

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
MARYSVILLE SCHOOL DISTRICT NO. 25,	)	CASE NO. 2443-C-79-109
For clarification of an existing	)	
bargaining unit of its employees	)	DECISION NO. 1211 - PECB
represented by:	)	
MARYSVILLE ASSOCIATION OF	)	
EDUCATIONAL SECRETARIES, An	)	FINDINGS OF FACT,
affiliate of Public School	)	CONCLUSIONS OF LAW,
Employees of Washington.	)	AND ORDER
	)	

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Jerry Gates, Labor Relations Consultant, appeared on behalf of the employer.

Gail P. Sessions, Attorney at Law, appeared on behalf of the respondent.

On November 19, 1979, the district filed a petition for clarification of an existing bargaining unit, seeking to exclude three positions from the bargaining unit: Secretary to Assistant Superintendent - 2 employees; Personnel Secretary - 1 employee. A hearing was held on June 6, 1980, at Marysville, Washington before Jack T. Cowan, Hearing Officer. Both parties filed post-hearing briefs.

BACKGROUND:

The collective bargaining agreement between the parties for the period of September 1, 1978 through August 31, 1981 excludes only two secretarial clerical positions: Secretary to the Superintendent (1) and Payroll Accountant (1).

The district has two assistant superintendents who report directly to the superintendent: Dean Farley, Assistant Superintendent for Finance and Facilities, and Richard Huselton, Assistant Superintendent for Curriculum and Instruction. Responsibility for collective bargaining has been delegated to the two assistant superintendents. Both are at the table during the bargaining process. Huselton's major responsibility is certificated staff and personnel. Farley is responsible for classified employees. Both provide input to the superintendent in the establishing of bargaining parameters. They additionally process and handle grievances on the second level. Also appearing on the organization chart is a vacant position titled Administrative Assistant. This position reports directly to the

superintendent, works with the two assistant superintendents on an advisory basis and is directly responsible for personnel and employee relations. It was anticipated at the time of the hearing, but never clarified by supplementation of the record, that the Administrative Assistant position would be filled during the 1980-1981 school year, and that the administrator would become the district negotiator.

The three secretarial positions in dispute are occupied by: Betty Zenger, secretary to Assistant Superintendent Farley; Darlene Jack, secretary to Assistant Superintendent Huselton; and Donna McKinney, personnel secretary currently reporting to Huselton.

Betty Zenger assists Mr. Farley in preparing fiscal information related to the negotiations proposals. She also types negotiation proposals. She screens and prioritizes all incoming mail for Farley and types his correspondence, including board parameters for collective bargaining with the classified groups.

Darlene Jack develops and maintains files of correspondence, records and reports for Mr. Huselton. She types negotiation proposals, as needed, and is involved with the processing of grievances.

Donna McKinney performs secretarial duties for Mr. Huselton and will do so for the new administrative assistant. She maintains personnel files on all district employees. In addition, she prepares personnel materials for action by the Board of Directors. She also opens and reviews administrators' mail and prepares correspondence. McKinney handles correspondence concerning grievances, and types negotiation proposals and counterproposals as needed. She has appeared at the bargaining table acting as recorder for the district. She was also in caucus sessions with the district representatives.

#### POSITIONS OF THE PARTIES:

The employer contends that all three subject positions are "confidential" and should be removed from the bargaining unit.

While suggesting a possibility of exempt status for the secretary to the personnel/administrative position due to her involvement with the certificated bargaining unit in negotiations, the association feels the evidence of the case fails to establish that any of the employees sought to be excluded perform duties which meet the exclusionary test adopted by the Supreme Court.

DISCUSSION:

No question has been raised regarding the status of either assistant superintendent or of the administrative assistant. It may be assumed that these positions are excluded from the "employee" and they are confidential employees under the terms of RCW 41.59.020 (4)(c)(i & ii). RCW 41.56.030(2)(c) excludes from the coverage of RCW 41.56 persons employed as confidential secretaries.

The subject of confidential employees has been discussed in numerous other cases. In Edmonds School District, Decision 231 (PECB, 1977) it was held that a secretary who "assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations have in effect a confidential relationship to the executive head of the district and therefore should be excluded..." Individuals sought to be excluded herein receive, type, dispense, file and retrieve memoranda which relate to confidential labor relations policies, and are thus confidential employees within the meaning of RCW 41.56.030(2)(c).

Possession of knowledge or information which, if disclosed, would damage the collective bargaining relationship, is a key factor in determining the confidentiality of a position. West Valley School District, Decision 798 (PECB, 1979). Persons who routinely perform duties and functions on behalf of the District which necessarily involve formulation, implementation and effectuation of the employer's labor relations policy are confidential in nature. Mukilteo School District, Decision 1008 (PECB, 1980).

In I.A.F.F. v. Yakima, 91 Wn.2d 101 (1978), the Supreme Court provided clarification of "confidential" in the following:

"... 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."

Proximity may, but doesn't always, create an accomplice. It might be argued that the subject positions as presently structured may represent one alternative means of accommodating the labor relations activities of the district, and that other alternatives involving fewer confidential employees could be envisioned. However, the positions as they are described in this record appear to align with work flow. Addition of the administrative assistant may give rise to subsequent realignments of the labor relations function, but the matter must be determined based on present information.

FINDINGS OF FACT

1. Marysville School District No. 25 is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington is a labor organization and collective bargaining representative within the meaning of RCW 41.56.030(3). PSE is the exclusive bargaining representative of a bargaining unit which includes all classified secretaries of the district except the secretary to the Superintendent and the payroll accountant.
3. A dispute has arisen concerning the exclusion of three secretarial positions from the unit, including Betty Zenger and Darlene Jack, secretaries to the two assistant superintendents and also Donna McKinney, personnel secretary.
4. As part of their regular position assignments, Betty Zenger, Darlene Jack, and Donna McKinney have access to confidential labor relations policies, information and materials such as employer bargaining parameters and cost estimates and drafts of employer bargaining proposals, prior to their use at the bargaining table.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit described in paragraph 2 above, and the Public Employment Relations Commission has jurisdiction to issue an order in this matter clarifying the existing bargaining unit.
2. Betty Zenger, Darlene Jack and Donna McKinney are confidential employees within the meaning of RCW 41.56.030(2)(c).

ORDER

The secretary to the Assistant Superintendent for Finance and Facilities, the secretary to the Assistant Superintendent for Curriculum and Instruction, and the secretary to the Administrative Assistant are confidential employees and are excluded from the secretarial bargaining unit represented by Public School Employees of Washington.

DATED at Olympia, Washington this 19th day of November, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director