

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	CASE NO. 5280-E-84-954
TEAMSTERS UNION, LOCAL 252)	
)	DECISION NO. 2064 -PECB
Involving certain employees of:)	
CITY OF OCEAN SHORES)	DIRECTION OF ELECTION

Ed Jacobson, Secretary-Treasurer, and Mike Manermann, Business Representative, appeared on behalf of the Union.

Robert Olander, City Manager, and David Tips, Mayor, appeared on behalf of the employer.

On June 1, 1984, Teamster's Union Local No. 252 (union) filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation. The petitioner seeks to represent clerical employees in the City of Ocean Shores. A pre-hearing conference was held on July 6, 1984. A hearing was held on July 25, 1984 before J. Martin Smith, Hearing Officer. The parties filed post-hearing briefs.

BACKGROUND

The City of Ocean Shores is a small resort community situated on the Pacific Ocean along the shore of the upper peninsula enclosing Grays Harbor. The city provides police services, public works services, a fire department, a golf course and an airport for its 2,500 permanent residents and its many tourist visitors. The fire, police and public works departments all have employees represented by unions. Teamsters Local 252 represents the employees in the public works department. This petition involves five unrepresented clerical employees who work in the city hall administrative offices.

Robert Olander is city manager and chief personnel officer of the city. He is solely responsible for negotiating labor agreements with the fire, police and public works units. During his two-and-one-half year tenure with the city, Olander has handled all of the grievances and negotiations for the city. In addition, he directs the staff at city hall.

Hester Ihrig is city clerk and finance director for the city. She supervises five employees, and she is responsible for assigning the typing of material needed by the city manager, city council or mayor. Ihrig has done some typing of materials for the city manager, but does not see the "secretary" role as part of her job. The personnel files are located in her office area, where they are kept unlocked but with orders to all other employees to stay out of the files. Ihrig was involved in collective bargaining prior to Olander's hiring, as part of her training to become a department head. Though she is no longer involved in negotiations, Ihrig and the city manager discuss personnel, salary and other confidential information. The union stipulated Ihrig's exclusion from the bargaining unit.

Vicki Hollensteiner performs a variety of clerical duties for the city. She answers all incoming telephone calls and refers callers to the right persons, is the general receptionist, assists with water department assessments, prepares business licenses and handles all materials for municipal court. In the absence of an employee specifically designated as secretary to the city manager, she does 90% or more of the city manager's typing and answers most of the telephone calls intended for the city manager. Most of the typing for city council is assigned to Hollensteiner. She makes no contribution to the formulation of labor relations policy, but has typed bargaining proposals in advance of their presentation to unions representing city employees. The union initially sought her inclusion in the unit.

The four remaining clerical employees at the city hall are primarily involved with accounting and billing functions. Kendra Steege and Delores (Jeanne) Sprague are both classified as accounting clerks, and they are assigned to maintenance of double entry bookkeeping. Renee Cheesman and Anita Schwen are both classified as utility clerks. Sprague maintains records concerning self-insured employee insurance programs provided by the city. Steege is assigned the task of opening incoming mail, and has performed some clerical duties in connection with the administration of the insurance benefits.

The city manager, the finance director, Hollensteiner and the four other employees substantially accomplish all of the administrative functions of city government, working in close proximity to one another in a small office facility. The employer has not historically taken precautions to maintain personnel or other records under secure conditions, but issued orders at or about the time this case was filed to limit access to the personnel files by city hall employees.

POSITIONS OF THE PARTIES

An issue was framed at the pre-hearing conference concerning the eligibility of Vicki Hollensteiner for inclusion in the petitioned-for bargaining unit,

and the bulk of the evidence and argument at hearing was directed towards the city's claim that Hollensteiner was a confidential employee. At the hearing, the employer advanced additional claims, that Kendra Steege and Delores (Jeanne) Sprague were confidential employees within the meaning of RCW 41.56.030(2)(c). The claim as to Sprague is based on her assignment to prepare a usage and claim study on the self-insured insurance program. The claim as to Steege is based on her assignment to open incoming mail and her work station in close proximity to those of the finance director and city manager. The employer contends that exclusion is warranted because of such assignments, no matter how minimal.

The union conceded the confidential status of Hollensteiner in its post-hearing brief. The union objected during the hearing to the city's raising of eligibility claims as to Steege and Sprague, but it did not seek a continuance of the hearing after its objections were overruled by the Hearing Officer. It is the position of the union that Steege and Sprague belong in the bargaining unit.

DISCUSSION

The city accomplishes a variety of functions through a small workforce. Among the several functions to be accomplished, it appears that few require the full-time effort of one or more employees. The city manager is the executive head of the employer entity, and of the petitioned-for bargaining unit. Reporting directly to the city manager is the clerk/finance director, Hester Ihrig, who was acknowledged by the union from the outset to be a supervisor and/or confidential employee properly excluded from the bargaining unit. While Hollensteiner reports to and takes some of her assignments from Ihrig, the record indicates that she also takes some assignments directly from the city manager. The union's stipulation to Hollensteiner's exclusion makes a determination unnecessary, although it is noted that some of her numerous assigned tasks would not qualify her for treatment as a "confidential" employee.

An employer proposing to exclude an employee from the coverage of the statute bears a heavy burden of establishing that the employee is a "confidential" employee. City of Seattle, Decision 689-A (PECB, 1979). The duties which imply the confidential relationship must flow from an official, intimate fiduciary relationship with the executive head of the bargaining unit, and must include the formulation of labor relations policy. IAFF v. City of Yakima, 91 Wn.2d 101 (1978). The statute also includes the requirement that the duties necessarily imply a confidential relationship. RCW 41.56.030(2)(c). A clear distinction has been made between formulation and administration of labor policy, and the mere administration of existing

contracts or policies is not sufficient to warrant exclusion as a confidential employee. City of Seattle, Decision 689-C (PECB, 1981). Looked at in that context, the confidentiality claims advanced by the employer as to Sprague and Steege fail.

Called as a witness by the city, Sprague testified that she does bookkeeping work on waterworks, streets and gas consumption. She did one survey, at the request of the city manager, on the amounts that had been paid and the actual cost to the city of benefits paid under the insurance programs. The employer's entire direct examination of this witness occupies two pages in the transcript. In answer to follow-up questions by the Hearing Officer, Sprague indicated limited knowledge of the insurance programs and a lack of understanding of the purposes for which the study she prepared was used. She also made a very brief reference in her testimony to handling of some payroll transactions as part of her duties. All of these activities are found to be in the nature of administration of existing programs, to which the confidentiality exclusion does not attach. It has long been established that the mere administration of payroll is not sufficient to warrant exclusion as a confidential employee. City of Lacey, Decision 396 (PECB, 1978). The benefits to be made available to employees are a mandatory subject of bargaining, City of Dayton, Decision 1990 (PECB, 1984), and the union would be entitled under RCW 41.56.030(4) and City of Yakima, Decision 1124-A (PECB, 1981), to information concerning the cost and administration of benefit programs already in existence.

The employer did not call Steege as a witness, but the Hearing Officer undertook to do so. She indicated having access to personnel files only on direct orders from Ihrig. Her involvement with the insurance benefits program is limited to issuance of vouchers and warrants for benefits already approved by others for payment under the existing plans. She opens and routes the mail in city hall, and she shares office space with Ihrig. None of these activities warrant exclusion from the rights conferred by the statute. The contents of personnel files are not inherently "confidential" in the labor relations sense. Her involvement with the insurance program is clearly limited to a single aspect of the administration of existing programs. Extended to its logical extreme, the employer's argument based on assignment to open and route mail would warrant the exclusion of every telephone operator and mail room clerk in public employment. Such is not the law. The employer is in a position to take reasonable precautions to secure its sensitive labor relations information by transmittal to the city manager through either of its two excluded office employees, and to arrange its offices or conduct its confidential conversations in a manner which will avoid exposure of sensitive material to persons having no regular or necessary exposure to such matters in the course of their employment.

FINDINGS OF FACT

1. The City of Ocean Shores is a municipal corporation of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1). Robert Olander is city manager of the employer.
2. Teamsters Local Union 252, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), timely filed a petition for investigation of a question concerning representation of certain clerical employees of the City of Ocean Shores.
3. Hester Ihrig is city clerk/finance director. She reports to the city manager and exercises supervisory authority over five clerical employees. The parties stipulate her exclusion from the bargaining unit.
4. Vickie Hollensteiner is the secretary-receptionist at city hall. She reports to Hester Ihrig, but also receives direct assignments from the city manager. Her duties have included typing of bargaining proposals as to which she has a fiduciary relationship with her supervisors to keep material confidential. The parties stipulate her exclusion from the bargaining unit.
5. Kendra Steege and Delores Sprague perform clerical and administrative duties with respect to administration of the city's self-insured insurance program. In other respects they perform duties typical of general clerks and utility clerks as part of the city's government staff.

CONCLUSIONS OF LAW


1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. A bargaining unit consisting of all full-time and all regular part-time office-clerical employees of the City of Ocean Shores, excluding elected officials, confidential employees and supervisors, is an appropriate unit for bargaining under RCW 41.56.060, and a question concerning representation presently exists in such unit.
3. Kendra Steege and Delores Sprague are public employees, within the meaning of RCW 41.56.030(2), and are neither confidential employees as defined in RCW 41.56.030(2)(c) nor supervisors, and are eligible voters in the proposed bargaining unit under RCW 41.56.060.

DIRECTION OF ELECTION

A representation election by secret ballot shall be held under the direction of the Public Employment Relations Commission in the bargaining unit described in paragraph 2 of the foregoing Conclusions of Law, to ascertain whether the employees desire to be represented for the purposes of collective bargaining by Teamsters Union, Local 252.

DATED at Olympia, Washington, this 12th day of October, 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.