

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	
)	
PUBLIC SCHOOL EMPLOYEES OF)	CASE NO. 1477-C-78-66
WASHINGTON)	
)	DECISION NO. 798 PECB
For clarification of an existing)	
bargaining unit of employees of)	ORDER CLARIFYING
)	BARGAINING UNIT
WEST VALLEY SCHOOL DISTRICT NO. 7)	
)	

G. P. Sessions, attorney at law, appeared on behalf of the union.

Robert D. Schwerdtfeger, consultant, appeared on behalf of the employer.

On May 10, 1978, Public School Employees of Washington filed a petition with the Public Employment Relations Commission for clarification of an existing bargaining unit of employees of the West Valley School District with respect to a newly created position of "payroll and finance technician". A hearing was held on April 10, 1979 before James N. Leibold, Hearing Officer. Both parties filed post-hearing briefs.

POSITIONS OF THE PARTIES

The employer contends that the disputed employee is a "confidential" employee within the meaning of RCW 41.56.030(2)(c). It relies on the recent creation of the disputed position, the fact that the first and only incumbent of the position has never been included in the bargaining unit, the fact that the employee works with the preparation of confidential data used in proposals in collective bargaining, and the employee's own perception of a conflict of interest if she were included in the bargaining unit.

The union contends that the disputed position involves duties of mechanical and technical nature, and that much of the information handled is not of the type protected by the "confidential" exclusion as interpreted by the Supreme Court in IAFF v. City of Yakima, 91 Wn.2d 101 (1978). The union acknowledges in its brief, however, that the disputed employee "is required to compute cost impact of various collective bargaining proposals".

BACKGROUND

The union was certified by the Washington State Department of Labor and Industries on March 14, 1969 as the exclusive bargaining representative of "all classified employees" of the employer, excluding employees exempted by RCW 41.56.030(2). The parties have been parties to a series of collective bargaining agreements, and the 1977-79 collective bargaining agreement between the parties described the covered bargaining unit as follows:

"Section 1.2. The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general job classifications: Secretaries, Aides, Transportation, Custodial, Food Service, and Maintenance.

Section 1.3. Nothing contained herein shall be construed to include in the bargaining unit any person whose duties as deputy, administrative assistant, or secretary necessarily imply a confidential relationship to the Board of Directors or Superintendent of the District pursuant to RCW 41.56.030(2)."

The wage appendix to the collective bargaining agreement lists a classification of "central office secretary".

The employer's administrative structure includes its Superintendent of Schools and its Business Manager. The Business Manager is responsible for developing financial information for the employer's collective bargaining negotiations. The payroll and finance technician has office space in the office of the Business Manager, but spends part of her time in a separate room which houses the employer's computer input/output device. The job description for the disputed position was developed during or about November, 1977. Lucille Werre started work in the position on January 2, 1978. She has not been included in the bargaining unit.

The employer bargains collectively with Public School Employees of Washington with respect to its classified employees and with the West Valley Education Association with respect to its certificated employees. The record indicates that, in addition to her duties involving computer input/output for payroll accounting, the disputed employee is the individual called upon by the employer to compute the cost impact of collective bargaining proposals.

An "office manager" position previously responsible for the employer's payroll accounting has been eliminated. There are presently six secretarial/clerical employees in the employer's central office, including the disputed employee. No issue was raised concerning the Superintendent's secretary. The accounting secretaries are covered by the collective bargaining agreement. Although there was some disagreement in testimony concerning the status of a "receptionist", the credible evidence indicates that the receptionist position is a bargaining unit position although the incumbent may not be a union member.

DISCUSSION

A reading of the transcript in this case compels comment on the practices of parties in questioning of witnesses in Commission hearings. Although the "rules of evidence" are not controlling in Commission proceedings, they are to be considered. More important, the "rules of evidence" were developed by the Courts over years of experience with bringing out evidence in the most effective manner without prejudice to opposing parties. Leading questions, whereby the representatives of parties tend to do the testifying for a witness by reciting facts and then requesting a simple affirmation in answer may not be technically improper, but they seriously erode the effectiveness of the witnesses' testimony. Given that unit clarification proceedings are investigative rather than adversary in nature, testimony through direct questions and simple, declaratory responses would produce a much better record than that which we have in this case.

The admission made in the union's brief that the disputed employee "is required to compute the cost impact of various collective bargaining proposals." (TR. pp. 10-11) virtually compels a conclusion that the disputed employee is a confidential employee. The Business Manager is described in undisputed testimony as the key member of the employer's administration with respect to the bargaining of economic matters. The payroll and finance technician works in close proximity to the Business Manager, engages in discussions of bargaining positions with the Business Manager, and has actually been used in this capacity since the creation of her position. See: Lower Snoqualmie School District, Decision 658 (PECB, 1979). There is no question that mere access to personnel files or payroll data is insufficient for exclusion. City of Lacey, Decision 396 (PECB, 1978). However, this employee has access to the type of confidential information protected by the "confidential" exclusion of RCW 41.56.030(2)(c) and case law under the National Labor Relations Act, that being information which, if disclosed, would damage the collective bargaining relationship between the parties.

This case is also to be distinguished from the situation in Wapato School District, Decision 788 (PECB, 1979), where a seemingly comparable position was left in the bargaining unit. As indicated above, the evidence appears to indicate that all of the secretarial/clerical employees of the employer other than the Superintendent's secretary are included in the bargaining unit. Although there was some testimony to the effect that a "receptionist" was excluded from the bargaining unit, there was certainly no evidence which would justify such an exclusion and the 1977-79 collective bargaining agreement contains a pay rate identified by Ms. Werre as the rate for the "receptionist". Although a high standard is required, it is concluded that the employer has demonstrated the necessity for its proposed exclusion in this case. No such showing was made in Wapato, where the employer proposed to expand its list of

excluded "confidential" positions from 3 positions to 4 without demonstration of need or of the continued viability of the previous exclusions.

FINDINGS OF FACT

1. West Valley School District No. 7 is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

2. Public School Employees of Washington is a labor organization within the meaning of RCW 41.56.010 and a bargaining representative within the meaning of RCW 41.56.030(3).

3. Public School Employees of Washington has been certified as the exclusive bargaining representative of all classified employees of West Valley School District No. 7. Excluded from the bargaining unit are deputies, administrative assistants or secretaries whose duties imply a confidential relationship to the Board of Directors or Superintendent of the District. A dispute has arisen as to whether the "payroll and finance technician" is a confidential employee who is excluded by RCW 41.56.030(2)(c) from the coverage of the Act and the classified employee bargaining unit.

4. The "payroll and finance technician" computes the cost impact of collective bargaining proposals and discusses bargaining positions with the district business manager, who is the key member of the employer's administration with respect to the bargaining of economic matters. The "payroll and finance technician" is the only employee in the employer's business office who is called upon to make such computations and it is anticipated she will continue to discuss bargaining positions with the business manager and will continue to be privy to information concerning the labor relations policies of the employer.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit described in paragraph 3 of the foregoing findings of fact, and the Public Employment Relations Commission has jurisdiction in this matter to issue an order clarifying an existing bargaining unit.

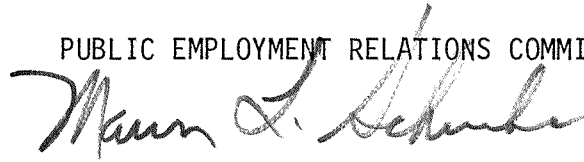
2. The "payroll and finance technician" position described in paragraphs 3 and 4 of the foregoing findings of fact is a "confidential" employee and is not a public employee within the meaning of RCW 41.56.030.

ORDER

The bargaining unit described in paragraph 3 of the foregoing findings of fact is clarified to exclude the "payroll and finance technician".

DATED at Olympia, Washington this 17th day of December, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name below.

MARVIN L. SCHURKE, Executive Director