

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
FRANKLIN COUNTY) CASE NO. 6027-C-85-303
)
) DECISION 2641 - PECB
For clarification of an existing)
bargaining unit of its employees)
represented by:)
)
WASHINGTON STATE COUNCIL OF) ORDER CLARIFYING
COUNTY AND CITY EMPLOYEES) BARGAINING UNIT
)
)
_____)

Menke and Jackson, by Anthony F. Menke, attorney at law, appeared on behalf of the employer.

Kenneth Coffin, labor relations representative, appeared on behalf of the union.

On October 14, 1985, Franklin County (employer) filed a petition with the Public Employment Relations Commission seeking clarification of an existing bargaining unit of employees represented by the Washington State Council of County and City Employees, AFSCME Council 2, Local 874 (union). At issue is the eligibility of the "confidential secretary to the county engineer" for continued inclusion in a unit of non-supervisory employees in the county road department. A hearing was held on October 15, 1986, before Walter M. Stuteville, Hearing Officer. The parties submitted post-hearing briefs. Authority to determine the dispute has been delegated to the Hearing Officer pursuant to WAC 391-35-190.

BACKGROUND

Franklin County is a largely rural county in south-central Washington. The county seat is at Pasco. Together with the Benton County cities of Richland and Kennewick, Pasco is in the Tri-Cities urban area, a high-tech and agricultural center for the region. The county operates a road department which is headed by the county engineer, Bruce Gilkeson.

The parties have had a collective bargaining relationship for approximately twenty years. The recognition clause of their latest collective bargaining agreement stated:

ARTICLE I - RECOGNITION

1.1 The Employer, Franklin County, agrees to recognize the Union as the exclusive bargaining representative for all full-time and regular part-time employees of the Highway Department and Equipment Rental and Revolving Fund Division, excluding the County Engineer, Assistant County Engineer, County Road Superintendent, Road Supervisor, Shop Supervisor and Accountant.

For approximately thirteen years prior to May, 1986, the county engineer's office had only one secretary. Working under the title "secretary to the county engineer", the person in that position provided secretarial support for the county engineer, the assistant road superintendent, and the accountant. The position was included in the union's bargaining unit. The county engineer's office was then located in the county courthouse. The county engineer arranged to have confidential materials, such as letters relating to labor relations matters, typed by a variety of county secretaries outside of his own office including, at different times, the county commissioner's

secretary, a part-time secretary in the county planning office, and (in one instance) the road superintendent's daughter.

The current incumbent of the disputed position, Shelly Gradin, was hired in November, 1985.

In May of 1986, the title of the disputed position was changed to "confidential secretary to the county engineer"¹ and a second office-clerical position was added in the county engineer's office under the title of secretary/clerk. The confidential secretary and the secretary/clerk both provide general secretarial support in the office, including typing, file maintenance, communications, receptionist, and accounting tasks. The county developed a new job description for the confidential secretary position under which, in addition to previously mentioned general office duties, the confidential secretary maintains personnel records and types and receives correspondence relating to labor negotiations and union grievances. The labor relations correspondence includes communications with the attorney who represents the department in labor relations matters, whose office is in Yakima. The confidential secretary also handles communications with the county commissioners and the county's prosecuting attorney. The county engineer also corresponds with other attorneys concerning lawsuits and insurance coverage. The confidential secretary does not attend meetings where labor relations policy is formulated.

In July, 1986, the county moved the engineer's office from the county courthouse to a new location. The office is now located

¹ The current title assigned by the employer is used in this opinion, but that usage does not create or imply a presumption that the proposed exclusion is appropriate. An exclusion must be proven by job content, not by job title.

near the Pasco International Airport, about one mile away from the former location.

POSITIONS OF THE PARTIES

The employer contends that the county engineer participates in labor negotiations and contract administration, and that he needs correspondence relating to those activities to be kept confidential. The employer points to certain job responsibilities which are directly related to collective bargaining and which only the confidential secretary performs. It contends that the county engineer has always had confidential labor-related documents to be typed or received, but that the engineer had the use of other county clerical employees for those purposes prior to the move of the county engineer's office. That option is claimed to no longer be practical because of the distance between the engineer's office and the courthouse.

The union agrees that the confidential secretary has access to files that are closed to other county employees, but argues that those files are actually under the control of the county engineer. As evidence that she should not be excluded from the bargaining unit, the union cites the fact that Gradin does not attend meetings where labor policy is discussed or formulated, and that she has not typed correspondence relating to negotiations between the county and the union. The union acknowledges that Gradin has typed grievance letters, but argues that grievance letters are not confidential correspondence. The union characterizes the relationship between the confidential secretary and the engineer as "casual and remote". It is the union's position that the "new" position created in 1986 is a continuation of past practice, such that only the job title and

job description have been changed while the position is functionally the same as while included in the bargaining unit. The union asserts that the confidential secretary does not have the required "intimate, fiduciary" relationship with the department head to warrant exclusion as a confidential employee.

DISCUSSION

The law on confidential exclusions is clear. Employers are allowed some reasonable number of personnel who are exempt from the rights of the collective bargaining statute, in order to perform the functions of employer in the collective bargaining process. Clover Park School District, Decision 2243-A (PECB, 1987). The definition of "public employee" set forth in the statute thus excludes confidential employees from the coverage of the Act:

RCW 41.56.030 DEFINITIONS.

. . .

(2) "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, or any person elected by popular vote or appointed to office pursuant to statute, ordinance, executive head or body of the public employer.

The Supreme Court interpreted that definition in City of Yakima v. IAFF, 91 Wn.2d 101 (1978), where it wrote:

When the phrase confidential relationship is used in the collective bargaining act, we believe it is clear that the legislature was concerned with an employees potential misuse of confidential employer labor relations policy and a conflict of interest.

. . .

We hold that 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 office or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

Throughout its history, the Public Employment Relations Commission has dealt with the issue of confidential employees, and particularly with what job responsibilities make a secretary a confidential employee so as to warrant exclusion of the position from the coverage of the statute.

Secretaries who reported directly to members of a school district's top management were excluded from a bargaining unit where it was shown that they assisted and acted in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. They had, in effect, a confidential relationship to the executive head of the school district. Edmonds School District No. 15, Decision 231 (PECB, 1977).² The administrative secretary to a city's director of public works was found to be

² Edmonds was cited with approval by the Supreme Court in Yakima.

a confidential employee in City of Tukwila, Decision 451-A (PECB, 1978), based on a showing that the individual was involved in labor relations matters and had access to confidential information concerning the labor relations policies of the employer. The secretary to a chief of police was held to be a confidential employee within the meaning of RCW 41.56.030(2)(c) in City of Pasco, Decision 939 (PECB, 1980), where it was shown that the secretary was privy to budgetary and personnel information prior to its general dissemination, that she typed materials dealing with internal operation and the union. On the other hand, a clerical employee in a police department was included in a bargaining unit upon a conclusion that she was not privy to confidential information concerning the employer's labor relations policies. City of Sunnyside, Decision 1178 (PECB, 1981). See, also, City of Ocean Shores, Decision 2064 (PECB, 1984).

The relocation of the county engineer's office constitutes a significant change of circumstance affecting this case. In the past, the county engineer had the use of secretarial support from the county commissioner's office when materials related to labor relations could be typed. Such arrangements were no longer practical after the move. The change in the job description and duties of the county engineer's secretary appears to be a logical companion to the new work site. The new functions of the confidential secretary, as described by the county engineer and by the secretary herself, fit the description of a confidential employee found in case precedent.

The union would have this analysis focus on the fact that Gradin does not formulate labor policy, nor does she participate in meetings where such policy is developed. While it is true that the confidential secretary has not been involved in the formulation of confidential materials, it is also clear

that she, along with the county engineer, is a custodian of such records. She does not do exclusively confidential work or even a high volume of confidential work; but she does enough such work that the assignments can be described as regular and ongoing. The "intimate fiduciary relationship" referred to in Yakima and subsequent cases must be with a department head or other management official responsible for policy formulation. The relationship between the county engineer and Gradin fulfills that test.

The union correctly points out that grievance processing (i.e., the interpretation or application of an existing collective bargaining agreement) is regarded as a "supervisory" activity, rather than a "confidential" activity. See, City of Seattle, Decision 689-C (PECB, 1981). That does not change the fact that the county engineer is privy to confidential information concerning the employer's strategy in collective bargaining. Similarly, the union's attempt to minimize the ongoing potential for grievance-related work³ does not undermine the existence of other confidential work.

The union also misses the point with its argument that correspondence with the employer's attorney that was handled by Gradin should not be considered confidential. Whether or not each such item actually contains confidential material is not the test; that they have the potential for being confidential is enough. Much of an attorney's work product may not be strictly "confidential", but some of it surely is. The fiduciary relationship between the county engineer and the confidential secretary is established.

³ The union believes that the number of grievance letters which Gradin actually typed since May of 1986, (twenty) was unusual and due to extraordinary circumstances.

Finally, the union attempts to distance the county engineer from the formulation of labor policy. The union argues that, in actuality, the county commissioners retain the authority to settle a collective bargaining agreement, and that they alone, therefore, may develop policy. The county engineer, in their view, "merely recommend[s] to the board". The argument is not persuasive. It is the usual practice in the public sector to leave final ratification power vested in the elected officials of the employer. Pursuit of that common practice does not, in itself, remove responsibility or authority from the department head. The evidence does not support the notion that the county engineer's recommendations would be ineffective in the final formulation of policy.

The record clearly shows that Gradin and Marcia Bradford, an accountant's assistant who also works in the county engineer's office were both very much aware of the confidential nature of some of Gradin's work. Bradford testified that she worked closely with Gradin and covered Gradin's responsibilities when Gradin was not available, but testified that she was aware that certain materials identified as confidential were only to be handled by Gradin. Thus, the evidence indicates that the fiduciary relationship between the confidential secretary and employer has been clearly established in the minds of other bargaining unit employees.

Finally, the union asserted that the so-called confidential work was de minimis since, through testimony, Gilkeson did not appear to be totally familiar with exactly what Gradin did and Gradin herself did not remember the content of "confidential" correspondence. Whether the county engineer was familiar with Gradin's day-to-day work, or whether Gradin remembered the content of certain correspondence, is not controlling. The ability and responsibility to access materials relating to

labor negotiations provides the "labor nexus" necessary for exclusion.

FINDINGS OF FACT

1. Franklin County is a public employer within the meaning of RCW 41.56.030(1).
2. The Washington State Council of County and City Employees is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. The employer and the union were parties to a collective bargaining agreement in effect from January 1, 1984 through December 31, 1984, which described the bargaining unit as:

. . . all employees of the Highway Department and Equipment Rental and Revolving Fund Division, except the County Engineer, Assistant County Engineer, County Road Superintendent, Road Supervisor, Shop Supervisor and Accountant.

The county engineer's secretary has historically been included in that bargaining unit.

4. The county engineer is the executive head of the bargaining unit and has a confidential relationship with the board of county commissioners concerning the labor relations policies of the employer. The county engineer historically obtained clerical assistance for labor relations matters from personnel other than his own secretary.

5. Between May, 1986 and July, 1986, an additional clerical employee was hired in the county engineers office, the duties of the county engineer's secretary were changed and the county engineer's office was moved from the county courthouse to a separate office building some distance from the courthouse. Under the new title of "confidential secretary to the county engineer" the county engineer's secretary now has separate and distinct duties which include handling correspondence relating to labor negotiations and labor contract administration.
6. The confidential secretary to the county engineer does not attend labor negotiations or county commissioner meetings where labor policy is formulated, but she does type and receive correspondence relating to such meetings.
7. Other secretaries in the office of the county engineer do not work with any materials or correspondence relating to labor negotiations or labor contract administration.
8. A dispute was framed by the parties during their negotiations for a successor contract, concerning the propriety of continuing to include the position of "confidential secretary to the county engineer" in the bargaining unit. No agreement was reached on the matter. Negotiations on a new collective bargaining agreement were continuing as of October 14, 1985, when the employer filed the petition for clarification of an existing bargaining unit to initiate these proceedings.

CONCLUSIONS OF LAW

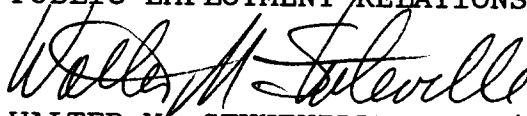
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC, and no question concerning representation currently exists.
2. The "confidential secretary to the county engineer" has an intimate and fiduciary responsibility with the executive head of the bargaining unit, and has access to confidential information concerning the labor relations policies of the employer, such that the position is a "confidential" employee within the meaning of RCW 41.56.030(2) (c).

ORDER

The bargaining unit described in paragraph 3 of the foregoing Findings of Fact is clarified to exclude the position of confidential secretary to the county engineer

DATED at Olympia, Washington, this 8th day of July, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Hearing Officer

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.