

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CLASSIFIED PUBLIC EMPLOYEES)	
ASSOCIATION / WEA)	CASE 9017-E-91-1492
)	
Involving certain employees of:)	DECISION 3911-B - PECB
)	
PATEROS SCHOOL DISTRICT)	CERTIFICATION
)	
)	

Faith Hanna, Attorney at Law, Washington Education Association, appeared for the petitioner.

James Hobbs, Labor Relations Consultant, appeared on behalf of employer at the hearing. Fristoe, Taylor & Schultz, by Frank W. Groundwater, Attorney at Law, and Johnson, Gaukroger & Johnson, P.S., by Phillip R. Johnson, Attorney at Law, filed objections on behalf of the employer.

This case comes before the Commission on timely objections filed by the employer, seeking to overturn a ruling made by Executive Director Marvin L. Schurke with regard to a claimed "confidential" employee. The employer simultaneously filed a motion to reopen the hearing in this matter, to receive additional evidence concerning the position claimed to be "confidential".

BACKGROUND

The Pateros School District provides educational services for approximately 270 students in kindergarten through the 12th grade. The employer operates one campus, with several buildings clustered within a radius of one city block. Gary Patterson has been the superintendent at Pateros since 1987. The employer has approximately 20 certificated employees, including the principal/athletic director/librarian at the high school. The employer has 17

classified employees, whose work time accumulates to 7.0 "full-time equivalent" employees for funding purposes.

The employer's classroom aides, office-clerical employees, bus drivers, food service workers, and custodians have historically been represented by the Pateros School District Classified Employees (PSDCE). The latest contract between the employer and the PSDCE expired on August 31, 1990.

On February 12, 1991, the Classified Public Employees Association (CPEA), an affiliate of Washington Education Association, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The CPEA sought to replace the PSDCE as the exclusive bargaining representative of classified employees of the Pateros School District.

At a pre-hearing conference held on March 11, 1991, the parties framed issues concerning the eligibility of 7 of the 19 potential voters, including a claim by the employer that its bookkeeper, Jane Hiltz, should be excluded from the petitioned-for bargaining unit as a "confidential" employee. A hearing was held at Pateros, Washington, on March 28, 1991, before Hearing Officer J. Martin Smith. On May 16, 1991, the PSDCE filed a written disclaimer of its bargaining rights for the unit involved.

On November 12, 1991, the Executive Director issued a Direction of Election in the matter.¹ In addition to calling for an election to determine the question concerning representation, the Executive Director ruled that Hiltz was not a "confidential" employee, noting that the record "left the impression that the information [possessed by Hiltz] was generally available to the public".

¹ Pateros School District, Decision 3911 (PECB, 1991).

A representation election was conducted under the auspices of the Commission on November 26, 1991, at which time 13 votes were cast in favor of the CPEA and one vote was cast against representation. There were no challenged ballots. Following the filing of the employer's objections, the Commission issued an interim certification of the CPEA as exclusive bargaining representative.²

POSITIONS OF THE PARTIES

The objections filed by the employer focus solely on the Executive Director's decision to include Jane Hiltz within the bargaining unit. The employer argues that the Executive Director placed too narrow a focus on testimony by Hiltz that all of the financial data she works with is available to the general public. It claims that the scope of financial information accessed by Hiltz warrants a conclusion that she has an intimate, fiduciary relationship with the superintendent of the school district on labor relations matters. The employer asserts that mention of the job description for the position held by Hiltz and of the pay rate for that position was irrelevant, and that she should be excluded as a "confidential" employee.

The CPEA contends that the Executive Director's ruling concerning Hiltz was proper, and should not be overturned. It notes the wide scope of disclosure of public records required by Chapter 42.17 RCW, and the past involvement of Hiltz as a representative for classified employees in collective bargaining with the school district, while occupying her current position. The CPEA argues that the hearing should not be reopened in the absence of newly discovered evidence or other good cause.

² Pateros School District, Decision 3911-A (PECB, 1991).

DISCUSSIONThe Motion to Reopen

The employer seeks to reopen the record in this case to receive the testimony of Superintendent Gary Patterson. The employer does not claim any change of circumstances since the hearing in this matter, nor does it claim newly discovered evidence which was not available to it at the time of the hearing. It simply seeks to buttress the assertion that Hiltz is a "confidential" employee.

Commission precedent precludes reopening a hearing except for good cause. Tacoma School District, Decision 2075 (EDUC, 1984); Kitsap County, Decision 2116 (PECB, 1984). The inadvertent failure to offer available evidence does not constitute good cause to reopen a record. Since the employer has not offered any other justification for failing to previously offer the evidence which it now wants considered, the employer's motion to reopen is DENIED.

The "Confidential" Claim

"Confidential" employees are excluded from coverage of the Public Employees' Collective Bargaining Act by RCW 41.56.030(2)(c). The statutory exclusion was given a narrow interpretation by the Supreme Court of the State of Washington in International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978), where the court stated in relevant part:

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.

IAFF v. City of Yakima [emphasis by bold supplied].

The Commission has applied the foregoing "labor nexus" test in numerous subsequent cases. In this case, the employer recognizes that the confidential exception is narrowly construed, and that 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). The issue here is whether that burden was met.

Jane Hiltz has served as the bookkeeper for the employer since 1975. She is a "12 month" employee, who works at the employer's central office. Her work shift is from 7:00 a.m. to noon and 1:00 p.m. to 4:00 p.m. Hiltz handles all of the employer's financial matters, except for funds held by the Associated Student Body (ASB). She is responsible for payroll, and administration of the employer's budget. She receives warrants which constitute revenue, and makes appropriate bank arrangements. She also pays out the district's money for accounts payable and payroll.³ It is her job to know the fund balances for various school district accounts, so that she can quickly keep the superintendent and school board informed of such information. She prepares year-end financial and personnel reports for submission to the Superintendent of Public Instruction (SPI). Certain claims and general grant information is processed through her desk. When Hiltz is not available to perform

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Hiltz is custodian of the "hours-worked" ledger for the classified employees, and testified in this proceeding concerning the work hours for other disputed individuals.

these tasks, an office aide substitutes for her. Hiltz has done some typing in the absence of the secretary to the superintendent, Kathy Barlow.⁴

Hiltz once served on the bargaining team for the PSDCE, but has not done so since approximately 1981. Currently, Hiltz assists the superintendent in preparing for collective bargaining, by gathering information, calculating the revenue available to the school district and the dollars available for bargaining purposes, and preparing computations of employee salaries and possible salary and benefit increases. In general, Hiltz formulates financial information for labor relations at Superintendent Patterson's request.

The foregoing duties would normally demonstrate a sufficient relationship to the formulation of labor relations policy to meet the "labor nexus" test, but Hiltz's testimony about her job functions cast some doubt on the "confidential" nature of the materials she prepares. On the basis of Hiltz's unrebutted testimony that she understands the information she prepares is available to the public, the Executive Director found that Hiltz's work product was not kept confidential, and thus did not merit her exclusion from collective bargaining rights.

The Executive Director correctly noted that not all mathematical computations are "confidential". The budget and salary reporting for all Washington school districts are standardized under procedures prescribed by SPI. Because of requirements of the Public Disclosure Act, most school district budget data is public information.⁵

⁴ The Executive Director excluded Barlow from the unit as a "confidential" employee.

⁵ Chapter 42.17 RCW. See, also, AGO 1973, No. 4.

One could speculate from part of Hiltz's testimony that even if her work product might eventually be made available to the public, it would be kept confidential until completion of the collective bargaining process. If that is in fact the case, we would likely find sufficient confidentiality to meet the "labor nexus" test.⁶ For present purposes, however, we agree with the Executive Director that individuals should not be excluded from the protections of Chapter 41.56 RCW based on speculative inferences from a record that can reasonably be read two different ways.

It was the employer's obligation to make clear its expectation that Hiltz would keep confidential, for at least some period of time, the information that she prepared. The record does not indicate that such an expectation necessarily existed. Consequently, we find that the employer has not established the necessity for the exclusion of Hiltz from all collective bargaining rights. See, City of Seattle, Decision 1797-A (PECB, 1985).

WAC 391-35-020(1) permits the raising of a "confidential" claim at any time. Should the employer believe it can establish, by words or conduct, that the labor relations financial information prepared by Hiltz for Superintendent Patterson and the school board is to be kept confidential, it can certainly initiate a unit clarification proceeding under Chapter 391-35 WAC. If such a petition is filed, the union may even choose to recognize the likely result of a unit

⁶ In this regard, we agree with the employer that Hiltz's rate of pay and lack of involvement in labor relations strategy sessions do not preclude her exclusion as a "confidential" employee. Participation in strategy sessions would support a "confidential" exclusion, but that exclusion is not limited to those who directly participate in the formulation of labor relations policy and objectives. It also extends to those support personnel who process sensitive labor relations-related material at the direction of those directly responsible for collective bargaining matters. Oak Harbor School District, Decision 3581 (PECB, 1990); Franklin Pierce School District, Decision 3371-A (PECB, 1991).

clarification petition supported by persuasive evidence, and elect to agree to the exclusion of Hiltz from the bargaining unit. While that may be the eventual result, our decision must be based on the record before us.

NOW THEREFORE, it is

ORDERED

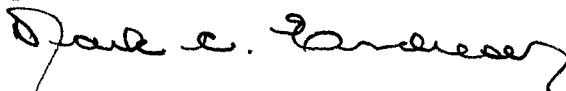
1. The objections filed by the Pateros School District in this matter under WAC 391-25-590(1) are DENIED.
2. The interim certification issued in this matter shall stand as the certification of the Classified Public Employees Association as exclusive bargaining representative.

Entered at Olympia, Washington, the 21st day of May, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



DUSTIN C. MCCREARY, Commissioner