

Grant County, Decision 11114 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

GRANT COUNTY

and

GRANT COUNTY PUBLIC EMPLOYEES
ASSOCIATION

For clarification of an existing
bargaining unit.

CASE 23916-E-11-1448

DECISION 11114 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Emmal Skalbania and Vinnedge, by *Patrick Emmal*, Attorney at Law, for the union.

Tammie Hechler, Human Resource Director, for the employer.

On April 7, 2011, Grant County (employer) and Grant County Public Employees Association (GCPEA) jointly filed a unit clarification petition under Chapter 391-35 WAC, seeking to clarify its existing bargaining unit of all full-time and regular part-time employees in various departments, certified as *Grant County*, Decision 7454 (PECB, 2001). The parties are seeking to exclude employees in the Accounting Department of the Auditor's Office as confidential. On May 4, 2011, Hearing Officer Kristi Aravena conducted a conference call with the parties where they stipulated to the exclusion of those positions. On June 2, 2011, the parties filed written stipulations.

ISSUE

Should the employees of the Accounting Department of the Auditor's Office be excluded from the existing bargaining unit as confidential?

The Executive Director accepts the stipulations made by the parties, and modifies the existing bargaining unit represented by the union to exclude the accounting employees at issue.

APPLICABLE LEGAL PRINCIPLES

Status as confidential - A public employer seeking a confidential employee designation has a heavy burden of proof, because confidential status deprives an employee of all collective bargaining rights. *King County Fire District 13*, Decision 9845 (PECB, 2007); *Pierce County*, Decision 8892-A (PECB, 2006); *State – Natural Resources*, Decision 8711-B (PSRA, 2006); *Town of Ruston*, Decision 9976 (PECB, 2008).

WAC 391-35-320 codifies the confidential employee test, often referred to as the labor nexus test, as follows:

Confidential employees excluded from all collective bargaining rights shall be limited to:

(1) 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 consistent exercise of independent judgment; and

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

It is not sufficient to simply establish the existence of an intimate fiduciary relationship between the alleged confidential employee and a public official because the labor nexus between actual job duties and the formation of labor relations policy must be demonstrated as well. *King County Fire District 13*, Decision 9845. Confidential employees' work assignments do not have to be exclusively or primarily confidential, but the employees must have "necessary, regular, and ongoing" confidential work assignments. *City of Redmond*, 7814-B (PECB, 2003), citing *City of Cheney*, Decision 3693 (PECB, 1991).

ANALYSIS

The employees in the Accounting Department of the Auditor's Office participate directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements.

The parties stipulate that the positions in the Accounting Department in the Auditor's Office are confidential and therefore excluded from the bargaining unit because the confidential duties are necessary, regular, and on-going.

CONCLUSION

The Executive Director finds that the stipulations filed by the parties are sufficient to constitute a basis for a ruling, and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the clarification requested by the parties. The Executive Director accepts the parties' stipulations that the duties of the employees in the Accounting Department in the Auditor's Office participate in a confidential capacity on behalf of the employer, and therefore are appropriate for exclusion pursuant to WAC 391-35-320 from the existing bargaining unit.

FINDINGS OF FACT

1. Grant County is a public employer within the meaning of RCW 41.56.030(13).
2. Grant County Public Employees Association is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union is the exclusive bargaining representative of a bargaining unit consisting of all full-time and regular part-time employees of the employer in various departments.
4. The parties jointly petitioned for determination of the confidential status of Accounting Department of the Auditor's Office.

5. The parties stipulate that the employees in the Accounting Department of the Auditor’s Office participate directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements.

6. The parties stipulate that the positions in the Accounting Department in the Auditor’s Office are confidential and therefore excluded from the bargaining unit because the confidential duties are necessary, regular, and on-going.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.

2. The employees in the Accounting Department of the Auditor’s office are confidential under WAC 391-35-320.

ORDER

The employees in the Accounting Department of the Auditor’s Office are excluded from the existing bargaining unit as confidential.

ISSUED at Olympia, Washington, this 6th day of July, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.