981).¹⁰ Accordingly, preparing materials for or attending meetings on those functions is not evidence of a "confidential" status for their secretaries.

Even if the principals and supervisors were to be deemed "confidential", the necessity for extension of the "confidential" exclusion to their secretaries is not evident. As here, the head building secretaries in University Place processed mail addressed to the building principals, including management updates on collective bargaining matters. It was found in University Place that the employer's concern for confidentiality could be satisfied by

⁹ It follows that if the RCW 41.59.020(4)(c) definition of "confidential" (which was cited with favor by the Supreme Court in City of Yakima, supra) were directly applicable to this case, there could be no finding of "derivative" confidentiality for the secretaries through their respective supervisors.

¹⁰ The district emphasizes that the secretaries continually work with confidential matters, citing the confidentiality of staff observations and evaluations, information received from parents or other sources while serving as receptionists regarding staff problems, information gleaned while sorting or prioritizing mail, information gleaned while typing correspondence or notes or meeting minutes for the principal, and information that is divulged in employee conference. These arguments are not persuasive. While this sort of information is not intended for general public distribution, it is not the type of confidential information that warrants exclusion from bargaining.

practices under which envelopes marked "confidential" were handed to the addressee unopened. These head secretaries are not "confidential".

The record herein also fails to support a conclusion that the head secretaries who work in the company of other office clerical employees are "supervisors" having sufficient authority to warrant their exclusion from the bargaining unit. The record is clear that, by law and practice, it is the building principals who are vested with the authority to supervise the employees assigned to the buildings. In terms of numbers of subordinates and opportunity to exercise supervisory authority, the best case can be made for the exclusion of the head secretaries in the two conventional high schools but the evidence indicates a pattern there of direct work assignments by the principals themselves.

The Vocational-Technical Institute

The VTI is a regional, secondary and post-secondary educational facility providing a variety of job preparation programs for students of high school and adult age. The VTI is managed by the district's administrator for vocational education. The parties have stipulated that the VTI administrator's secretary is "confidential". The parties have also stipulated that the secretary to the VTI business services supervisor and a secretary in the VTI personnel office should also be excluded from the petitioned-for bargaining unit as "confidential".

The non-supervisory certificated employees of the VTI bargain under Chapter 41.59 RCW through a bargaining unit and exclusive bargaining representative separate and apart from the bargaining relationship covering the certificated employees in the school district's K-12 facilities. The VTI director has direct involvement in collective bargaining negotiations for that unit.

VTI Administration -

The VTI administrator has an assistant who is regularly consulted concerning management proposals and positions for the VTI collective bargaining process,

and who receives confidential information on the status of those negotiations. The assistant occasionally attends collective bargaining sessions in the administrator's absence. The assistant is also involved in the resolution of grievances prior to their referral to the district personnel office.

The VTI assistant administrator has a secretary who is in dispute. The employee's work station is in the immediate vicinity of the administrator's secretary, and the incumbent provides clerical support for the administrator in the absence of his secretary. The school district's job description for the position of secretary to the assistant administrator states:

Responsible to the business office supervisor to carry out executive clerical work for school administrators. Take dictation, shorthand, file and initiate high level correspondence to state educational officials. Maintain confidential records and perform other executive and general office duties as directed by the business office supervisor.

The secretary shares the assistant administrator's knowledge of many phases of the VTI operation, and generally has access to the same data as the director's secretary. She has not assisted in formulating collective bargaining proposals and has not been involved in collective bargaining negotiations, but has helped the director's secretary prepare budget data, has done some typing and filing of confidential data, and has had access to union contract language on a word processor. On at least one occasion, she typed collective bargaining negotiations notes.

The quasi-independence of the VTI operation and the existence of the separate faculty bargaining unit at the VTI weigh in favor of the employer as to this particular dispute. On the other hand, the three stipulated "confidential" exclusions at the VTI and the limited, secondary role of the assistant administrator in collective bargaining weigh against the employer. The past history concerning both the disputed employee and her immediate supervisor must be viewed in the context that the clerical employees of the employer have not been organized, so that there was no potential for a conflict of

interest arising from pooling of assignments in the work area. On close examination, the "confidential" assignments have been, at most, sporadic, and the necessity for their continuation is not clear. It is thus concluded that the employer has failed to sustain its burden as to this exclusion.

VII Payroll Office -

The satellite personnel office at the VII is staffed by a personnel supervisor (who is instructed to carry out the district's personnel policies and procedures for the VII), a secretary (who is excluded from the bargaining unit by the stipulation of the parties as a "confidential" employee), an accountant and a payroll specialist. The job description for the payroll specialist defines the duties of the position as follows:

Responsible to the VII personnel office and business office supervisors to carry out payroll functions for the vocational-technical institute staff as per policies and procedures of Clover Park School District. Maintain confidential payroll records on employees and perform payroll duties as directed by the personnel office and business office supervisors, and approved by the district administrator for personnel.

Typical work entails calculating rates of pay, processing and updating personnel action forms, maintaining files and records, maintaining a payroll hourly log book, distributing salary warrants, coordinating payroll information with other school district offices, providing salary information for budget purposes, processing district and state reports and information requests, verifying employee information requests, auditing and forwarding time cards, and providing payroll information and projections to the administrative staff. The payroll specialist also provides new employee orientation on benefit plans.

The payroll specialist generally works with payroll data in raw form. The incumbent's access to such payroll information does not automatically warrant exclusion as a "confidential" employee. City of Lacey, Decision 396 (PECB, 1978). While information concerning hiring, termination, promotions, transfers, salary rates and similar data may be protected from disclosure to

the general public, it does not necessarily relate to the formulation of management policy or strategy for collective bargaining.

The incumbent has performed research at the request of VTI administrators, the results of which may have been used for collective bargaining. Thus, the payroll specialist has assisted the VTI personnel supervisor in calculating salary projections and the impact of salary changes. Limited data compilation assignments made in the past must, however, be weighed (in the context of the historical absence of collective bargaining organization among the employer's clerical employees) against the number of "confidential" exclusions already stipulated at the central personnel/collective bargaining office, in the VTI administration and business offices and even within the same office as the disputed employee. It is concluded that the employer has not sustained its heavy burden with respect to showing need for a third "confidential" exclusion within the VTI personnel office.

VTI Programs -

Eight program supervisors administer the day-to-day operation of different segments of the VTI program. These first-line supervisors have relationships with their staffs which are somewhat similar to those of building principals in the K-12 program.¹¹ The program supervisors perform staff evaluations and make recommendations regarding hiring, termination, discipline and related personnel matters, but they do not have the authority to act independently in this regard. The supervisors provide input to the VTI administration on staffing recommendations, salaries, and work schedules. They administer step 1 of the grievance procedure of the collective bargaining agreement under which VTI teachers work, which entails discussion of the grievance. While the record does not provide specific data on the number of grievances processed over a period of time, it does reflect that one program supervisor has had no grievances in the past year and perhaps only two or three in the past five years. The district has a mixed practice regarding input by

¹¹ The program supervisors are in a bargaining unit of VTI administrators and supervisors organized under Chapter 41.59 RCW separate and apart from the supervisor and principal units detailed in footnotes 1 and 2, supra.

program supervisors into the collective bargaining process, such that two program supervisors have reviewed the collective bargaining agreement and made proposals regarding it, while at least one of the others has never been contacted by the management for input on collective bargaining negotiations.

Each program supervisor has a secretary who reports directly to him or her.¹² All of those secretaries perform similar functions, including:

Provides information to students and assists with registration; schedules appointments, maintains calendars and deals with callers; transcribes from dictation, operates office equipment (terminal, word processor, calculator); prepares correspondence; prioritizes work, reads and annotates mail to facilitate necessary action; maintains confidential files, writes and/or summarizes reports; does statistical research; prepares material for data entry; maintains up-to-date procedure manuals; assists with arranging meetings; performs related duties ...

In at least one case, the secretary performs the following additional tasks:

Prepares new course data sheets and maintains files; prepares fee lists, edits and maintains the master file of course outlines; exists and maintains master fee payment calendars; maintains a file of instructor daily work information; gathers data for inclusion in the five-year plan.

These secretaries type correspondence regarding personnel-related matters and evaluations, and maintain related files. The secretaries are used to gather support information for the instructional program and assist in calculating budgets for grants and gathering personnel data.

One program supervisor is also the district's affirmative action representative at the VII. The secretary to that individual has additional duties

¹² The record reflects that the program supervisor for special and federal projects has two secretaries, with neither being designated as head secretary. Both employees report directly to the program supervisor.

relating to the typing of materials and correspondence relating to affirmative action for submission to the district personnel office.

There has been a mixed practice as to having these secretaries take notes at discipline or grievance meetings. The record reflects that one or more of the secretaries may have attended such meetings, while the others have not. All of these secretaries transcribe notes taken at such meetings and type grievance-related notes and correspondence. These secretaries do not type collective bargaining proposals or attend negotiations meetings.

As with the head building secretaries in the K-12 schools, these program secretaries have little or no contact with the superintendent of schools. Any claim of "confidential" status for these employees must be made derivatively, through the program supervisors. The record would not support exclusion of the program supervisors as "confidential" employees; they have themselves organized under Chapter 41.59 RCW for the purposes of collective bargaining. The conclusion as to their secretaries is consistent with the conclusions reached above on the K-12 head secretaries.

Personnel/Administrative Office Secretaries

The employer has used "pool" arrangements for distribution of work among approximately six clerical employees in the district personnel office. A similar arrangement has been used among no less than seven clerical employees working in support of its superintendent and his immediate staff. The two groups work in close proximity to one another, and it appears that there is some interchange. All of them have been stipulated as "confidential" except for four positions titled: data management secretary (Ann Hibbert), personnel office secretary (Peggy Gardner), personnel receptionist/clerk (Barbara West) and word processing secretary (Janice Saum).

Data Management Secretary -

The job description for the data management secretary summarizes the assignment and defines typical work as follows:

Serves as computer services liaison and manages all computerized equipment in the Personnel Office. Responsible to Personnel Office Manager (Training will be conducted by the Assistant Administrator for Personnel).

Typical work. 1) Manages all computerized data, a. personnel system, b. related payroll system, c. data entry, d. utility management, e. data retrieval and report writing, f. monitors system for error, g. reviews all output for accuracy and completeness; 2) Assists division staff in service and operational training on division computer terminals; 3) Serves as divisional liaison to payroll office on interrelated computerized data; 4) Serves as division liaison to computer services; 5) Maintains contact with all sources of data entry to personnel system; 6) Performs necessary secretarial functions related to data management system; 7) Assists in the preparation of various personnel state reports (S-275 and S-277); 8) Other duties as assigned. Some overtime required.

This employee is responsible for payroll, budget, and personnel data. The incumbent has mastery of the computer and works as a trainer and troubleshooter. In the performance of her duties, she has retrieved seniority, wage, and other personnel data as needed for affirmative action, compliance checks, and a variety of other personnel reasons. As part of the general office secretarial pool, this employee has on occasion performed copying, data collection, and retrieval of computer information regarding collective bargaining matters for the personnel administrators, but has never typed collective bargaining proposals, attended bargaining sessions, typed negotiations' minutes or proofread related material.

Personnel Office Secretary -

This employee has a computer terminal at her work station with which classified employees records are maintained and updated. The job description for the position defines its typical work as follows:

Typical Work: 1) Type letters, reports and other material from copy and rough drafts; 2) Provides necessary district information to new classified employees; 3) Initiate appropriate information by use of the WANG terminal or personnel action after receipt of

necessary information from appropriate authorizing office to inform payroll of changes in classified employee information; 4) Maintain personnel records for classified personnel; 5) Correlate and update job description book; 6) Update staff listing information for personnel records and for the bulletin; 7) Prepare requisitions for the ordering of all supplies for the personnel office; 8) Prepare work calendars for classified personnel; 9) Prepare monthly reports as required to unions/organizations associated with the district through collective bargaining; 10) Maintain due date files for the receipt of evaluations of classified personnel; 11) Maintain due date files for the renewal and registration of health certificates for district employees who work near students; 12) Look up personnel information and furnish it to others as necessary; 13) Work with confidential and sensitive material; 14) Act as counter representative in a backup situation; 15) Operate office equipment including WANG terminal, photocopying machine, 10-key calculator, and postage machine; 16) Responsible for issuing payroll numbers for all new employees of the district.

As part of the general office secretarial pool, the employee in this position has also performed typing for the personnel administrators. She has proof-read collective bargaining notes, but does not prepare materials for negotiations, type collective bargaining proposals or attend bargaining sessions.

Personnel Office Receptionist/Clerk -

The job description for the position defines its typical work as follows:

Typical Work: 1) Receive visitors, answers inquiries or refer them to proper employee; 2) Set up interview appointments for all job openings and process correspondence relative to interviews as directed; 3) Screens and maintains all documents in the applicant flow process; 4) Provide a tally for all applicants for any position in the district for affirmative action by age, sex and ethnic code; 5) Initiate job vacancy notices to the proper agencies upon receipt of notification of position-vacancy; 6) Receive, screen and route telephone calls to proper office employee; 7) Provide standard employment information, procedures and forms; 8) File applications, personnel folders and office forms; 9) Assist district telephone operator, relief and substitute; 10) Work with confidential and sensitive

information; 11) Assist with typing and other office duties; 12) Operates office equipment including postage machine, photocopying machines, adding machines and WANG terminal; 13) Schedule, process and report ASC conference rooms; 14) Perform related work as required.

The clerk has compiled data, typed and filed for the district affirmative action office, and has done a small amount of typing for the district's personnel administrator, but has had little to do with collective bargaining. She has not typed negotiations minutes and even has little knowledge of grievances, discipline or related matters.

Administration Office Word Processor/Secretary -

The job description for the position defines its typical work as follows:

1) Provides information as necessary regarding district policies, residence areas, school entrance requirement, attendance variances, and other student and district information; 2) Prepares and maintains records pertaining to attendance areas and variances, neighborhood codings and district-of-residence codings; 3) Provides variance and waiver information for inclusion on board agenda each month; 4) Responsible for telephone and written communications with other school district community relations and attendance offices regarding student releases; 5) Supports the community services/-district court liaison officer: a. Provides cordial personal contact screening and receives and screens telephone calls; b. Processes mail; c. Transcribes dictation; d. Types court reports, letters, charts, etc.; e. Maintains files on vandalism reports; f. Maintains supervisor's calendar and schedules appointments; 6) Operates word and data processor, copy machine and other general office equipment; 7) Provides secretarial assistance to other staff in the division as required; 8) Handles and works with district confidential information on a daily basis; 9) Performs other duties as assigned.

This secretary provides primary clerical support for the court liaison officer who is the district's intermediary with students in legal trouble over drugs, assaults, thefts, etc. The court liaison officer serves as the district's hearing officer for student due process proceedings, and is the

person in charge of student attendance variances. The secretary also types news releases for the district's public relations coordinator, and is a back-up typist for the superintendent's office. The employee holding this position was present at collective bargaining sessions on two occasions in 1985 for the purpose of keeping notes, but only as a substitute for the employee who normally serves as recorder. The employee typed collective bargaining proposals about four different times, proofread negotiations' proposals during the summer of 1985, and had access to collective bargaining proposals on the word processor. It is unclear, however, as to why the "back-up" recorder stipulated by the parties to be a "confidential" employee was not used for those tasks.

Conclusions -

In each of these situations, the primary tasks of the disputed individual are clearly outside of the field of labor-management relations. As to each, the employer already has clerical employees in the same or a related office who have been excluded by stipulation of the parties as "confidential". As to each of them, the actual contact with labor relations matters has been sporadic and is clearly secondary to primary duties which do not invoke the "labor nexus" test. In at least some of the situations, there is no explanation of the necessity for assignment of labor relations materials to somebody other than the employees stipulated to be "confidential". In sum, the record does not sustain the exclusion of these employees from the coverage of the collective bargaining act.

There is no question that the office manager in the district personnel office has, in the past, made assignments on a pool basis of various tasks that are not specifically delineated in job descriptions. As noted above, however, the employer's practices at a time when there was no potential for conflict of interest or damage to a collective bargaining relationship must be taken in context and must be weighed against the deprivation of statutory rights of employees who the employer would propose to make "confidential". A question thus arises on these facts as to whether the past practice supports a conclusion that its continuation is, in the terms of the statute, necessarily

implied. In other words, if a retrenchment and re-focus of "confidential" assignments is possible under the changed circumstances of a collective bargaining relationship, can a broader dissemination of the "confidential" work be supported? As was noted in University Place, supra, preservation of the secrecy of sensitive correspondence can sometimes be accomplished by procedures as simple as a "confidential" cover on the document, without depriving excessive numbers of employees of their statutory rights. Our precedent, including Cape Flattery, supra, does not support "wall-to-wall" exclusions, even within the main office of an employer. The employer has not sustained its burden as to these positions.

Purchasing Secretary

The district's director of purchasing and auxiliary services is the chief administrator for a variety of support functions, including purchasing, payroll, receiving, warehousing, surplus property, library services, book processing, audio-visual, contracted outside services, and mail courier service. This employer official supervises approximately 25 employees and, on occasion, has been called upon to develop information on budgets and capital expenditures, to prepare reduction-in-force lists, to determine costs of bargaining proposals, and to provide other input for collective bargaining. Responses are usually by typed report or memorandum. This administrator has also been called upon to represent the district in collective bargaining.

The director has one secretary whose status is in dispute. The secretary monitors the administrator's calendar, schedules and coordinates meetings, and takes notes at meetings. The secretary has access to all information that the administrator possesses, including financial statements, department personnel matters, meeting reports and computer news. The secretary assists in the drafting of and types reports, correspondence, bid specifications and memos for the administrator, including memos to the superintendent and board. The incumbent assists in gathering data for the administrator, assists in calculating retroactive pay adjustments and cost information, has partici-

pated in the preparation of information for collective bargaining and could share in the deliberative process leading to such reports. She also types staff evaluations and has typed grievance meeting minutes. The incumbent secretary has not attended any collective bargaining sessions on behalf of the district.

The functions of this office include a multitude of activities, most of which have no relationship whatever to collective bargaining. Only a small portion of the administrator's duties touch upon personnel functions or collective bargaining, and the record does not identify any specific information as to which disclosure could damage the collective bargaining process.¹³ The record suggests that any payroll or employee data is readily available through employees already excluded as "confidential" in the personnel office. The employer has not sustained the need for the requested exclusion.

Maintenance and Operations Secretary

The director of maintenance and operations manages the activities of the district's maintenance and custodial employees. The department is divided into a mechanical/electrical group, a technical services group, an operations group, a grounds group, and an office staff.

The position of office manager in the maintenance and operations department is in dispute. Other clerical employees in that department are a cost accounting clerk (who monitors purchases against the maintenance budget, labor hours charged against work orders, total cost of work orders, and gathers information on attendance, sick leave and vacation for forwarding to the personnel department) and a receptionist-clerk (who directs telephone calls and receives and processes work orders). The job description for the maintenance office manager states:

Assist with the supervision of all office personnel to facilitate

¹³ To the extent that the purchases or activities administered merely implement a budget already adopted by the school district board of directors, the budget and expenditures are a matter of public record.

the effective accomplishment of responsibility for the maintenance and operations department. Dispatches work order requests to the appropriate supervisor and monitors related activities associated with completing and accounting for work done.

The job description defines typical work as:

- 1) Assists with the supervision of:
 - a. Typing of all correspondence;
 - b. Office budgetary and accounting activities;
 - c. Accomplishment of purchasing requests;
 - d. Collection and submittal of budget entries by maintenance section;
 - e. Maintenance of district maintenance revolving fund;
 - f. Generation of accident reports;
 - g. Payroll submittal and review;
 - h. Accomplishment of self-insured documentation required by district directives;
 - i. Use of pocket pager base station;
- 2) Types all correspondence generated by the supervisory staff;
- 3) Receives, establishes, and coordinates appointments for the supervisory staff;
- 4) Assists with and assures proper flow of filing of documents and correspondence;
- 5) Assists with coordination of request for information requiring search of current and historical files;
- 6) Maintains and coordinates inventory listings.

The department director provides general instructions. The office manager generally performs work similar to that performed by the other employees. She gives detailed instructions to the two clerical employees, oversees their work, and handles exceptions to the routine. The office manager evaluates candidates for employment, performs and signs evaluations for the two clerical employees, has authority to counsel them on job improvements that need to be made, and recommends promotions. Clerical work problems are directed to the office manager before being referred to the department head. The office manager has access to the director's files on personnel matters, has gathered data for grievance processing and has typed reports on probationary employees. The incumbent types and files correspondence for the director, has access to mail, assists in developing budgets, sorts and delivers work orders, and could approve overtime in the director's absence. The department administrator also signs the evaluation forms, however, and he retains control (together with the central personnel office) of decisions on hiring, termination, promotion and other personnel related matters.

The office manager has not attended collective bargaining sessions and has not typed negotiations' minutes or proposals. The record is not sufficient to warrant exclusion of the secretary as a "confidential" employee.

In light of the independent review authority retained and exercised by the department head, the office manager's role with regard to other employees is more closely akin to that of a "lead person" or "working foreman" with limited authority over a small group of employees. It does not appear that the individual is a supervisor who can exercise discretion in hiring, discipline or the modification of work rules, so as to have a separate community of interest from that of the other two office employees.

FINDINGS OF FACT

1. Clover Park School District No. 400 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 Clover Park School District No. 400.
3. While the employer maintains collective bargaining relationships with organizations representing several bargaining units of its employees, at the onset of these proceedings, the employees involved herein were not represented for the purposes of collective bargaining.
4. Operating under the general policy direction of an elected board of directors, the overall administrative direction of the school district is by a superintendent of schools who is appointed by the board. The labor relations functions of the employer are centralized under an employer official holding the title of "administrator for personnel and

collective bargaining". During pre-hearing conferences in this proceeding, the parties stipulated to the exclusion from the bargaining unit (and from the coverage of Chapter 41.56 RCW) of the secretary to the superintendent of schools, four employees in the district personnel office and approximately seven other office clerical employees (including three at the vocational-technical institute) as "confidential" employees within the meaning of RCW 41.56.030(2)(c).

5. Pursuant to an election agreement filed by the parties, a representation election was conducted under the direction of the Public Employment Relations Commission on June 4, 1985, among employees of Clover Park School District No. 400 in the bargaining unit described as:

All full-time and regular part-time office-clerical, aide, professional and technical employees of Clover Park School District No. 400, excluding certificated employees, confidential employees, supervisors, clinical instructors, substitutes and all other employees of the district.

A majority of the employees voting cast ballots in favor of representation by Classified Public Employees Association/WEA, and an interim certification has been issued designating that organization as exclusive bargaining representative of the bargaining unit.

6. The parties filed a supplemental agreement pursuant to WAC 391-25-270, wherein they reserved eligibility issues concerning approximately 49 persons for post-election determination. The incumbents of the disputed positions were permitted to cast challenged ballots, but the challenged ballots were not sufficient in number to affect the outcome of the election. A dispute remains as to the bargaining unit status of the positions referred to in the supplemental agreement.
7. The head secretaries in school buildings and the secretaries to program supervisors in the vocational-technical institute operated by the employer do not have, either directly or indirectly, an intimate

fiduciary relationship with the superintendent of schools or with the administrator for personnel and collective bargaining of the Clover Park School District. Those secretaries do not participate directly in the formulation of the labor relations policies of the employer.

8. The head secretaries in school buildings and the secretaries to program supervisors in the vocational-technical institute operated by the employer report to building principals and program supervisors who are educational employees within the meaning of Chapter 41.59 RCW, who have exercised their rights under that statute to organize for the purposes of collective bargaining and are not "confidential" employees.
9. As secretaries to building principals and program supervisors, the disputed head and program secretaries have primary responsibilities dealing with various aspects of the day-to-day operation of the school district. They may come in contact with sensitive information that may not be suitable for general dissemination but, aside from sporadic exceptions, such information need not include confidential information concerning the labor relations policies of the employer.
10. The head secretaries employed in those school buildings where more than one clerical employee is assigned serve as lead persons, assign work and exercise limited judgement in the direction of the office staff within the directives of the building principal and school district policy. A majority of their time is spent in performing the same general types of clerical/secretarial functions as the other secretarial employees. Those head secretaries do not have discretionary authority, in the interest of the employer, to hire, fire, impose discipline, promote, transfer, layoff, recall, authorize overtime, approve leave requests, reward or adjust grievances of subordinate employees, or have the authority to effectively recommend such action. Authority concerning such personnel matters is reserved to the building principals and to the central personnel management of the employer.

11. The assistant administrator of the employer's vocational-technical institute has had limited involvement with the labor relations policy of the employer as back-up to the VTI administrator. The secretary to the assistant VTI administrator does not have, either directly or indirectly, an intimate fiduciary relationship with the superintendent of schools or with the administrator for personnel and collective bargaining of the Clover Park School District. That secretary does not participate directly in the formulation of the labor relations policies of the employer. In light of the stipulated exclusion of the secretary to the VTI administrator and two other VTI clerical employees as "confidential", the record does not establish that access to the labor relations policies of the employer is necessarily implied for this secretary position.
12. The payroll specialist employed in the VTI personnel office, the data management secretary in the district personnel office, the receptionist/clerk in the district personnel office, the secretary in the district purchasing and auxiliary services department, and the secretary in the district maintenance and operations department do not have, either directly or indirectly, an intimate fiduciary relationship with the superintendent of schools or with the administrator for personnel and collective bargaining of the Clover Park School District. Those secretaries do not participate directly in the formulation of the labor relations policies of the employer. Those employees have primary responsibilities dealing with various aspects of the day-to-day operation of the school district. They may come in contact with sensitive information that may not be suitable for general dissemination but, aside from sporadic exceptions, such information need not include confidential information concerning the labor relations policies of the employer.
13. The word processor secretary in the district administration office took notes for the employer at some collective bargaining sessions and provided some clerical support for the employer's negotiators in 1985,

but only as back-up to the employees regularly assigned to such activities. In light of the stipulated exclusion of the primary and back-up employees regularly assigned to such functions, as well as two other employees in the district personnel office as "confidential", the record does not establish that access to the labor relations policies of the employer is necessarily implied for this secretary position.

14. The office manager/secretary in the maintenance and operations department serves as a lead person, assigning work and exercising limited judgment in the direction of a small office staff within the directives of the department head and school district policy. A majority of her time is spent in performing the same general types of functions as the other clerical employees. The disputed employee does not have discretionary authority, in the interest of the employer, to hire, fire, impose discipline, promote, transfer, layoff, recall, authorize overtime, approve leave requests, reward or adjust grievances of subordinate employees, or have the authority to effectively recommend such action. Authority concerning such personnel matters is reserved to the department head and to the central personnel management of the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The individuals holding the positions of school building head secretary, VTI assistant administrator secretary, VTI personnel office payroll specialist, VTI program supervisor secretary, district personnel office data management secretary, district personnel office secretary, district personnel office receptionist/clerk, district administration office word processing secretary, purchasing and auxiliary services secretary and maintenance and operations office secretary are public employees within the meaning of RCW 41.56.030(2), and are not confidential employees with the meaning of RCW 41.56.030(2)(c).

3. Head secretaries working in the company of other clerical employees and the office manager/secretary in the maintenance and operations department are non-supervisory public employees who have duties, skills and working conditions similar to those of, and share a community of interest under RCW 41.56.060 with, employees in the bargaining unit described in paragraph 5 of the foregoing Findings of Fact.

ORDER

1. The employees holding the positions identified in the Supplemental Agreement in this proceeding are included in the bargaining unit described in paragraph 5 of the Findings of Fact.
2. In order to protect the free exercise of the right of public employees to cast a secret ballot, and since the challenged ballots cast by the disputed employees are not determinative in the representation proceeding, such ballots are impounded, and shall not be opened or counted.
3. The interim certification, Decision 2243 (PECB, 1985), issued on June 12, 1985, stands as the certification of representative in this matter.

DATED at Olympia, Washington, this 9th day of February, 1987.

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.