

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
COWLITZ COUNTY)	CASE NO. 4197-C-82-206
)	DECISION NO. 1651 - PECB
For clarification of an existing bargaining unit of its employees represented by:)	
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES.)	ORDER CLARIFYING BARGAINING UNIT
_____)	

Dick Anderson, Personnel Director, appeared on behalf of the employer.

Pamela G. Cipolla, Attorney at Law, appeared on behalf of the union.

By a petition filed on August 25, 1982, Cowlitz County, hereinafter employer, requested the Public Employment Relations Commission to clarify an existing bargaining unit with respect to the positions of "assistant clerk to the board" and "secretary/receptionist". A hearing was held on March 3, 1983 before Ronald L. Meeker, Hearing Officer. Both parties filed post-hearing briefs.

BACKGROUND:

Washington State Council of County and City Employees, Local No. 1262, hereinafter union, and Cowlitz County have had a bargaining relationship since 1961, when the employer voluntarily recognized the union as the exclusive bargaining representative of "courthouse" employees.

The collective bargaining agreement between the employer and Local 1262 for the period from January 1, 1981 through December 31, 1983 does not contain a concise unit description. The pertinent language in Article III - Recognition states:

The Employer recognizes the Union as the exclusive bargaining representative for all employees except those specifically excluded in Appendix B or employees in another bargaining unit.

Appendix A to the contract contains the names, titles and wage rates for bargaining unit employees. That listing is sorted under the following headings: "Administration Building Maintenance", "Assessor", "Auditor" (including "Assistant Clerk of the Board"), "Clerk", "Commissioners" (including "Secretary/Receptionist"), "Community Development", "Cooperative Extension", "Family Court", "Hall of Justice", "Juvenile", "Purchasing", "Treasurer", "Weed Control", "Election Reserve", "Park and Recreation" and "Central Services".

Appendix B to the contract is a list of departments or positions within departments, as follows: "Commissioners" (elected officials plus "Administrative Coordinator" identified), "Superior Court", "District Court", "Board of Equalization" (appointed officials identified), "Human Resources", "Clerk (elected official plus one other classification identified), "Treasurer (elected official plus two other classifications identified), "Auditor" (elected official plus one other classification plus "Clerk of the Board" identified), "Assessor" (elected official plus two other classifications identified), "Purchasing" (one classification identified), "Prosecuting Attorney", "Budget/Personnel", "Insurance/Safety", "Community Development" (director plus six other classifications identified), "Family Court" (one classification identified), "Juvenile Diversion", "CETA", "Coroner", "Cooperative Extension" (two classifications identified), "Museum", "Parks" (two classifications identified), "Central Services" (two classifications identified), "Fair", "Governmental Conference", "Civil Service Commission", "Administration Building" (one classification identified), and a duplicate entry of "Human Resources". At the bottom of the page, Appendix B states:

The Union has not necessarily agreed to the above list of exclusions and has given notice that the issues will be addressed through the unit clarification process.

Should any new position be created, the issue of whether or not such position should be included in or excluded from the bargaining unit will be discussed by the Labor/Management Committee. If agreement is reached, the position will be treated accordingly. If there is no agreement, either party may seek a determination through PERC.

Two positions are in dispute in this proceeding. One is the "Secretary/Receptionist" listed on Appendix A to the contract under the "Commissioners" heading. The other is the "Assistant Clerk of the Board" listed on Appendix A of the contract under the "Auditor" heading. The "Clerk" and "Assistant Clerk" positions were evidently transferred from the Auditor's office to the Commissioner's office, effective on or before July 1, 1982.

The employer and WSCCCE Local No. 334 have a separate bargaining relationship covering employees of the employer's public works department. In addition, Teamsters Union Local No. 58 represents the deputy sheriffs of the employer.

POSITIONS OF THE PARTIES:

The employer contends the secretary/receptionist and the assistant clerk to the board in the Commissioner's office are confidential employees as described in RCW 41.56.030(2)(c), and should be exempt from the bargaining unit by definition.

The union contends the two contested positions have been a part of the bargaining unit since 1961, that there has been no change in the duties of the two positions which would warrant a change in their bargaining unit status, that the two contested positions have very little contact with confidential material and that there are already two exempt employees in the Commissioner's office in addition to three exempt employees in the personnel department. Lastly, the union contends that the only disqualifying confidential material would be material relating to Local Union No. 1262.

DISCUSSION:

The statute involved is RCW 41.56.030(2), which states in pertinent part:

"Public employee" means any employee of a public employer except any person ... (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...

The Supreme Court of this state has twice addressed the public sector "confidential employee" question. First, in Municipality of Metropolitan Seattle v. Dept. of L & I, 88 Wn.2d 925 (1977), the court wrote of a legislative judgment that public officials should have freedom to control, hire or fire confidential employees, but emphasized that the exclusion is very narrow. In Firefighters v. Yakima, 91 Wn.2d 101 (1978), the court more precisely described the association and the duties which "necessarily imply" a confidential relationship. The court reasoned that the legislature provided the exception because of concern for a potential misuse of confidential labor relations policy information and the resulting conflict of interest, and then wrote:

We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply a 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.

92 Wn.2d at p. 107.

The imposition of a "labor nexus" test for confidential status is entirely in keeping with federal labor policy under the National Labor Relations Act. See: NLRB v. Hendricks County Rural Electric Membership Corporation, ___ U.S. ___, 108 LRRM 3105 (1981). The decisions of the Public Employment Relations Commission have followed the policy that the exclusion is narrow and the burden on an employer seeking exclusion is a heavy one. City of Seattle, Decision 689-A (PECB, 1979); Cape Flattery School District, Decision 1249-A (PECB, 1982).

Dorothy Hanson holds the "administrative coordinator to the commissioners" position referred to in Appendix B of the contract. The union acknowledges Hanson to be a confidential employee excluded from the bargaining unit. Hanson testified that she has three subordinate personnel reporting to her: the clerk to the board, the assistant clerk to the board and the secretary/receptionist. Hanson is present at all Commissioners' meetings to take notes. Hanson testified that she tries to keep material dealing with labor negotiations and grievances away from the assistant clerk and the secretary/receptionist.

Hettie Herron had been clerk to the board (a position conceded by the union as a "confidential" exclusion from the unit) for about one and one-half months at the time of the hearing. She was previously the assistant clerk to the board for over three years. Her testimony indicates no change in the duties of the assistant clerk position. During her tenure there was no handling of confidential material nor did her position description outline duties dealing with labor relations. Cheryl Mealy, who currently holds the position of assistant clerk to the board, testified that she has not handled any material dealing with labor relations. Neither has she overheard any conversations dealing with labor relations. The only change which is disclosed on this record concerning the assistant clerk to the board is the transfer of this position from the Auditor's office to the Commissioners' office, with no change in duties and/or assignments.

Billie Valentine has been the secretary/receptionist in the Commissioners office for more than twelve years. There is no indication from the position description that she is to handle any material dealing with labor relations. She testified that, even though she does typing of materials on the Commissioner's meetings, there is never any detail dealing with personnel. When the Commissioners discuss personnel matters, the record simply shows "the balance of the items discussed were personnel." Valentine further testified that she has never taken notes of the Commissioner's meetings, as the clerk of the board handled that task whenever the administrative coordinator was absent. Thus, in the case of the secretary/receptionist there is no evidence or testimony of a change of circumstances or of duties since the employer had agreed to a contract with the position included in the bargaining unit.

The small size of the Commissioners' office space and the lack of a door on the lounge area may be a handicap at times, causing the Commissioners to meet in one of their individual offices for the purpose of discussing confidential labor relations matters. However, these conditions by themselves are not sufficient evidence to justify the exclusion of the two contested positions. In Pe Ell School District No. 301, Decision 1068-A (PECB, 1981); San Juan School District No. 143, Decision 1321 (PECB, 1982), Cape Flattery School District, Decision No. 1249-A (PECB, 1982) and Crescent School District, Decision 1572 (PECB, 1983), the disputed employees worked in small office settings as part of small administrative staffs, but determination of the confidentiality issue was made on their duties as clerical employees. In Pe Ell and San Juan, the disputed employees routinely received, typed and processed letters and other documents dealing with the employer's labor relations policies, collective bargaining proposals and personnel practices. Both employees reported directly to the district superintendents who were responsible for labor relations matters, and they were excluded as confidential employees. On the other hand, the small office settings were not sufficient to justify exclusion in Cape Flattery and Crescent, where the disputed employees did not meet the labor nexus test as part of their regular routine.

Examination of Valentine's duties as secretary/receptionist and of Mealy's duties as assistant clerk to the board reveals that they do not perform duties which would require exclusion on the basis of confidentiality. Neither employee types or otherwise processes documents relating to the employer's labor relations policies, neither is required to prepare notes or proposals used in collective bargaining and neither reports directly to the Commissioners. The employer has thus not proven that the disputed employees deal with labor relations matters as part of their regular assigned duties. The employer's indication that both employees would be used in some unspecified capacity in future negotiations are merely speculative and insufficient to establish necessity in light of the existing and continuing "confidential" exclusions in both the commissioner and budget/personnel offices.

FINDINGS OF FACT

1. Cowlitz County is a political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local Union No. 1262 is a labor organization and bargaining representative within the meaning of RCW 41.56.030(3).
3. Cowlitz County has recognized Washington State Council of County and City Employees Local Union No. 1262 as the exclusive bargaining

- representative for employees in a "courthouse" bargaining unit except those specifically excluded in Appendix B or employees in another bargaining unit.
4. In addition to the elected officials, Cowlitz County employs four employees in the Commissioners' office. Dorothy Hanson, administrative coordinator, and Hettie Herron, clerk of the board, are excluded from the bargaining unit represented by the union.
 5. Cheryl Mealy, assistant clerk of the board, reports to the administrative coordinator, assists the clerk to the board in preparing material for board meetings, performs stenographic and clerical duties as assigned and performs relief receptionist duties.
 6. Billie Valentine, secretary/receptionist, reports to the administrative coordinator, performs secretarial, receptionist and clerical duties in the Commissioners' office.
 7. The evidence does not establish that Mealy or Valentine have been or necessarily will be privy to confidential information concerning the labor relations policies of the employer.


CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56 and no question concerning representation presently exists.
2. Cheryl Mealy and Billie Valentine are public employees within the meaning of RCW 41.56.030(2) and are not confidential employees within the meaning of RCW 41.56.030(2)(c).

ORDER

The position of assistant clerk of the board and the position of secretary/receptionist are included in the bargaining unit described in paragraph 3 of the foregoing Findings of Fact.

DATED at Olympia, Washington, this 9th day of June, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director