

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CLASSIFIED PUBLIC EMPLOYEES)	CASE 8227-E-89-1394
ASSOCIATION/CPEA/WEA)	
)	DECISION 3371-A - PECB
Involving certain employees of:)	
)	
FRANKLIN PIERCE SCHOOL DISTRICT)	ORDER DETERMINING
)	ELIGIBILITY ISSUES
)	

Roger U. Cantaloube, appeared on behalf of the union.

Vandenberg & Johnson, by William A. Coats, Attorney at Law, appeared on behalf of the employer.

On October 16, 1989, 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 office-clerical employees of the Franklin Pierce School District. The Franklin Pierce Association of Educational Office Personnel (FPAEOP) intervened in the proceedings, based on its status as the incumbent exclusive bargaining representative of the employees involved. A pre-hearing conference was held on November 9, 1989, at which time the parties signed an election agreement and a supplemental agreement.¹

¹ Filed pursuant to WAC 391-25-270, the supplemental agreement set aside "eligibility" issues concerning four classifications for post-election determination. The union disagreed with the employer's claimed exclusion, on the basis of "confidentiality", of employees holding positions titled:

1. Fiscal Analyst
2. Secretary to Assistant Superintendent for Support Services
3. Secretary to Assistant Superintendent for Curriculum, Instruction and Staff Development
4. Payroll Manager

The Commission conducted a representation election on November 30, 1989. A tally of ballots issued that day indicated that CPEA was designated by a majority of the employees as their new exclusive bargaining representative. An Interim Certification issued by the Commission on December 8, 1989, described the bargaining unit as:

All full-time and regular part-time secretarial-clerical employees of the Franklin Pierce School District; excluding supervisors, confidential employees and all other employees.

Franklin Pierce School District, Decision 3371 (PECB, 1989).

The case remained "open" to resolve the "eligibility" issues reserved in the supplemental agreement.

A hearing regarding the matters reserved in the supplemental agreement was convened at Tacoma, Washington, on December 12, 1990, before Hearing Officer Mark S. Downing. At the outset of the hearing, the union identified a fifth position as also being in dispute. The union stated that it disagreed with the employer's claim that the position of: "secretary to assistant superintendent for secondary education" was confidential. The employer objected to litigating the status of the position, arguing that the union had not previously asserted a claim for the position nor had it provided sufficient notice for the employer to adequately prepare for a hearing on the particular position. The Hearing Officer directed that available evidence regarding the duties of the position be placed in the record.

BACKGROUND

Franklin Pierce School District is located in the western part of Pierce County, south of Tacoma. As is typical for such entities, an elected board of directors sets policy for the employer, while a superintendent of schools serves as the chief administrative

officer. At the time of the hearing, the employer had an enrollment of approximately 5989 students,² and it operated two high schools, two middle schools, seven elementary schools, and one alternate school.

The employer has collective bargaining relationships with organizations representing six separate bargaining units of classified and certificated employees. The employer's office-clerical employees were represented in one of those separate bargaining units for a number of years prior to the onset of this representation proceeding.³

The formulation and implementation of the employer's labor relations policies is vested in the employer's board of directors. Proposals for collective bargaining developed at two administrative levels, are presented by the superintendent and four assistant superintendents to the board for review and instructions.

The first level of administrative review for labor relations policies is the superintendent's cabinet, which consists of:

1. Superintendent Robert Whitehead
2. Assistant Superintendent for Personnel and Elementary Education Yoshihiro Roy Okamoto
3. Assistant Superintendent for Support Services Gary Nelson
4. Assistant Superintendent for Secondary Education Betty Storie
5. Assistant Superintendent for Curriculum, Instruction and Staff Development Janice Watson

² Site and enrollment data is taken from Washington Education Directory (1989-1990), at page 95, published by Barbara Krohn and Associates from data collected by the Superintendent of Public Instruction.

³ See, Franklin Pierce School District, Decisions 78, 78-A, 78-B, 78-C, and 78-D (PECB, 1977).

6. Director of Special Education David Cupp
7. Director of At-risk Programs Jurley Paddock
8. Director of Fiscal Services Gerald Coons
9. An elementary school principal
10. A secondary school principal.⁴

The superintendent's cabinet assembles periodically to discuss collective bargaining strategy, proposals, and the status of negotiations. Division heads analyze and report to the group concerning the impact of pending proposals on their department. Ideas are exchanged among cabinet members to assist the negotiating team in achieving its goals and resolving bargaining obstacles. Leta Kremer, the superintendent's secretary, attends cabinet meetings as recorder.

The second level of administrative review of labor relations policies is by the employer's negotiating teams. Assistant superintendents Okamoto and Watson act as co-chairs of the employer's negotiating team for bargaining with the employer's certificated employees. The employer uses a five-member negotiating team for bargaining with the classified employees, with co-chairs Okamoto and Nelson assisted by labor relations consultant James Hobbs and two building principals assigned by rotation.

Okamoto is responsible for salary-related matters in negotiations. The employer's proposed operating budget is publicized in July of each year, and must be adopted by the school board on or before August 31 of each year. Okamoto must begin his budget preparations well in advance of negotiations with the classified employee bargaining units, which frequently do not start until August. After obtaining instructions for negotiations from the board, Okamoto develops confidential strategic plans, or "contingencies",

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The two "principal" positions are periodically rotated amongst the employer's school principal staff.

to ensure that adequate funds are available to finance any increased costs that may result from collective bargaining. In order to maintain the confidentiality of these "contingency" funds, they are often placed in various categories of the budget where they cannot be identified as being earmarked for collective bargaining costs.

Nelson is responsible for administration of the employer's maintenance, custodial service, transportation, food service, purchasing, facilities, and construction operations. He is responsible for all facets of collective bargaining with classified employee bargaining units, except for Okamoto's duties regarding salary matters.

The union has stipulated to the exclusion of three office-clerical employees from the bargaining unit, based on the "confidential" nature of their duties. Those classifications include the superintendent's secretary and two personnel secretaries among the several secretaries employed in Okamoto's department.⁵

POSITIONS OF THE PARTIES

The employer argues that the five classifications in dispute are "confidential" positions supporting the collective bargaining

5

Charlene Roning serves as the employer's recorder at negotiation and grievance meetings regarding classified employees. Okamoto also calls upon her for assistance in the administration of classified personnel matters, including developing salary and benefit proposals, reviewing the impact of increment and salary increases, and making projections from simulated budgets, to determine the fiscal impact of different proposals.

Carol Johnson assists Okamoto in developing salary adjustments, and in preparing materials for negotiations, including fiscal data and calculations regarding the impact of various proposals and staffing information.

process. The employer asserts that the positions provide technical assistance in developing proposals, and determining costs of alternative positions. It asserts that they have knowledge of employer proposals before they are presented to the board for review, as well as prior to presentation of the proposals at the bargaining table. The employer maintains that unauthorized disclosure of this essential negotiations information would be harmful to the collective bargaining process, and that inclusion of the disputed positions in the bargaining unit would create a conflict of interest that would be disruptive to the collective bargaining process.

Pointing out that the employer seeks a total of eight "confidential" exclusions, the union contends that the employer has distributed insignificant portions of collective bargaining work to several potential bargaining unit members, in a piecemeal manner. It is the union's position that the employer's approach is contrary to the intent of the Public Employees' Collective Bargaining Act, and that the "confidential" work could be consolidated and assigned to the three agreed-upon "confidential" positions. The union believes that any involvement by the disputed employees in the collective bargaining process is casual, and merely for the sake of convenience. In addition, the union claims that the job duties of the classifications in question do not adequately meet the "labor nexus" test to warrant exclusion from the bargaining unit.

DISCUSSION

Applicable Legal Principles

The basic law on "confidential" exclusions is clear. The definition of a "public employee" set forth in RCW 41.56.030(2)(c) excludes from 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 IAFF v. City of Yakima, 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. A confidential employee is defined in RCW 41.59.020(4)(c) as:

(i) Any person who participates 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 judgement; and,

(ii) Any person who assists and acts in a confidential capacity to such person.

Thus, a "labor nexus" is essential to the existence of a "confidential" exclusion.

The "confidential" exclusion is not limited exclusively to those employees who directly participate in the actual formulation of labor relations policy and objectives, but also extends to those support personnel who process sensitive labor relations-related material at the direction of those responsible for collective bargaining matters. Oak Harbor School District, Decision 3581 (PECB, 1990).

The burden of proof is on the party seeking exclusion of an employee on the grounds of confidentiality. City of Seattle, Decision 1797-A (PECB, 1985). An employer will be allowed some reasonable number of exempt personnel in order to perform its functions under the collective bargaining statute, but the party seeking a "confidential" exclusion must present evidence that the affected employee necessarily has intimate contact with, and knowledge of, the employer's labor relations policies and practices. Clover Park School District, supra. An employee is not required to work exclusively, or even primarily, on "confidential" material, so long as the assignments can be described as "necessary", "regular" and "on-going". Oak Harbor School District, supra.

Historical Exclusions Not Binding -

In support of its argument for the exclusion of the disputed positions, the employer argues here that the contested positions were excluded when the bargaining unit was represented by the former exclusive bargaining representative. The mere fact of their having been excluded in the past does not, however, constitute a basis for an inference or a ruling in this case.

The employer has not argued, or offered evidence any indicating, that the unit placement of any or all the disputed positions was the result of a previous Commission decision. Examination of the

Commission's docket records also fails to disclose any such ruling.⁶ The most that can be inferred is that the former exclusive bargaining representative acceded to the exclusion of the disputed positions from the bargaining unit, for unknown reasons. The actions of the former organization could not bind the CPEA. University Place School District, Decision 2584 (PECB, 1986). Further, the agreements of parties on unit determination matters are not binding on the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

Pre-hearing Stipulations are Binding -

Stipulations made by parties during the course of representation proceedings, including stipulations made in election agreements, are binding upon the parties, except for good cause shown. Community College District No. 5, Decision 448 (CCOL, 1978); Island County, Decision 2572 (PECB, 1986); Clover Park School District, Decision 2243-B (PECB, 1987). In this case, the supplemental agreement signed by the parties characterized the reserved issues as follows:

Employer proposes exclusion from bargaining unit based on confidential duties.

The employer did not raise any "community of interest" or "supervisor" issue as to any of the disputed employees.

During the course of the hearing, the employer attempted to raise, for the first time, an argument that the "fiscal analyst" and "payroll manager" positions were not secretarial in nature, but

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The only prior Commission case involving this bargaining unit is Franklin Pierce School District, Decisions 78 - 78-D, supra. The issues in that case concerned the "severance" of the office-clerical employees from a larger bargaining unit. No eligibility questions concerning confidentiality were decided in that proceeding.

rather more akin to technical mid-management positions. In addition to the alleged confidential nature of these positions, the employer would now argue that the positions have no "community of interest" with the office-clerical bargaining unit. Additionally, the employer alleged at the hearing, for the first time, that the "payroll manager" position has supervisory responsibilities which warrant exclusion of the position from the bargaining unit.

The employer has failed to show good cause to withdraw from its previous stipulations, or to expand the issues in this case. No substantive evidence was taken at the hearing as to the claim of supervisory duties, or as to whether disputed positions have a community of interest with the office-clerical bargaining unit.

Consideration of Additional Position -

At the outset of the hearing on the supplemental agreement, the union stated that a fifth position was also in dispute. The employer protested that "had not agreed" to consider a fifth position, but the Hearing Officer overruled the employer's objections and took evidence on that position. Upon review of the entire file in this case, the Hearing Officer's actions are found to have been appropriate.

Among the initial steps routinely taken in processing of the representation petition in this case, the Commission notified the employer of its obligation, pursuant to WAC 391-25-130, to provide a list of all employees occupying positions or classifications of the type described in the petition. The employer was advised that such a list should be as complete and accurate as possible, and that persons which the employer would desire to have excluded from the bargaining unit as confidential employees, supervisors, or otherwise should be listed with an indication of the basis for the proposed exclusion. In responding to that request, the employer provided a list containing the names of 54 employees, including the names of the four employees occupying the positions subsequently

identified in the supplemental agreement. The employer's list did not include Patty Morgan, who holds the position of "secretary to the assistant superintendent for secondary education".

The list provided by the employer was accepted by all parties as being accurate, and was used as an attachment to the election agreement and supplemental agreement, to reflect the "eligibility" stipulations of the parties in the instant proceeding. The union discovered the omission of Patty Morgan later, and brought that omission to the attention of the Hearing Officer at the outset of the hearing.

The Commission's rules require the employer to provide both the Commission and all other parties with a complete list of the employees involved. WAC 391-25-130. Neither a petitioner, an intervening employee organization nor the Commission has the records or resources to independently verify the list of employees, and must rely on the accuracy of the information provided by the employer. In this regard, the Commission's rule accomplishes the same general purpose as the list of employees required in proceedings before the National Labor Relations Board by Excelsior Underwear, 156 NLRB 1236 (1966), although the Commission's rule elicits the list at an earlier point in the proceedings.

In this case, the union's petition described the proposed bargaining unit as including all secretarial-clerical employees of the employer:

All full-time and regular part-time employees who work for the Franklin Pierce School District within the following job classifications: Secretaries, Clerks, excluding supervisors and confidential employees and all other employees of the employer.

For some unexplained reason, the list provided by the employer did not include the name of Patty Morgan, or mention the position that

she occupies, although it included all of the other office-clerical positions which the employer claimed should be excluded from the bargaining unit as "confidential" or "supervisors". Giving the employer the benefit of the doubt in the absence of any claim or evidence to the contrary,⁷ it is inferred that the name and position were omitted from the list due to inadvertence. Incredibly, the employer continued to argue in its post-hearing brief that the union "did not claim representation of the secretary to the assistant superintendent for secondary programs" in its petition. That argument is entirely without merit.

The petition was clear, and the employer's actions in listing other claimed "confidential" exclusions indicates that it understood the scope of the petition and of the Commission's request for a list. Any fault for not including Morgan in the roster letter lies with the employer. The employer's mistake is a basis for relieving the union of any stipulation (or lack thereof) concerning the position. The employer's mistake is not an acceptable basis for denying the union's claim that Morgan's position should be included in the bargaining unit. The hearing in this matter was held in the employer's administrative office. The employer was in the best position to know of the existence of the position, and of any duties which it would claim to be of a "confidential" nature, and to produce witnesses on those points. The position is properly before the Executive Director for a ruling.

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An intentional concealment of a potential bargaining unit position from the Commission and other parties to a case would not only violate WAC 391-25-130, but could be a basis for a finding of misconduct on the part of counsel or other persons acting in a representative capacity, for obstructing the processes of the Commission. See, WAC 391-08-020.

The Fiscal Analyst

Beverly Phillips is employed as "fiscal analyst" in the employer's accounting office. She reports to Director of Fiscal Services Gerald Coons, but generally works independently. Her work station is located near that of Coons and Payroll Manager Mary Lou Hull.

Phillips was given her present job title about two years ago, but her duties did not change at that time or since. Her job description outlines an extensive array of budgetary duties, such as preparing, implementing and reconciling the employer's computer accounting, including general ledger entries and budget transfers; assisting in developing the employer's budgets through data entry and verification of the budget document; preparing and distributing budget reports for all budget administrators and schools; preparing and distributing revenue, expenditure and fund balance reports; serving as the employer's contact and liaison for all insurance policies and contracts, including medical, life and student insurance; working directly with the employer's benefit coordinator and risk pool management; making recommendations to the director of fiscal services concerning changes or improvements for budgeting, accounting or monitoring procedures; and performing other clerical duties, including word processing, computer operations, calculations, and typing.

Assistant Superintendent Okamoto calls upon Phillips for help with a variety of tasks, including assistance in developing his salary and benefits "contingencies". Phillips works closely with Okamoto in determining whether various percentage or dollar amount wage increases can be met, and what other adjustments would be necessary to obtain those results. At Okamoto's direction, Phillips inputs salary-related data into a computerized accounting system, to provide budgetary data based on varying circumstances. If there is a possibility of the employer overspending, Okamoto discusses alternatives with Phillips so that expenditures stay within the

budget. Phillips is aware of recommended bargaining proposals before their review by the board of directors, and before the board finalizes its instructions to its negotiators.

From the record made, it is clear that Phillips possesses the "labor nexus" required for exclusion from the definition of "public employee", and hence from collective bargaining rights, as a "confidential" employee.

Payroll Manager

Mary Lou Hull serves as "payroll manager". She also reports to Director of Fiscal Services Gerald Coons, and her work station is located in the vicinity of his office. Two payroll assistants report to Hull.

Hull's job description outlines extensive payroll-related duties including, auditing all areas of payroll operations; computing retroactive salary adjustments, vacation and termination pay; monitoring leaves for compliance with the applicable collective bargaining agreement; administering salaries and benefits for represented and unrepresented employees, including overtime, and paid leaves; possessing current information regarding state and federal payroll laws; providing payroll and benefit information, including medical and retirement data, for new employees; preparing and reporting retirement deductions; setting up pay periods and pay dates for computerized payroll; administering garnishments; maintaining a log of employee injuries and accidents; providing salary and benefit expenditure projections for compliance with fund balance; reviewing salary and benefit costs for budgeting purposes; and implementing and monitoring benefit pools.

Of particular interest in this case, Hull is called upon to provide analysis of payroll and benefits data for collective bargaining data regarding both certificated and classified bargaining units,

and she maintains data to determine the cost and utilization of sick, personal, emergency, and bereavement leaves. Okamoto calls upon her to review the financial and administrative impact of collective bargaining proposals related to the areas of salaries, benefits and workers compensation, and to provide feedback regarding counter-proposals for negotiations. On one occasion, Hull drafted an employer bargaining proposal addressing the pooling of benefit funds. Hull is also aware of recommended proposals prior to their being reviewed with the school board.

From the record made, it is clear that Hull possesses the "labor nexus" required for exclusion from the definition of "public employee", and hence from collective bargaining rights, as a "confidential" employee.

Support Services Secretary

Karen Snope serves as secretary to Assistant Superintendent for Support Services Gary Nelson. Snope's work station is located, along with Nelson's, several miles from the superintendent's office. Snope works in the company of one other secretary. She was formerly a member of the office-clerical bargaining unit, but was excluded from that bargaining unit after job assignments were revised in 1988.

Assistant Superintendent Nelson is accountable for non-salary related matters in collective bargaining with all unions representing classified employees of this employer. Nelson prepares the employer's collective bargaining proposals, and the employer's responses to union proposals. In the performance of his duties, Nelson calls on Snope to assist him in drafting and typing proposals. Snope makes recommendations on the proposed content of proposals, based on her own familiarity with classified employees. Nelson and Snope meet with Hobbs and Okamoto to discuss potential

bargaining proposals, and what changes need to be made before reviewing them with the school board.

From the record made, it is clear that Snope possesses the "labor nexus" required for exclusion from the definition of "public employee", and hence from collective bargaining rights, as a "confidential" employee.

Curriculum, Instruction and Staff Development Secretary

Gail Petersen serves as secretary to Assistant Superintendent for Curriculum, Instruction and Staff Development Janice Watson. Petersen's work station is at the employer's administrative office in the vicinity of the superintendent's secretary. Petersen is a lead secretary who works in the company of two other secretaries, an instructional assistant and a data technician.

Assistant Superintendent Watson is responsible for planning and coordinating the employer's curriculum process for teacher training and classified staff development. The costs associated with staff development are budgeted from Watson's department and, as a member of the superintendent's cabinet, Watson reviews the overall district budget. Watson has been a member of the employer's negotiation team for collective bargaining with the organizations representing the employer's certificated employees and school principals, and she participates in strategic discussions regarding all aspects of the collective bargaining process. In particular, Okamoto consults with Watson whenever there is a collective bargaining proposal concerning in-service training, staff development or vocational training.

Petersen's job description outlines a range of secretarial duties, including receiving and transcribing dictation; maintaining and processing files; performing bookkeeping tasks associated with the position; maintaining appointment schedules; making arrangements

and preparing materials for in-service workshops; proofreading documents; providing word processing training to district staff; and providing switchboard coverage.

Of interest in this case, Watson calls upon Petersen for assistance in meeting her responsibilities regarding collective bargaining. Petersen take notes in conferences with Okamoto regarding employer proposals; helps to develop reports concerning various budgetary proposals, by calculating costs for different strategies and determining the budgetary impact; types proposals and other negotiations information concerning curriculum and staff development; and keeps files containing minutes of cabinet meetings and other notes regarding collective bargaining. Petersen is aware of what the employer is considering for salary increases before proposals are reviewed with the school board or presented in bargaining.

From the record made, it is clear that Watson's responsibilities would qualify her for a "confidential" exclusion under RCW 41.59.020(4)(c)(i), even if she was not excluded by her "assistant superintendent" title under RCW 41.59.020(4)(b). As the secretary to such a confidential employee who is actually involved in assisting her superior with collective bargaining matters, Petersen also possesses the "labor nexus" required for exclusion from the definition of "public employee", and hence from collective bargaining rights, as a "confidential" employee.

Secondary Programs Secretary

Patty Morgan is the secretary to Assistant Superintendent for Secondary Programs Betty Storie. Morgan's work station is located in the vicinity of the superintendent's secretary, and Morgan acts as the "back-up secretary" for Superintendent Whitehead.

Storie oversees the operation of five secondary schools, including two high schools, two middle schools, and one alternative school,

and a vocational education program. Storie's involvement in the collective bargaining process stems from her position as a member of the superintendent's cabinet. She is requested to analyze and report on the impact that pending bargaining proposals would have on her department.

Morgan's job description details her duties as receiving and transcribing dictation; assembling data; preparing reports; filing; processing correspondence; performing bookkeeping associated with the position; scheduling appointments for Storie; serving as substitute recording secretary for the school board; serving as secretary for principals' meetings; serving as switchboard operator; assisting in central office projects; assisting in the preparation of budgets and staffing allocations for secondary programs; and serving as recording secretary during investigative hearings regarding staff or students.

Storie calls upon Morgan for assistance in responding to bargaining proposals impacting secondary schools. Morgan develops alternatives and strategies for dealing with the proposals, and performs any related typing. Storie shares negotiation strategies with Morgan, so she will understand Storie's objectives and can perform negotiation-related tasks with a minimum of direction. Morgan is aware of the employer's collective bargaining proposals affecting secondary programs before they are presented to the school board for approval, and prior to their submission to the unions.⁸

From the record made, Storie's collective bargaining responsibilities, albeit in a limited area, would appear to qualify her for a

⁸ Morgan also assists Storie in the administration of collective bargaining agreements, by transcribing various information regarding the circumstances of disciplinary actions. Such functions are an outgrowth of the role of Storie as a "supervisor", and are not evidence supporting a "confidential" exclusion. See, City of Seattle, Decision 1797-A (PECB, 1985).

"confidential" exclusion under RCW 41.59.020(4)(c)(i), even if she was not excluded by her "assistant superintendent" title under RCW 41.59.020(4)(b). As the secretary to such a confidential employee who is actually involved in assisting her superior with collective bargaining matters, Morgan also possesses the "labor nexus" required for exclusion from the definition of "public employee", and hence from collective bargaining rights, as a "confidential" employee.

Conclusions

The incumbents in the five disputed positions would be faced with a conflict of interest if they were included as members of a bargaining unit. All of the disputed employees report to administrators who have necessary, intimate, and fiduciary responsibility to the superintendent and/or school board, including the formulation and effectuation of labor relations policy. In each case, the administrator relies on the support staff members to compile sensitive information, and to prepare proposals for bargaining. The unauthorized disclosure of such information would be damaging to the collective bargaining process. Inclusion of the disputed positions in the office-clerical bargaining unit could place them in a position of compromised loyalty. See, Edmonds School District, Decision 231 (PECB, 1977), which was cited, with approval, by the Supreme Court in City of Yakima, supra.

FINDINGS OF FACT

1. Franklin Pierce School District is a public employer within the meaning of RCW 41.56.030(1).
2. On October 16, 1989, Classified Public Employees Association (CPEA) filed a timely and sufficiently supported petition for investigation of a question concerning representation for

office-clerical employees of the Franklin Pierce School District.

3. Franklin Pierce Association of Educational Office Personnel (FPAEOP) intervened in the proceedings as the incumbent exclusive bargaining representative of the petitioned-for employees.
4. During pre-hearing conferences, the parties signed an election agreement, pursuant to WAC 391-25-230, and a supplemental agreement, pursuant to WAC 391-25-270. The parties therein stipulated to the exclusion from the bargaining unit (and from the coverage of Chapter 41.56 RCW) of the superintendent's secretary and two secretaries who work in the office of the Assistant Superintendent for Personnel and Elementary Education as "confidential" employees within the meaning of RCW 41.56.030(2)(c). The parties reserved eligibility issues concerning four positions for post-election determination, based on the employer's claim that the incumbents of those positions were also "confidential" employees.
5. The list of employees provided by the employer in this proceeding pursuant to WAC 391-25-130 failed to include the name of Patty Morgan, and also failed to include the position of "secretary to assistant superintendent for secondary education". At no time in pre-hearing conferences did the parties discuss or stipulate the eligibility of that position for inclusion in the bargaining unit.
6. A representation election was conducted by the Commission on November 30, 1989, among employees of Franklin Pierce School District in a bargaining unit described as:

All full-time and regular part-time secretarial-clerical employees of the Franklin Pierce School

District; excluding supervisors, confidential employees and all other employees.

A majority of eligible employees in the bargaining unit cast ballots in favor of representation by CPEA, and an interim certification issued by the Commission on December 8, 1989, designated that organization as exclusive bargaining representative of the bargaining unit.

7. A hearing was held concerning the matters reserved in the supplemental agreement, on December 12, 1990. At the outset of the hearing, CPEA identified the "secretary to assistant superintendent for secondary education" as a fifth position in dispute. The Hearing Officer overruled the employer's objections to consideration of that position.
8. The formulation and implementation of the employer's labor relations policy is vested with an elected board of directors. Collective bargaining proposals are developed by the superintendent and members of the superintendent's cabinet, including Director of Fiscal Services Gerald Coons; Assistant Superintendent for Curriculum, Instruction and Staff Development Janice Watson; and Assistant Superintendent for Secondary Education Betty Storie. Proposals are presented to the school board for approval and instructions. Assistant Superintendent for Personnel and Elementary Education Yoshihiro Roy Okamoto and Assistant Superintendent for Support Services Gary Nelson serve as co-chairs of the employer's negotiation teams in collective bargaining. Okamoto and Nelson are assisted at the bargaining table by a labor relations consultant, Jim Hobbs, and by various other employer officials assigned in rotation.
9. The employees holding the disputed positions report directly to members of the superintendent's cabinet who are privy to confidential information concerning the labor relations

policies of the employer. In each case, the employees holding the disputed positions are called upon to prepare materials for collective bargaining negotiations and/or to analyze the impacts of various proposals prior to their discussion at the bargaining table. Incumbents in the disputed positions have knowledge of collective bargaining information and strategy from the outset of bargaining, prior to the establishment of bargaining instructions by the board of directors and before proposals are exchanged at the bargaining table, so that they would be faced with a conflict of interest if they were also included as members of the office-clerical bargaining unit.

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. Employees of the Franklin Pierce School District holding the positions of "fiscal analyst", "payroll manager", "secretary to assistant superintendent for support services", "secretary to assistant superintendent for curriculum, instruction and staff development", and "secretary to assistant superintendent for secondary education" are confidential employees within the meaning of RCW 41.56.030(2)(c).

ORDER

1. The bargaining unit described in paragraph six of the foregoing findings of fact excludes the positions of "fiscal analyst", "payroll manager", "secretary to assistant superintendent for support services", "secretary to assistant superintendent for curriculum, instruction and staff develop-

ment", and "secretary to assistant superintendent for secondary education".

2. The interim certification previously issued designating CPEA/WEA of Franklin Pierce as exclusive bargaining representative of the bargaining unit shall stand as the certification of representative in this proceeding.

Dated at Olympia, Washington, this 15th day of November, 1991.

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.



FFFFFFF	LL	AAA	SSSSS	HH	HH	DECISION
FF	LL	AA AA	SS SS	HH	HH	DECISION
FF	LL	AA AA	SS	HH	HH	ECISIO
FFFFFF	LL	AAAAAAA	SSSSS	HHHHHHH		CISI
FF	LL	AA AA	SS	HH	HH	IS
FF	LL	AA AA	SS SS	HH	HH	
FF	LLLLLLL	AA AA	SSSSS	HH	HH	DECISION

CLASSIFIED PUBLIC EMPLOYEES
ASSOCIATION/CPEA/WEA
and
FRANKLIN PIERCE SCHOOL DISTRICT

DECISION 3371-A (PECB)

NPER 9.380 GENERAL LEGAL PRINCIPLES--EVIDENCE--STIPULATIONS.

NPER 32.44 CERTIFICATION PROCEDURES--PREHEARING PROCEDURES AND CONDUCT--STIPULATION.

Stipulations made in election agreements during course of representation proceedings are binding upon parties, except for good cause shown. Franklin Pierce School District, Decision 3371-A (PECB, 1991).

NPER 16.22 EMPLOYEES WITH LIMITED STATUTORY PROTECTION--CONFIDENTIAL EMPLOYEES--STANDARDS.

Office-clerical employees who provide support services to members of superintendent's cabinet held to be "confidential" employees. Franklin Pierce School District, Decision 3371-A (PECB, 1991).

NPER 35.1 ELECTION--CONSENT AGREEMENTS.

Actions taken by former exclusive bargaining representative concerning exclusions from unit are not binding on successor bargaining representative. Franklin Pierce School District, Decision 3371-A (PECB, 1991).

By: Marvin L. Schurke
Executive Director
November 15, 1991

Roger U. Cantaloube, for the union.
William A. Coats, for the employer.

Case 8227-E-89-1394

MSD