

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TEAMSTERS UNION, LOCAL 599)	CASE NO. 7397-E-88-1263
Involving certain employees of:)	DECISION 3055 - PECB
CITY OF FIFE)	DIRECTION OF ELECTION
)	

Hafer, Price, Rinehart and Schwerin, by
John Burns, Attorney at Law, appeared on
behalf of the petitioner.

Loren D. Combs, Inc. P.S., by Susan Rae
Sampson, Attorney at Law, appeared on
behalf of the employer.

On May 6, 1988, Teamsters Union, Local 599 (petitioner), filed a petition with the Public Employment Relations Commission, seeking investigation of a question concerning representation involving certain employees of the City of Fife. As originally filed, the petitioner sought a bargaining unit described as "all employees who are not currently under labor agreements". A pre-hearing conference was conducted on June 16, 1988, in Fife, Washington. A statement of results of pre-hearing conference was issued on July 6, 1988, specifying that the parties had a dispute concerning eight clerical employees that the employer considered to be confidential, as well as concerning the bargaining unit status of part-time employees. A hearing was conducted on July 26, 1988, before Hearing Officer Kenneth J. Latsch. At the outset of the hearing, the parties stipulated that the part-time employees should be included in the proposed bargaining unit, using criteria

established by the Commission.¹ In addition, the parties stipulated that certain clerical employees should be excluded from the proposed bargaining unit as "confidential" employees. The hearing was therefore limited to the bargaining unit status of employees holding positions titled: "Finance Officer", "Information Processing Services Licensing Officer", and "Secretary/Steno". The parties submitted post-hearing briefs.

BACKGROUND

The City of Fife is located in Pierce County, Washington. The city operates under a "mayor-council" form of government. The council retains final policy making authority. Each member of the council chairs a committee which deals with specific matters such as utilities and transportation, finance and personnel, community development, and public safety. An employed official holding the title of "Director of Administration" reports to the mayor and council, and has a wide range of responsibilities concerning financial and personnel issues.

The employer has existing collective bargaining relationships with Teamsters Union, Local 599, involving two bargaining units of city employees. One of those, consisting of non-supervisory law enforcement personnel, has about 15 employees. The other consists of about eight public works employees.

The petitioned-for bargaining unit is essentially a "residual" unit initially claimed by the union to include about 25 employees. The positions at issue in the instant representation proceeding perform a variety of clerical assignments.

¹ Specifically, the parties stipulated that those part-time employees working 15 days in a calendar quarter are to be included as regular part-time employees.

Finance Officer

The Finance Officer reports to the Director of Administration. The incumbent of the position, Lynne Goodman, deals with a variety of fiscal matters, including keeping track of the city's investments and handling bills that must be paid. Goodman also testified that she is often called upon to work at the reception area, assisting the public in their dealings with the city.

Goodman testified that she has never participated in any collective bargaining negotiations or strategy meetings on behalf of the employer. On occasion, Goodman has been directed to attend city council meetings, but when she has attended she has never been allowed to participate in executive sessions. The only time she ever met with a union representative was to explain the differences in insurance plans offered to city employees.

The record indicates that the Finance Officer has made adjustments in insurance benefit amounts, but only at the direction of the Director of Administration and then only as the result of mistakes made in the payment of benefits. It is evident that the Finance Officer does not have independent authority to make changes in benefit plans.

Information Processing Services & Licensing Officer

The Information Processing Services & Licensing Officer also reports directly to the Director of Administration. The incumbent, Donna Reetz, testified that her primary responsibilities deal with information processing and a variety of city permits, such as building and sign permits. Reetz is

expected to do general typing for a number of city officials and does all city filing except for police department work.

The Director of Administration testified that the Licensing Officer takes an active part in negotiations by transcribing proposals, preparing the final contract document, and by assisting in the development of contract language. Reetz disagreed with the Director of Administration's characterization of her labor relations work, however, testifying that she only attended one introductory bargaining session, and was never introduced as part of the city's negotiating team. Reetz has never taken part in labor policy formulation, nor has she taken any part in writing or developing contract language. Reetz has typed final contracts previously negotiated by the employer with unions representing its employees, but testified that she has no authority to modify or edit the document. As in the case of the Finance Officer, Reetz has attended open, public city council meetings, but has not been allowed to participate in executive sessions.

Secretary/Steno

The Secretary/Steno position was created in 1988. The incumbent is Rebecca Kelly. The record indicates that Kelly reports to the Director of Administration and is responsible for assignments made by the director, as well as by the city council.

Kelly prepares the agenda for city council meetings, based upon information given to her by the mayor and council members. She has no authority to alter the agenda items provided to her.

Kelly has not yet participated in labor matters, but she has participated in council executive sessions where labor matters

have been discussed. The Director of Administration testified that the secretary would be expected in the future to take part in council meetings where labor policy was to be formulated.

POSITIONS OF THE PARTIES

The employer argues that all three of the disputed positions must be excluded as confidential. It maintains that each of the affected employees has regular contact with the employer's labor relations policies, so that inclusion of the disputed positions in the bargaining unit would create an inherent conflict of interest.

The petitioner argues that the three positions at issue are not confidential employees within the meaning of Public Employment Relations Commission precedent, and all three should be included in the proposed bargaining unit. The petitioner contends that the Director of Administration is the only true confidential employee within the employer's workforce, and that, given the small size of the city's workforce, further exclusions are not called for.

DISCUSSION

The applicable legal standards are well established. RCW 41.56.030(2) uses the term:

RCW 41.56.030 DEFINITIONS.

As used in this chapter:

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or

body of the public employer, or (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, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

[1967 ex.s. c 108 §3.](emphasis supplied)

As interpreted by the Supreme Court in Firefighters v. City of Yakima, 91 Wn. 2d 101 (1978), confidential status can be found only if the moving party can demonstrate that the affected employee is in:

... an official intimate fiduciary relationship with the executive head of the bargaining unit or public official ... [with respect to] formulation of labor relations policy.

The issue of "confidential" status has been addressed by the Commission on numerous occasions. The moving party has a heavy burden of proof in confidentiality cases, because a finding of confidentiality would exclude the affected employee from all collective bargaining rights. Clover Park School District, Decision 2243-A (PECB, 1987).

The employer has not sustained its burden in this case to conclusively demonstrate that the disputed positions are confidential. After calling for exclusion of six department heads, the employer's initial response to the petition in this case asserted that seven of the ten full-time employees in the petitioned-for unit were "confidential" and that all 16 of the part-time employees should be excluded on the basis of their part-time status. The record clearly indicates that the

Director of Administration is a confidential employee, and that others have been excluded by stipulation of the parties as "confidential".

While the Director of Administration testified that each of the three employees has a wide range of labor relations responsibilities, that testimony was contradicted by each of the employees. At best, the Director's testimony would indicate some potential prospective use of the three disputed positions in a confidential manner, but such uncertain application cannot sustain a finding of confidential status. The three positions shall be included in the proposed residual bargaining unit.

FINDINGS OF FACT

1. The City of Fife is a municipal corporation of the state of Washington, located in Pierce County, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 599, a "bargaining representative" within the meaning of RCW 41.56.030(3), has existing collective bargaining relationships with the City of Fife concerning bargaining units of law enforcement and public works employees, and has filed a timely and properly supported petition for investigation of a question concerning representation involving a residual unit of employees of the City of Fife.
3. The City of Fife uses a "mayor-council form of government, with each city council member chairing a separate committee which deals with specific city business.

4. The Director of Administration reports to the mayor and is the chief operating officer of the city, with responsibility for the daily administration of city affairs. The Director participates in collective bargaining on behalf of the employer, and also deals with personnel issues.
5. The Finance Officer reports to the Director of Administration and is responsible for routine fiscal matters, such as billings and collections. The Finance Officer regularly monitors the various medical plans offered to city employees, but has no authority to modify the plans. The Finance Officer has not participated in formulation of the employer's labor relations policies or in substantive collective bargaining negotiations.
6. The Information Processing Services & Licensing Officer reports to the Director of Administration and is primarily responsible for general typing for a number of different city officials, and also works with the general public who wish to obtain building or sign permits. The incumbent has typed final contract documents resulting from collective bargaining, but has not participated in the formulation of the employer's labor relations policies or in substantive collective bargaining negotiations.
7. The Secretary/Steno reports to the Director of Administration and takes notes at open, public meetings of the city council. The incumbent has attended executive sessions where labor matters have been discussed, but has not participated in the in formulation of the employer's labor relations policies. As minutes are not kept of executive sessions, the necessity for her presence has not been established. The Secretary/Steno has not prepared any documents used in collective bargaining and has not

participated in substantive collective bargaining negotiations.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. A residual bargaining unit consisting of:

All full-time and regular part-time employees of the City of Fife, excluding elected officials, appointed officials, confidential employees, supervisors, public works department operations and maintenance employees and police department employees

is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and a question concerning representation presently exists in that bargaining unit.


3. The individuals holding the positions of "Finance Officer", "Information Processing Services & Licensing Officer", and "Secretary/Steno" are public employees within the meaning of RCW 41.56.030(2) who are not "confidential employees" within the meaning of RCW 41.56.030(2)(c).
4. The individuals holding the positions of "Finance Officer", "Information Processing Services & Licensing Officer", and "Secretary/Steno" are properly included in the appropriate bargaining unit described in paragraph 2 of these conclusions of law, and are eligible voters in the election directed herein.

DIRECTION OF ELECTION

An election, by secret ballot, shall be conducted under the direction of the Public Employment Relations Commission, to determine whether employees in the appropriate bargaining unit described in paragraph 2 of the foregoing conclusions of law desire to be represented for the purposes of collective bargaining by Teamsters Union, Local 599.

DATED at Olympia, Washington, this 8th day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed
by filing objections in
accordance with WAC 391-25-590.