

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,

Petitioner,

and

EDMONDS SCHOOL DISTRICT NO. 15,

Employer

CASE NO. 765-C-77-30

DECISION AND ORDER

DECISION NO. 231-PECB

Upon a petition for a unit clarification filed under RCW 41.56.060 of the Public Employees' Collective Bargaining Act, herein called the Act, a hearing was held before the undersigned, a hearing officer of the Public Employment Relations Commission (PERC).

Upon the entire record in this case, the undersigned finds and concludes:

1. Edmonds School District No. 15, herein called the District, is a public employer within the meaning of the Act, situated within the State of Washington.
2. Public School Employees of Edmonds School District, an affiliate of the Public School Employees of Washington, herein called the Petitioner, is a labor organization within the meaning of the Act.
3. The Petitioner is the exclusive collective bargaining representative in a unit of all classified secretarial-clerical employees employed by the District. The Petitioner and the District have agreed in their collective bargaining agreement that the following secretarial-clerical employees be excluded from the unit: secretary to the superintendent (3); secretary to personnel services (2); and secretary to employee relations (1). This petition for unit clarification relates to a provision of the collective bargaining agreement which provides as follows:

The District and the Association agree to submit the question of the following exclusions to the Public Employment Relations Commission and will abide by the decision:

- A. Secretary to Area Superintendent (3)
- B. Secretary to Assistant Superintendent (1)
- C. Secretary to Director of Business Services (1)

4. The District is engaged in providing educational services to approximately 24,000 students. Pursuant to RCW 28A.21.090, a school board is vested with authority to approve the District's budget and the selection of the District's personnel and is also authorized to enter into contracts on behalf of the District.

The school board acts upon recommendations made by the district superintendent who by statute (RCW 28A.21.110) is the chief executive officer of the district. The district superintendent has in fact delegated authority to the superintendent's cabinet. This cabinet is composed of three area superintendents, the assistant superintendent for accountability and support services, the director of business services, the director of personnel, the director of employee relations, and the district superintendent. The applicable collective bargaining agreement provides that the secretaries to the latter three are excluded from the bargaining unit. The cabinet meets at least weekly. By majority vote they make recommendations to the school board in such policy areas as budget allocation and modifications of job classifications. They make hiring and firing recommendations to the Board. They decide on student policies such as transfers and grading. During collective bargaining negotiations, the cabinet supplies the district's negotiators with bargaining parameters. The cabinet also decides the district's position with regard to matters relating to administration of collective bargaining agreements.

Each of the three area superintendents is responsible for managing the schools in a specific geographic portion of the school district. One of the three is responsible for a smaller area than the other two. However, he has the added responsibility of being the acting assistant superintendent for instruction.

The assistant superintendent for accountability and support services oversees on a day to day basis the following departments: research and development, special education, psychological services, speech and hearing services, audiometric services, counseling and guidance, student records, student testing, communication and community relations, attendance and security, and affirmative action. Approximately 236 employees are included in this division.

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The assistant superintendent for accountability and support services acts in place of the superintendent in the latter's absence. He also is responsible for coordinating and synthesizing recommendations from the various administrators within the district relating to such policy areas as reduction in force planning and restoration in force planning. His draft is then taken to the cabinet for consideration.

The director of business services is the chief fiscal officer of the district and is responsible for the following departments: budget and finance, payroll and accounting, purchasing, warehousing, maintenance and operations, plant facilities, transportation, food service, data processing and the print shop operation. Approximately 500 employees work in this division.

The area superintendents, the district superintendent for accountability and support services, and the director of business services each review discipline recommendations from supervisors within their respective division, and then each may recommend disciplinary action to the superintendent's cabinet. Each also provides recommendations to the cabinet with regard to the divisions' hiring and also modifications of job classifications and salary levels. Within their respective divisions, each adjusts grievances and approves overtime and leave.

The secretaries to each of the cabinet members rotate appearing at the cabinet meetings and preparing the minutes. Each of the cabinet member's secretaries receive the written communications addressed to the cabinet member. They also type outgoing communications and file and retrieve documents for their assigned cabinet member. Documents submitted into evidence by the respondent support its contention that each of the employees herein sought to be excluded, both type and receive inter office memoranda relating to confidential labor relations matters.

RCW 41.56.030(2) provides:

"(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer."

The duties of each of the cabinet members necessarily imply a confidential relationship to the superintendent who is the executive head of the district.

The National Labor Relations Board, by decision, has excluded from employee status those individuals who have "participated in the formulation, determination or effectation of policy with respect to employee relations matters. North Ark. Electric Corp., 186 NLRB No.83, 75 LRRM 1068 (1970).

Individuals who serve in a confidential position to the employer in such matters must have unfettered loyalty. For example, in the instant case, the cabinet members decide negotiating strategy and parameters and make effective recommendations relating to layoff and recall to the school board. Premature disclosure of such discussions or related inter office memorandum to the employees' collective bargaining representative would be very harmful to the district. It is logical that the legislature would have included "secretary" in its listing of types of excludable confidential employees in order to prevent such dissemination of confidential matters.

In fact, the Legislature has specifically excluded from employee status the five cabinet members relevant to this proceeding. The Legislature did so in the context of the Educational Employment Relations Act, RCW 41.59.020(4)(b). Of course, 41.59 applies only to certificated personnel and not to the secretaries herein sought to be excluded. Nevertheless in 41.59.020(4)(c)(i) and (ii) the Legislature indicated that persons who participate "directly in behalf of an employer in the formulation of collective bargaining agreements" as well as persons who act in a confidential capacity to such persons are deemed to be confidential employees" who are excluded from employee status under that act. Thus, the Legislature has indicated that it wishes to afford the School District employer protection in its labor relations discussions and communications.

The Legislature was not so clear in its drafting of 41.56 with regard to confidential employees. In order to prevent dissemination of confidential matters, the Legislature included "secretary" in its listing of types of confidential employees excludable pursuant to RCW 41.56.030. I interpret RCW 41.56.030(2)(c) to at least exclude secretaries who "assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations" The B. F. Goodrich Co. 115, NLRB 722, 724, 37 LRRM 1383 (1956). Such secretaries have, in effect, a confidential relationship to the executive head or body of the school district. The five individuals sought to be excluded herein receive, type, dispense, file

and retrieve memorandum which relate to confidential labor relations policies and are thus confidential employees within the meaning of RCW 41.56.030(2)(c). In reaching this conclusion I find that, in view of the very large size of the school district, the number of exclusions sought is not, per se, unreasonable. I note that each of the area superintendents administers a school system that is larger than a large portion of the school districts in the state.

The Petitioner limited its presentation to support of its contention that the individuals in question should not be excluded from the unit inasmuch as these five individuals were not deemed ineligible to vote in an election conducted by this Commission in October 1976. I find this to be of little significance since the parties at that time did not raise the issue that any individuals may be confidential employees. Indeed, subsequent to the certification, the parties did agree to exclude six confidential employees from the bargaining unit and to permit this Commission to decide whether the five employees relevant to this proceeding are confidential employees. I have no choice under the Statute but to exclude from a bargaining unit those employees which are determined to be confidential employees.

Therefore, I shall clarify the unit to exclude those positions which the Petitioner has sought to be excluded.

DATED at Olympia, Washington this 24th day of May, 1977.

  
ALAN R. KREBS, Hearing Officer

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