

BACKGROUND

This case concerns two employees who perform office-clerical work in the municipal court operated by the City of Hoquiam. William Stewart, who has been judge of that court since 1990, testified that the administrative functions of the court are conducted by two employees: Bonnie Eisenhower and Karen Seguin. Eisenhower is classified as "clerk" and Seguin as either "clerk" or "deputy clerk". There is no written job description for the court clerk position. Both receive the same pay and benefits.

Eisenhower is the senior of the two clerks and is, by virtue of her background and experience, primarily responsible for administrative functions of the court, including receipt and disbursement of court funds and bookkeeping. The court has no position designated as administrator, but Eisenhower was directed by a former judge of the court to sign correspondence as court administrator, and has continued to do so. Seguin has primary responsibility as liaison with the police department. Both employees share duties in the courtroom while court is in session, and both are trained to perform all clerical functions of the court.

In the event of absence of one of the petitioned-for employees due to illness, vacation or other reasons, the other will perform the functions of the absent employee. Both employees are working 30 hours per week, due to budget restrictions. The court office is open for business from 8:30 a.m. to 5:00 p.m., which requires that each employee work alone approximately 10 hours per week. During the times they are working alone, the employee on duty assumes full responsibility for operation of the office.

Eisenhower believed she would be contacted in the event both clerks were absent from the office, in order to determine what steps should be taken relative to the functioning of the court's office. Eisenhower also believed she could make recommendations to the

judge concerning poor performance or discipline of the other employee, should the occasion arise, and that she might be directed by the judge to counsel the other clerk on attendance. None of the foregoing situations has occurred, however, nor has she ever received any instructions from the judge relative to her authority in these matters. Eisenhower stated she prepares budget data for review by the judge.

Judge Stewart testified that he is the supervisor of the two individuals. The judge holds court sessions each Tuesday. The judge is infrequently involved in day-to-day operations of the court at other times, but confirmed in his testimony that both clerks are cross-trained to perform all clerical functions, and that the division of their workload has been the result of the experience and aptitudes of the two clerical employees. Stewart stated he prepares the budget with input of financial data from Eisenhower, and after review with Seguin. Stewart regards both clerks as being equal in authority, capable of performing all clerical functions of the court and without any supervisory authority.¹

City Administrator Pete Wall also testified with regard to Eisenhower's duties. It was his view that Eisenhower is responsible for the day-to-day administration of the court, including assignment of clerical work functions and scheduling of work hours of the clerical staff. Wall believes that Eisenhower's recommendations concerning employment or discipline of the court's clerical staff would be influential in the decision making process of the judge of the court, but no specific examples were cited. Wall testified that he has had no direct dealings with Eisenhower with respect to the budgeting for the court's operation.

¹ Seguin corroborated Judge Stewart's account of the duties and responsibilities of the court clerks.

POSITION OF THE PARTIES

The union maintains that the two clerical employees of the Hoquiam Municipal Court form an appropriate bargaining unit. Basic to the union's contention is the premise that Eisenhower is neither a "supervisor" nor a "confidential employee".

In its post-hearing brief, the employer contended that the union is, in effect, seeking a clarification of an existing bargaining unit during a period wherein such attempt is untimely. The employer further asserts that Eisenhower is a "supervisor" or "confidential employee" who should be excluded from the proposed bargaining unit. The employer maintains that Eisenhower is a supervisor because of her responsibility for the day-to-day operation of the court, and should be regarded as a "confidential employee" since, in the event of labor negotiations, she would be privy to information involved in the formulation of labor relations policy.

DISCUSSIONExistence of "Question Concerning Representation"

Prior to filing the petition in this case, the union asked the employer to agree to inclusion of the two court clerks under the terms of the parties' existing collective bargaining agreement covering another bargaining unit. The employer declined, on the basis that the union's request was, in essence, for a unit clarification at an untimely period during the term of the parties' labor agreement. The union then commenced this proceeding under Chapter 391-25 WAC, by filing a petition for investigation of a question concerning representation. Having stipulated during the pre-hearing conference in this case that the union's petition was

timely, the employer asserted a "timeliness" issue in its post-hearing brief.

The employer's claim that the union is attempting to subvert Commission precedent and statutory mandates by filing the petition herein is not persuasive. Under the authority of Toppenish School District, Decision 1143-A (PECB, 1981), and WAC 391-35-020, a unit clarification by the union would have been considered untimely, and the employer quite properly rejected the union's effort to add the positions which are the subject of this petition to the existing bargaining unit. Although the union initially sought to utilize the unit clarification procedure with respect to these positions, it did not pursue that effort. Instead, it filed the petition herein when its "accretion" effort was resisted by the employer.

By filing the "representation" petition in this case, the union has appropriately placed before the Commission a question concerning the representation of the clerks working in the employer's municipal court operation. The Commission may direct an election among those unrepresented employees, if they constitute an appropriate bargaining unit. They need not be the **most** appropriate bargaining unit. Port of Seattle, Decision 3937 (PECB, 1991).

Proposed Exclusion of Eisenhower

The Commission has excluded "confidential employees" from bargaining units under RCW 41.56.030(2)(c), to prevent conflicts of interest affecting those who necessarily prepare confidential labor relations materials, or have access to such materials. IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978); City of Mountlake Terrace, Decision 3832-A (PECB, 1992). The Commission generally excludes "supervisors" from the bargaining units which include their subordinates, in order to prevent conflicts of interest affecting those who act on behalf of the employer in directing the workforce, and disciplining other employees. City of Richland,

Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981); City of Winslow, Decision 3520 (PECB, 1990).

The evidence adduced by the employer concerning the supervisory or confidential status of Bonnie Eisenhower consisted of testimony by Eisenhower and City Administrator Wall. Eisenhower is unquestionably the senior of the two clerical employees in the court, and she has concentrated her efforts on the administrative functions of the court. That evidence is not conclusive, however.

Although Eisenhower signs correspondence as "administrator", pursuant to an informal directive of a former judge, she is classified as a clerk. Although she prepares budget data for the judge, the other clerical employee is also consulted by the judge prior to submission of a budget request, and the city administrator does not deal directly with Eisenhower on budget matters. While she believed she would be asked by the current judge to counsel the other clerk in the office relative to disciplinary matters, and that she could make recommendations to the judge concerning employee discipline, it was clear that she had never been called upon to do so. Wall's testimony was that Eisenhower is responsible for the assignment of work and scheduling of work hours, but Eisenhower did not testify that she assigned work or scheduled work hours.

The testimony of Judge Stewart indicated that he saw himself as the supervisor of the clerical employees working in the municipal court. He testified that both employees are trained to perform all clerical functions of the court, that both clerical employees have equal authority, that the division of duties between the two clerical employees is solely the product of their prior exposure and aptitudes, and that neither of them is a supervisor. It was clear that Stewart himself dealt with the city administrator on the budget for the court.

The record indicates that the two clerks are fully interchangeable in their functions. There is no probative evidence which establishes that Eisenhower fits the criteria for exclusion as either a "supervisor" or a "confidential employee". The employer's claim that Eisenhower should be excluded as a "confidential employee" is particularly speculative, and is unsupported by probative evidence of any actual involvement with confidential labor relations materials. City of Chewelah, Decision 3103-B (PECB, 1989).

FINDINGS OF FACT

1. City of Hoquiam is a "public employer" within the meaning of RCW 41.56.020(1). Among other activities, the employer maintains and operates the Hoquiam Municipal Court. William Stewart serves as the judge of the court.
2. Washington State Council of County and City Employees, a bargaining representative within the meaning of RCW 41.56-.030(3), filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of certain office-clerical employees working in the Hoquiam Municipal Court.
3. The judge of the Hoquiam Municipal Court is the sole direct supervisor of the clerical and administrative functions of the court. The judge prepares and deals with the city administrator concerning the budget for the court.
4. The clerks of the Hoquiam Municipal Court perform office-clerical functions which they share, according to their preference or experiences, to provide efficient operation of the court. Neither of the clerks have any indicia of supervi-

sory authority over the other, and neither of them is or has been privy to confidential labor relations material.

6. The City of Hoquiam has not established that it will be necessary for it to rely upon the services of either of the clerks of its municipal court to formulate and implement labor relations policy with respect to the employees of the court.

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. Bonnie Eisenhower is a public employee within the meaning of RCW 41.56.030(2), and does not have a fiduciary relationship with the employer concerning labor relations matters so as to be deemed a "confidential employee" within the meaning of RCW 41.56.030(2)(c).
3. Exclusion of Eisenhower from the petitioned-for bargaining is not warranted under RCW 41.56.060, inasmuch as Eisenhower is not a "supervisor" whose inclusion in the unit would create a potential for conflicts of interest.
4. A bargaining unit consisting of all full-time and regular part-time office-clerical employees of the City of Hoquiam assigned to the municipal court is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and a question concerning representation currently exists under RCW 41.56.070 with respect to those previously unrepresented employees.

DIRECTION OF ELECTION

1. A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 4 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Washington State Council of County and City Employees or by no representative.
2. Bonnie Eisenhower shall be deemed an eligible voter in the election directed in this matter.

Issued at Olympia, Washington on the 21st day of April, 1994.

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.