



ities, including: Three employees with the job title of "supervisor"; three employees with the job title of "assistant supervisor"; and one employee classified as "training officer". Additionally, the Hearing Officer raised concerns about the list of employee classifications either currently or proposed to be excluded from the proposed bargaining unit, including: "Operations manager", "administrative secretary", "accounting assistant/payroll technician", "computer aided dispatch (CAD) coordinator", "records management system (RMS) coordinator", "clerk typist", and "technician". The parties entered into an election agreement, pursuant to WAC 391-25-230, in which they stipulated that an appropriate bargaining unit could be described as follows:

All full-time and regular part-time employees of SNOPAC; excluding supervisors and confidential employees of SNOPAC.

The parties also signed a supplemental agreement, pursuant to WAC 391-25-270, reserving issues concerning the 14 disputed positions for subsequent proceedings.

The parties agreed on a tentative election date of February 23, 1993, and the election was held on that date. The results were as follows:

78 employees eligible to vote  
50 votes cast for Association of SNOPAC Employees  
3 votes cast for Teamsters Local 763  
1 vote cast for No Representation  
3 challenged ballots

No objections were filed, and an interim certification was issued designating the petitioner as the exclusive bargaining representative for the bargaining unit involved.<sup>1</sup>

---

<sup>1</sup> Snohomish County Police Staff and Auxiliary Services Center, Decision 4313 (PECB, 1993).

The evidentiary record forming the basis for determining the eligibility issues reserved in the supplemental agreement has been accumulated in several steps:

It appeared during the initial pre-hearing conference that there was a possibility of resolving the eligibility issues without a hearing, and the parties agreed that the employer would supply the Hearing Officer and the other parties with specific documentation concerning the responsibilities of the disputed job titles. On February 16, 1993, the employer provided the job descriptions for all the positions in question.

Following the issuance of the interim certification, the Hearing Officer conducted another pre-hearing conference on this matter. The petitioner and employer agreed that there were no material questions of fact to be decided, and that the issues could be resolved by stipulated facts and argument, in lieu of a formal hearing.<sup>2</sup>

On March 16, 1993, the Hearing Officer conducted a third pre-hearing conference, at which time the employer withdrew its request to have the positions of "supervisor", "assistant supervisor" and "training officer" excluded from the bargaining unit. The following classifications remained in dispute, however: "Operations manager", "CAD coordinator", "RMS coordinator", "technician", "administrative secretary", "accounting assistant/payroll technician" and "clerk typist".

On April 28, 1993, the petitioner and employer jointly submitted a stipulation regarding challenged ballots, together with updated job descriptions for some of the disputed positions.

The Hearing Officer held an additional pre-hearing conference, by means of a telephone conference call conducted with representatives of the parties on May 5, 1993. By that time, the parties agreed to the disposition of certain of the positions earlier in dispute: The "technician" position was included in the bargaining

---

<sup>2</sup>

Teamsters Local 763 did not take part in the proceedings after the issuance of the interim certification.

unit; the "operations manager", "administrative secretary" and "accounting assistant / payroll technician" positions were excluded as confidential employees. Only the "CAD coordinator"; "RMS coordinator" and "clerk typist" remained at issue.

The parties agreed to jointly submit a supplemental stipulation of facts, for final determination of the remaining disputed positions. It was submitted on May 13, 1993.

#### BACKGROUND

The STIPULATION REGARDING CHALLENGED BALLOTS filed by the parties contained the following:

The Employer, Snohomish County Police and Auxiliary Services Center ("SNOPAC") and the Collective Bargaining Unit, the Association of SNOPAC Employees, by and through their respective, undersigned counsel hereby stipulate and agree as follows:

1. SNOPAC is an interlocal association of municipalities and special purpose districts organized to provide police and emergency communications and related services and is a public employer.

2. SNOPAC operates its communications center from facilities in the Snohomish County Courthouse. The facilities for receipt of 911 telephone calls and police and emergency dispatching are located in the basement of the Courthouse. The administrative offices of SNOPAC are located on the first floor of the Courthouse.

3. SNOPAC originally requested that the position of Director, Assistant Director, Computer Aided Dispatch ("CAD") Coordinator, Record Management System ("RMS") Coordinator, Operations Manager, Training Officer, Technician, Administrative Secretary, Accounting Assistant / Payroll Technician, Clerk Typist, and Supervisor be considered and determined to be outside the bargaining unit. After discussion with the bargaining unit and the affected employees, the Employer has withdrawn its request to have the positions of Supervisor and Training Officer be considered and determined to be outside the bargaining unit.

4. The SNOPAC Director is the executive head of SNOPAC and leads the administrative team which includes

the Assistant Director, the CAD Coordinator, the RMS Coordinator, the Operations Manager and is supported by the Administrative Secretary, the Accounting Assistant/Payroll Technician, the Clerk Typist and the Technician. The SNOPAC Director is involved in formulating collective bargaining proposals and labor management policy on a regular and on-going basis. He is involved in directing collective bargaining. Historically, this position has not been in the bargaining unit.

...  
6. The Operations Manager is in charge of the communications center in the absence of the Director and Assistant Director. She evaluates the performance of bargaining unit employees and investigates allegations of employee misconduct as well as initiating disciplinary sanctions where appropriate. On a daily basis, the Operations Manager applies the collective bargaining agreement. She participates on the Director's management team and develops labor management policy. She is directly involved in labor negotiations on the employer's negotiating team. Historically, this position has not been in the bargaining unit. ...

7. The CAD Coordinator has primary, direct responsibility for the CAD system. The CAD system is a relatively new aspect of the delivery of SNOPAC services. The CAD Coordinator has and will be developing policies related to employee access and use of the CAD system. Because CAD coordination involves technical aspects of equipment and access beyond general departmental administration, within his area of operation, the CAD Coordinator develops the employer's labor management policies subject to review and approval by the Director's management team on which the CAD Coordinator is a participant. The CAD Coordinator provides coverage for the RMS Coordinator. The CAD Coordinator is responsible for monitoring employee compliance with policies and procedures in the utilization of the CAD system and formulating disciplinary recommendations to the Director where warranted and revoking security clearances to data files where necessary to protect the integrity of the system and confidence of the user agencies. Although relatively new, this position or a comparable position has not previously been in the bargaining unit. ...

8. The RMS Coordinator has primary, direct responsibility for the RMS system. The RMS system, like the CAD system, is a new aspect of SNOPAC services. Because RMS coordination involves technical aspects of equipment and access beyond general departmental administration, within his area of operation, the RMS Coordinator has and will be developing policies related to and governing employee access and use of the RMS system. The

RMS Coordinator will evaluate employee use of the RMS system and investigate allegations or complaints of misuse. Where appropriate, the RMS will formulate a disciplinary recommendation and restrict access by bargaining unit employees. The RMS Coordinator, having primary responsibility for the RMS system, will formulate labor management policy with respect to that system. This policy will most probably have an affect on labor management matters and negotiations. The RMS Coordinator is on the Director's management team. Although relatively new, this position or a comparable position has not previously been in the bargaining unit. ...

9. The Administrative Secretary provides direct support for the director, Assistant Director, Operations Manager, CAD and RMS Coordinators. She works closely with the Director who is the executive head of SNOPAC and provides word processing and security for important and confidential matters such as labor negotiations strategy (including proposals and counter-proposals during collective bargaining and other occasions of labor-management interaction), disciplinary investigations and employee evaluations on a regular and on-going basis. The Administrative Secretary also maintains the minutes of the Board of Director meeting [sic] including those that occur in executive session (closed sessions allowed for limited purposed under the Open Meeting Act for certain confidential matters) including Board approval of labor management strategies and policies. The Administrative Secretary shares an office immediately adjacent to the Directors office with the Accounting Technician / Payroll Assistant and Clerk Typist; she has cause to go into the Directors [sic] office frequently during the day. All of the administrative files of SNOPAC, including those maintained for collective bargaining and labor/management purposes, are maintained by her. This position has not historically been in the bargaining unit. ...

10. The Accounting Technician / Payroll Assistant is a part-time position working the equivalent of 55% of a full time equivalent ("FTE"). In addition to completing the documentation for payroll for all employees at SNOPAC, the Accounting Technician / Payroll Assistant fills in for the Administrative Secretary in nearly all the duties of the Administrative Secretary including providing support to the Director and his management team on confidential matters such as preparation of documentation involved in labor negotiations and disciplinary investigations. The Accounting Technician / Payroll Assistant also provides information to the Employer's bargaining team that is utilized in the formulation of wage offers and types and prepares financial date [sic] that is used in labor negotiations. Because the duties

of the Administrative Secretary take her out of the administrative offices with some regularity (e.g., Board meetings which are not held at the administrative offices), the Accounting Technician / Payroll Assistant fill [sic] in for the Administrative Secretary to some extent every day. The nature of the administrative offices make it extremely difficult or impossible to exclude the Accounting Technician / Payroll Assistant from access to confidential information including that related to disciplinary investigations and labor management policy development. Additionally, the Accounting Technician / Payroll Assistant will be participating on the employer's negotiating team to prepare the employer's note [sic] and minutes of the negotiating sessions which will require her to have access to strategy discussions during negotiations. This position has not historically been in the bargaining unit. ...

11. [The] Clerk typist is a half-time position which provides coverage for the Administrative Secretary at those times when the Accounting Technician / Payroll Assistant is not available due to the latter's part-time schedule or other duties. Like the Accounting Technician / Payroll assistant, the Clerk Typist shares an office with the Administrative Secretary immediately contiguous to the Director's office and is, thusly, in the immediate proximity of confidential discussions and documents that could not be maintained more privately without great expense and a significant realignment of the Clerk Typist's duties. Effectively, the Accounting Technician / Payroll Assistant and the Clerk Typist equate to an additional FTE confidential assistant to the Director and his management team. This position has not historically been in the bargaining unit. ...

12. With respect to the Communications Technician, while this position has not been historically in the bargaining unit, SNOPAC would acknowledge that on an application of the confidential assistant or supervisor standard, this position would not, on its face, meet that test. Thus, SNOPAC will withdraw its prior objection to this position being considered a public employee included as part of the bargaining unit.

13. The positions of Director, Assistant Director, Operations Manager, CAD Coordinator, RMS Coordinator, Administrative Secretary, Accounting Technician / Payroll Assistant, and Clerk Typist are physically removed, except for occasional monitoring and supervision, from the location of the principle [sic] activities of the dispatchers and information specialists. In addition, the work activities are distinctly different from the daily dispatching and information telephone answering

activities of the dispatchers and information specialists that comprise the historic bargaining unit.

[Emphasis by **bold** on positions remaining at issue.]

### The CAD Coordinator Position

The job description submitted by the employer for the position of "COMPUTER AIDED DISPATCH (CAD) COORDINATOR" was as follows:

1. DESCRIPTION: The CAD Coordinator is a staff position and reports directly to the Director. The individual shall oversee the overall performances of CAD system operations and work closely with the RMS Coordinator.
2. RESPONSIBILITIES:
  - a. Administer and coordinate the day to day functioning of the county-wide CAD system.
  - b. Plan, research and develop future system enhancements and such modifications as may be required for system growth and/or addition of new system users.
  - c. Serve as primary liaison between SNOPAC and the CAD user groups.
  - d. Maintains the CAD system and minimizes system downtime.
  - e. Administer and/or coordinates the technical functions of the CAD database including maintenance of associated tables, system security, and, arranging normal and emergency hardware and software maintenance.
  - f. Develops and conducts a CAD system training program for all system users.
  - g. Responds to complaints, concerns and/or questions from system users regarding system availability, functionality and operation.
  - h. Develops and coordinates cost effective CAD training for current and new system users.
  - i. Instructs shift supervisors and other key personnel in system testing and maintenance.
  - j. Develops an annual CAD operating budget.
  - k. Facilitates user group meetings as required.
  - l. Participates in SNOPAC staff meetings and supervisor meetings.



m. Performs, or causes to be performed file maintenance assistance for CAD files.

n. Prepares statistical reports as necessary.

o. Coordinates and integrates applicable functions of the CAD and RMS system and works closely with the RMS coordinator.

p. Analyzes technical, operational, and financial requirements pertaining to CAD/RMS implementation and integration.

q. Maintains an accurate and detailed account on system operation history of all hardware and software of the CAD system. Documentation will include the problem reported, analysis/repair, and end result.

m.[sic] Records on magnetic cassettes a file of system history for backup record purposes.

n.[sic] Verifies MSAG data provided by the E9-1-1 Coordinator's office and enters the data into the CAD Geo-File.

o.[sic] Coordinates with the E9-1-1 Coordinator, Boundary Review Board, and affected agencies for geographic annexations.

p.[sic] Updates the Director periodically on the status of the CAD system and advises the Director when significant problems are impending or occurring.

q.[sic] Performs other related duties as required.

...

#### 4. DESIRABLE EDUCATION AND EXPERIENCE

a. A two-year technical degree in electronics, computer science, or a related field and two years experience in computer system operations; or a total of five years experience in the coordination of a Computer Aided Dispatch System.

b. Five years experience in a public safety communications center.

[Emphasis by underlining supplied.]

The "stipulations regarding challenged ballots" filed on April 28, 1993 included an "updated" job description which changed the CAD coordinator position as follows:

In the first paragraph, the underlined phrase designating this as a "staff" position was deleted;

Paragraph 2.f was altered to read:

"f. Prepares collective bargaining proposals on CAD for the Director."

Paragraph 2.g was altered by adding:

"... and investigates complaints of system misuse or security clearance issues including determinations of disciplinary action."

and:

"... as well as employees."

The paragraph lettering of the CAD job description was changed to follow a normal sequential pattern.

#### The RMS Coordinator Position

The job description submitted by the employer for the position of "RECORDS MANAGEMENT SYSTEM (RMS) COORDINATOR" position was:

1. DESCRIPTION: The RMS Coordinator is a staff position and reports directly to the Director. The individual shall oversee the overall performance of RMS system operations and work very closely with the CAD Coordinator.
2. RESPONSIBILITIES:
  - a. Administers and coordinates the day to day functioning of the county-wide RMS system.
  - b. Plans, researches and develops future system enhancements and such modifications as may be required for system growth and/or addition of new system users.
  - c. Serves as primary liaison between SNOPAC and the RMS user groups.
  - d. Maintains the RMS system and minimizes system downtime; coordinates with/assists the CAD coordinator to minimize CAD system downtime.
  - e. Administers and/or coordinates the technical functions of the RMS Oracle database including maintenance of associated tables, system security; and, arranging normal and emergency hardware and software maintenance.
  - f. Responds to complaints, concerns and/or questions from system users regarding system availability, functionality and operation.

g. Develops, coordinates and conducts cost effective RMS training for current and new system users.

h. Instructs shift supervisors and other key personnel in system testing and maintenance.

i. Develops an annual RMS operating budget.

j. Facilitates user group meetings as required.

k. Participates in SNOPAC staff meetings and supervisor meetings.

l. Performs, or causes to be performed file maintenance assistance for RMS files and tables.

m. Prepares statistical reports as necessary.

n. Coordinates and integrates applicable functions of the RMS and CAD systems and works closely with the SNOPAC CAD Coordinator.

o. Analyzes technical, operation, and financial requirements pertaining to CAD/RMS implementation and integration.

p. Maintains an accurate and detailed account on system operation history of all hardware and software of the RMS system. Documents reported problems, analysis/repairs, and end results.

q. Records on magnetic cassettes a file of system history for backup record purposes.

r. Updates the Director periodically on the status of RMS operations and advises the Director when significant problems are impending or occur.

s. Performs other related duties as required.

...

#### 4. DESIRABLE EDUCATION AND EXPERIENCE

a. A two-year technical degree in electronics, computer science, or a related field and two years experience in records management system operations; or a total of five years responsibility for the coordination of an integrated computerized system network.

b. Five years experience in a public safety records system.

[Emphasis by underlining supplied.]

Parallel to the changes made in the "CAD coordinator" job description, the RMS coordinator job description was later modified by adding two paragraphs:

"g. Responds to and investigates complaints of employee misuse of the system or misconduct relating to the RMS system including formulating disciplinary sanctions."

and:

"j. Prepares collective bargaining proposals for management or [sic] the RMS system."

#### The Clerk/Typist Position

The job description for the "clerk/typist" position submitted by the parties is as follows:

1. DESCRIPTION: This is clerical and receptionist work for the Director, Operations Manager, Personnel Manager and Administrative Secretary. Position is primarily for the purpose of training and/or orientation of office procedures and policies. Work is performed under the direct supervision of the Administrative Secretary within prescribed rules, regulations and policies as set forth by the Director. Incumbent may be called upon to assume some of the duties and functions of the Administrative Secretary, in the Administrative Secretary's absence.

2. RESPONSIBILITIES:

a. Receives and routes all administrative telephone calls and visitors, takes messages and answers inquiries when appropriate.

b. Opens, dates and sorts all mail and delivers same to the Administrative Secretary for further attention.

c. Performs all filing functions and maintains filing system in a secure, organized and up-to-date manner. Also prepares all out-dated material for shredding or long-term storage as outlined in the Center's retention plan.

d. Checks all invoices for payment and accuracy and delivers same to Administrative Secretary for voucher preparation.

e. Posts all vacation and sick leave adjustments to Center schedules and delivers same to Administrative Secretary for time accrual preparation.

f. Performs typing duties as assigned, including preparation of confidential documents.

g. Provides coverage for Administrative Secretary and Accounting Assistant/Payroll Technician when necessary.

h. Performs such additional duties as may be required. ...

[Emphasis by underlining supplied.]

The underlined phrase in paragraph 2.f was not included in an earlier job description, dated 1985, supplied by the employer.

#### The Supplemental Stipulation

The "supplemental" stipulation of facts submitted by the petitioner and employer on May 13, 1993 includes:

...  
1. The Computer Aided Dispatch ("CAD") Coordinator and the Records Management System ("RMS") Coordinators are responsible for their respective, highly technical areas of operation within SNOPAC. Because their areas of operation are highly technical, they initiate certain labor management policies that apply to those technical areas of their respective operations. These coordinators also evaluate employee utilization of the CAD and RMS systems, respectively, and on occasion make disciplinary recommendations including whether suspension or termination is appropriate for an abuse of the labor management policies relating to the RMS and/or CAD systems, respectively.

2. Recommendations which are made by the RMS and CAD Coordinators within their area of technical expertise and including labor management policies are, effectively, ratified by the directors and become the policies of SNOPAC. This is distinguished from more general recommendations that might be made of a general administrative or general managerial type which such recommendations would be more susceptible to debate and modification when

made to the director or the director's management team.

4. In the current office facility and office duties configuration of the SNOPAC administrative offices, the Clerk Typist position is one-half of a full time equivalent ("FTE"). The Clerk Typist functions, along with the Accounting Assistant / Payroll Technician, as an Assistant Administrative Secretary. In that capacity, the Clerk Typist performs the Administrative Secretarial duties when the Administrative Secretary is unavailable to perform them. These duties include preparation of confidential memoranda, filing of confidential documentation, including labor management policy development documents. The Administrative Secretary, the Accounting Assistant / Payroll Technician and the Clerk Typist all share the same office which includes the administrative office's filing cabinets. To restructure the Clerk Typist position so it does not perform any confidential document preparation or confidential document filing, in light of the configuration of the office and the unpredictability of the inability of the Administrative Secretary or the Accounting Assistant / Payroll Technician to perform the same would constitute a significant restructuring of job duties as well as the prospect of a reconfiguration of the office space. Both components of this restructuring would likely have identifiable cost implications.

4. Since the Accounting Assistant / Payroll Technician and the Clerk Typist are each, respectively, approximately one-half time positions, the total number of FTEs that the employer would have designated as confidential assistance to the Executive Director and the management staff would be two FTEs.

5. The parties agree that, to the extent the job descriptions of the positions historically excluded from the Bargaining Unit do not precisely set forth the facts of the Stipulation and the Supplemental Stipulation, the job descriptions will be updated so that those stipulated facts are expressly or impliedly part of the job descriptions.

POSITIONS OF THE PARTIES

The employer argues that the CAD and RMS coordinators should be excluded, as supervisors, from the bargaining unit. It alleges that these technical coordinators make recommendations which influence employment policy and procedures involving members of the bargaining unit. Concerning the clerk typist position, the employer asserts that the position should be excluded from the bargaining unit as a confidential employee, because it works closely with and fills in for the administrative secretary, who the parties agree is a confidential employee.

While generally concurring with the employer's arguments, the focus of a collateral argument advanced by the petitioner was on the "community of interest". It points out that, with the exception of the technician position now included in the bargaining unit, all members of the historical bargaining unit are involved in either emergency dispatching or information resource work. The petitioner sees the historical unit as a homogeneous community of interest, into which neither the coordinators and nor the clerk typist would comfortably fit. Furthermore, the petitioner asserts the "other side" of the employer's argument on the clerk typist position: The union indicates concern that, because the clerk typist works in the executive director's office with other confidential employees, the individual would be placed in a conflict of interest if attempting to have a meaningful role in the collective bargaining process as a member of the bargaining unit.

DISCUSSIONApplicable Legal Principles

Confidential employees are not "public employees" within the meaning of Chapter 41.56 RCW, and have no right to organize or

bargain collectively. In IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978), the Supreme Court of the State of Washington established a "labor nexus" requirement which has relevance to the employer's argument in the instant case:

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.

Thus, the "confidential" exclusion is limited to persons **necessar-ly** having access to confidential information concerning the labor relations policies of the employer, where disclosure could harm the collective bargaining process.<sup>3</sup>

Supervisors are "public employees" within the meaning and coverage of Chapter 41.56 RCW, and have a right to organize and bargain collectively. Municipality of Metropolitan Seattle (METRO) v.

---

<sup>3</sup> The standard of proof that was recently emphasized by the Commission in City of Mountlake Terrace, Decision 3832-A (PECB, 1992):

Exclusion of a position as "confidential" deprives the individual holding the excluded position of all collective bargaining rights. For that reason, the Commission has long emphasized that the party proposing exclusion of a position as "confidential", bears a heavy burden of proof. ... it is not enough to simply establish the existence of an intimate fiduciary relationship between the allegedly confidential employee and a public official. The "labor nexus" between actual job duties and the formulation of labor relations policy must be demonstrated as well.



Department of Labor and Industries, 88 Wn.2d 925 (1977). In RCW 41.56.060, the Legislature delegated authority to the Public Employment Relations Commission to determine the composition of appropriate bargaining units, including the eligibility of individual employees for inclusion in units.

DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining.

...

City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), stands for the proposition that, although employers and unions may agree on unit composition, they do not have the ability to bind the Commission by such agreements. Nor does their agreement at one point in time assure that the unit agreed upon is or will continue to be appropriate.

The standards for unit determinations concerning supervisors date back to at least Richland, supra, and are based on a potential for conflicts of interest within a bargaining unit if supervisors are included in the same unit with their rank-and-file subordinates. Chapter 41.56 RCW does not define "supervisor", but the Commission has looked to the definitions found in the National Labor Relations Act (NLRA) and the Educational Employment Relations Act, Chapter 41.59 RCW, in deciding "supervisor" claims under Chapter 41.56 RCW.

[S]upervisor ... means any employee having the authority, in the interest of the employer, to hire, assign, promote, transfer, layoff, recall, suspend, promote, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action if in connection with the foregoing exercise of such authority is not merely routine or clerical in nature but calls for

the consistent exercise of independent authority.

Those are the types of authority as to which the potential for a conflict of interest exists.

#### Supervisory Exclusions

The employer's arguments concerning the CAD coordinator and the RMS coordinator appear to contain a mix of "confidential" and "supervisor" theories. However, the employer's claim that the two coordinators "initiate certain labor management policies that apply to those technical areas of their operation" sounds more like the supervisory functions of directing work and assigning employees than any confidential functions. Similarly, the authority of the disputed individuals to "make disciplinary recommendations" is a supervisory role, not a basis for exclusion as a confidential employee. Confidential employees have a direct role in the collective bargaining process, while supervisors traditionally administer policies as a part of personnel management, whether or not they are responsible for the initial inception of such policies. It is the administration of such policies, not their creation, which presents potential conflicts of interest concerning subordinate personnel and justifies the exclusion of confidential managers and supervisors from a rank-and-file bargaining unit.

From the information supplied by the employer, the coordinators do not directly supervise bargaining unit personnel, except through their oversight of a specific technical aspect of the employer's operation (i.e., the use of specific equipment within the agency). The coordinators oversee technical operations, as opposed to personnel supervision. Within the agency, and within their respective areas of expertise, it is to be expected that the employer would, as stated, seriously consider the technical and personnel recommendations of such positions. Such recommendations have not,

however, been shown to have risen to the "effective recommendation" standard, particularly in relation to employee discipline or discharge, that is traditional in labor law.

The set of job descriptions submitted for these positions on February 16, 1993, had virtually no confidential or supervisory content. The amended job descriptions submitted on April 28, 1993, added some of the proper "buzz-word" phrases: "Prepares collective bargaining proposals on the CAD for the Director"; "Prepares collective bargaining proposals for management or the RMS system". An employer can change job descriptions to reflect actual position responsibilities. In this case, however, the amended job descriptions were clearly created in contemplation of their submission as evidence in this proceeding.<sup>4</sup> Without additional evidence to support them, the timing of the revisions calls into question the legitimacy of the asserted delegation of authority. Thus, the modifications to the descriptions have no probative value in this proceeding. Morton General Hospital, Decision 3521-B (PECB, 1991). The Hearing Officer is left without sufficient evidence to support exclusion of the CAD and RMS positions.

#### Confidential Exclusion

In the instant case, the employer's administrative offices are staffed by three employees who work in close proximity: The "administrative secretary", the "accounting assistant / payroll technician" and the disputed "clerk/typist". The first two positions have been stipulated to be confidential employees. The clerk/typist works only part-time and, based on the employer's own

---

<sup>4</sup> The original job descriptions for both the CAD and RMS coordinators contained the phrase: "... is a staff position." That phrase was deleted from the revised job description for the CAD coordinator, but was maintained in the RMS coordinator description. The precise meaning of the term, and of its deletion, was not made clear.

statement, would only perform "confidential" work in the absence of the administrative secretary.

Clerical employees involved in the formulation of labor relations policy may be found to be "confidential" employees. Two conditions have been identified as necessary to finding a "labor nexus": First, the work product of the position must be analyzed to establish that the individual claimed as "confidential" is in fact privy to documents closely connected to the employer's labor negotiations;<sup>5</sup> and second, the assignments given the position must be "necessary, regular and ongoing".<sup>6</sup> City of Cheney, Decision 3693 (PECB, 1991).

The employer's position appears to be premised upon a felt need to have a person available to do "confidential" work when the administrative secretary is not available. The argument fails to

---

<sup>5</sup> A clerical employee who typed the employer's proposals prior to their being submitted to the union, and who attended bargaining sessions to take notes for the employer, was judged to be a confidential employee in Oak Harbor School District, Decision 3581 (PECB, 1990). An accountant who prepared and reproduced cost analyses to be used by the employer in collective bargaining was found to be a confidential employee in Franklin County, Decision 3694 (PECB, 1991).

<sup>6</sup> Clerical employees with only sporadic or occasional contact with labor relations matters have not been excluded from the rights of the collective bargaining statute. Particularly pertinent to this case, a variety of clerical positions were denied confidential status in Clover Park School District, Decision 2243-B (PECB, 1987), because the employer's need to protect its labor relations policies from disclosure could be accommodated by minor changes of procedure. The Commission stated:

... we are hesitant to withhold statutory representation rights from the contested secretaries when reasonable accommodations can be made to eliminate any question of their confidentiality.

See, also, Benton County, Decision 2719 (PECB, 1989).

take the probable timing and amount of "confidential" work into account, however. The employer has only one, wall-to-wall, bargaining unit. The bulk of any "confidential" work load would likely occur during bargaining with that one unit. Contracts are customarily negotiated on a scheduled basis that is triggered by the expiration of the previous collective bargaining agreement, at an interval of not more than once per year and not less than once per three years. Any "confidential" work done in relation to that bargaining would usually be accomplished during the time immediately preceding and immediately following the expiration of the contract. For the clerk typist, the potential for performing "confidential" work would thus be much more limited than the times when the "administrative secretary" is not present. It would also be limited to the typing and processing of bargaining proposals or the processing of correspondence between various members of the employer's negotiating team. The parties have not stipulated any facts that would support a conclusion by the Hearing Officer that a meaningful amount of "confidential" work done will not be handled by the two positions already designated as "confidential".

The employer's position is also premised on physical arrangements in its office, arguing that a "significant restructuring" of its office configuration would be required if the clerk typist is not deemed to be a confidential employee. Even in a small workspace, however, it should be possible to handle materials in such a manner so as to not create a conflict of interest for the clerk typist:

The employer is in a position to take reasonable precautions to secure its sensitive labor relations [sic] 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.

City of Ocean Shores, Decision 2064 (PECB, 1993).

See, also, Cape Flattery School District, Decision 1249-A (PECB, 1982), where the Commission pointed out that operable locks are the reasonable and customary means for safeguarding the confidentiality of information.

#### COMMUNITY OF INTEREST

The petitioner would exclude the coordinators and the clerk typist from the otherwise wall-to-wall bargaining unit, on the basis that they do not share a community of interest with the bargaining unit. During the processing of the petition, and particularly after the multiple pre-hearing conferences, it became apparent that the petitioner's focus on organizing only the "downstairs" workforce would result in leaving the occupants of other non-supervisory positions "stranded", without effective access to collective bargaining. The parties then further weakened the distinction, by agreeing to put the "technician" who works "upstairs" in the petitioned-for bargaining unit.

Chapter 41.56 RCW has been administered by the Commission to prevent the stranding of positions without practical access to collective bargaining. The creation of two "one person" units was rejected in Town of Fircrest, Decision 248-A (PECB, 1977), noting that there is no duty to bargain in such a unit. Other cases indicate a reluctance to isolate employees or small groups:

... exclusion of the building official from the unit would have the dual effects of stranding the employee without any possibility of bargaining rights and fragmenting the employer's work force.

City of Snohomish, Decision 2712 (PECB, 1987).

Also weighing against acceptance of the employer's position here is that it would result in at least a temporary "stranding" of two employees. They would not be prevented from organizing for the purposes of collective

bargaining in the future, but the viability of a two-person unit in a workforce 2000 times that size must inherently be questioned. There is no evident community of interest on which to align the disputed employees with any other group of METRO employees. It is thus concluded that a separate unit of "radio maintenance equipment specialist" would not be appropriate.

Municipality of Metropolitan Seattle, Decision 3563 (PECB, 1990).

Concerns about "fragmentation" of bargaining units arise from time to time. **One very real concern is that employees not directly involved in an organizational effort will be deprived of their statutory bargaining rights by being left "stranded" alone or in a unit that is too small to bargain effectively.** Another concern is that the establishment of a bargaining relationship gives rise to a scope of "Bargaining unit work", and a duty on the part of the employer to give notice to the exclusive bargaining representative and provide opportunity for bargaining prior to transfer of bargaining unit work to employees outside of the bargaining unit. **Thus, decisions have required that fringe groups be incorporated into units that can be explained only on the basis of "extent of organization".**

City of Centralia, Decision 3495-A (PECB, 1991) [emphasis by **bold** supplied].

In the instant case, the bargaining unit sought by the petitioner is not stated as being a wall-to-wall unit, but the actual extent of organization is virtually employer-wide. Even though the clerk typist and the coordinator positions do not perform precisely the same work as the dispatchers, they share some commonalities by virtue of working for the same employer. They presumably work under the same personnel system and the same payroll system. There is no evidence that there are significant differences in vacations, holidays, health and welfare coverage, or other benefits. Furthermore, the three employees in question perform responsibilities in support of, and in conjunction with, the dispatching and informa-

tion retrieval work done by other bargaining unit employees. Work need not be identical to justify inclusion in a bargaining unit, particularly where the unit is a presumptively appropriate "wall-to-wall" unit, or is a "vertical" unit structured along lines of the employer's departmental or divisional organization.

#### FINDINGS OF FACT

1. The Snohomish County Police and Auxiliary Services Center (SNOPAC) is a "public employer" within the meaning of RCW 41.56.030(1). It provides emergency dispatch and information services to the citizens of Snohomish County.
2. The Association of SNOPAC Employees, a "bargaining representative" within the meaning of RCW 41.56.030(3), has received interim certification as exclusive bargaining representative of non-supervisory employees of SNOPAC, based upon the results of a representation election conducted by the Commission on February 23, 1993.
3. Prior to the certification of the Association of SNOPAC Employees in this proceeding, a history of bargaining existed for certain SNOPAC employees while they were represented by Teamsters Union Local 763. The historical bargaining unit included dispatcher, information specialist, dispatch supervisor, assistant supervisor, and training officer positions.
4. During the course of this proceeding, the employer initially objected to the inclusion of the positions titled "supervisor", "assistant supervisor" and "training officer" in the bargaining unit. Those specific objections were withdrawn by the employer during the course of a pre-hearing conference held after the election in this matter.



5. During the course of this proceeding, the parties disclosed that various other positions within the employer's workforce were not in the petitioned-for bargaining unit, including: "operations manager", "CAD coordinator", "RMS coordinator", "technician", "administrative secretary", "accounting assistant / payroll technician", and "clerk typist".
6. The parties subsequently entered into, and provided sufficient basis to support, a stipulation that the "operations manager" is properly excluded from the bargaining unit as a supervisor.
7. The parties subsequently entered into, and provided sufficient basis to support, a stipulation that the "administrative secretary" and "accounting assistant / payroll technician" are properly excluded from the bargaining unit as a confidential employees.
8. The parties subsequently entered into, and provided sufficient basis to support, a stipulation that the "technician" is a non-supervisory employee who is properly included in the bargaining unit involved in this proceeding.
9. On May 13, 1993, the petitioner and employer submitted additional stipulations concerning the duties of the CAD coordinator, RMS coordinator, and clerk typist positions.
10. The extent of organization in the employer's workforce is so widespread as to indicate that the petitioned-for bargaining unit encompasses the vast majority of the employer's workforce and is, in effect, a "wall-to-wall" bargaining unit. There is no evidence tending to establish that the clerk typist, CAD coordinator and/or RMS coordinator have wages, hours or working conditions which are substantially different from those of the "dispatch and information specialist" employees initially sought by the petitioner in this proceeding. Exclu-

sion of those employees from the petitioned-for bargaining unit on the basis that they are not directly involved in performing the same duties, would leave them "stranded", without effective means to assert collective bargaining rights under Chapter 41.56 RCW.

11. The circumstance of having only one bargaining unit among the non-supervisory employees of the employer limits the amount and timing of "confidential" work needed to be produced in the employer's offices. The "administrative secretary" is the principal assignee to handle confidential work; the accounting assistant / payroll technician provides backup to the "administrative secretary" for processing of confidential materials. The occasions for the clerk typist to perform work of a confidential nature are thus limited to situations when both of the stipulated confidential employees are absent, and then only at the limited times when confidential materials are being processed.
12. The clerk typist works in the same office area as the "administrative secretary" and the "accounting assistant / payroll technician", and they are expected to cover each other's work assignments when such assistance is necessary. The record fails to establish that the employer would be excessively burdened by making arrangements which exclude the clerk typist from access to confidential materials pertaining to the labor relations policies of the employer.
13. The CAD coordinator and RMS coordinator do not directly supervise bargaining unit employees. Rather, they are technical experts in their respective fields, who oversee and coordinate the use of specific equipment used by bargaining unit members to perform their duties. Although the CAD coordinator and RMS coordinator each "initiate ... management policies" and "make recommendations", those positions do not

have the authority to effectively recommend the hiring, firing or disciplining of bargaining unit employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The "CAD coordinator" and "RMS coordinator" are technical experts in their respective fields, but do not possess sufficient supervisory authority to create a conflict of interest within a bargaining unit, so that inclusion of the position from the bargaining unit at issue in this proceeding is not warranted under RCW 41.56.060.
3. The clerk typist assigned to the employer's administrative office is a public employee within the meaning and coverage of Chapter 41.56 RCW, and is not a "confidential" employee within the meaning of RCW 41.56.030(2)(c).
4. The bargaining unit involved in this proceeding is properly described as an employer-wide unit, by application of the "extent of organization" aspect of the unit determination criteria set forth in RCW 41.56.060, described as:

All full-time and regular part-time employees of Snohomish County Police Staff and Auxiliary Services Center, excluding the director, confidential employees and supervisors.


On the record made here, an exclusion of the "clerk typist", "CAD coordinator" and/or "RMS coordinator" positions from that appropriate bargaining unit would strand them without effective means to assert their collective bargaining rights under Chapter 41.56 RCW, and would make that unit inappropriate under RCW 41.56.060.

ORDER

1. The description of the appropriate bargaining unit involved in this proceeding is amended as described in paragraph 4 of the foregoing conclusions of law.
2. The position of "CAD coordinator" is included in the bargaining unit involved in this proceeding.
3. The position of "RMS coordinator" is included in the bargaining unit involved in this proceeding.
4. The position of "clerk typist" is included in the bargaining unit involved in this proceeding.
5. The interim certification issued in this proceeding shall stand as the final certification of representative, subject to the amendment of the unit description as specified in paragraph 1 of this order.

Issued at Olympia, Washington, on the 13th day of October, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).