

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WISHKAH VALLEY SCHOOL DISTRICT)	CASE 9051-C-91-517
)	
For clarification of an existing bargaining unit of its employees represented by:)	DECISION 3910 - PECB
)	
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON)	ORDER CLARIFYING BARGAINING UNIT
)	
)	
)	

Vandeberg & Johnson, by Clifford D. Foster, Attorney at Law, appeared for the employer.

Caroline Lacey, Attorney at Law, appeared for the union.

On March 1, 1991, Wishkah Valley School District (employer) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission. The employer sought exclusion of one office-clerical position from a bargaining unit represented by Public Employees of Washington (PSE), claiming that it is held by a "confidential employee" within the meaning of RCW 41.56.030(2)(c). A hearing was conducted at the employer's office on July 30, 1991, before Hearing Officer Rex L. Lacy. The parties submitted post-hearing briefs. Authority to determine the eligibility issue raised in this matter was delegated by the Executive Director to the Hearing Officer, pursuant to WAC 391-35-190.

BACKGROUND

Wishkah Valley School District operates an educational program for students in kindergarten through the twelfth grade. Located in the Wishkah Valley, about 12 miles north of Aberdeen, Washington, the school district has approximately 200 students attending its one

school facility. A five-member board of elected school directors sets general policy for the school district. The daily management of district affairs is delegated to Superintendent Richard Throgmorton. Carol McDougall is the district's business manager, and Jim Miller is the elementary, middle school and high school principal. Apart from the superintendent, business manager and principal, the employer's workforce consists of 17 certificated employees and 11 classified employees.

Public School Employees of Washington has been the exclusive bargaining representative of all of the employer's classified employees since November 17, 1977, when the employer extended voluntary recognition to PSE. All of the employer's classified employees are grouped in one wall-to-wall bargaining unit.¹

Throgmorton, Miller and McDougall serve as the employer's negotiating team for all collective bargaining with the certificated and classified employees, with the superintendent serving as the employer's chief spokesperson. After receiving instructions from the board of directors, Throgmorton is responsible for the preparation of the employer's proposals and their presentation to the unions. Throgmorton is also the employer's spokesperson for the processing of grievances advanced by the unions.

The roots of the present dispute date back several years, and relate to several personnel changes, as follows:

The parties' 1986-88 collective bargaining agreement (and all subsequent contracts) contained "recognition" language different from that which had existed in the parties' initial contract and all contracts since 1978:

¹ The employer's certificated employees are separately represented, pursuant to Chapter 41.59 RCW.

Section 1.2 The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general classifications: Secretarial/Clerical, Aide, Custodial/Maintenance, and Transportation; provided, however, the (~~secretary to the superintendent, and the bookkeeper are~~) Business Manager is excluded from the bargaining unit, based upon confidential relationship to the Board of Directors or Superintendent.

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 pursuant to RCW 41.56.030(2).

It appears that the "bookkeeper" position may have disappeared with the creation of the "business manager" position, and that the "secretary to the superintendent" was thereupon included in the bargaining unit.

Throgmorton was hired by the employer in September of 1986, as the business manager. The position was full-time, and his responsibilities were those routinely associated with that title.

Carol McDougall held the title of "secretary I" until 1988. As part of routine office-clerical duties, she typed and processed the superintendent's correspondence, including those associated with the employer's labor relations policies and practices. McDougall worked 189 days per year when she held the "secretary I" position, and was included in the bargaining unit after 1986.

Throgmorton ascended to the superintendent position in 1988. Some time thereafter, the employer converted a house adjacent to the school facility into an administrative office.² The living room

² The house had formerly been used by the employer as a residence for its superintendents.

of the house was converted into the room where school board meetings and other conferences are held. An adjacent room was converted into a private office for the superintendent. The business manager also has a private office in that facility.

McDougall was appointed to fill the position of business manager after Throgmorton became superintendent, and she was then excluded from the bargaining unit. McDougall continued, however, to perform the "secretary for the board of directors" function which she had performed as a member of the bargaining unit.

Debbie Furth, who had previously worked in the employer's food service program, was selected to replace McDougall in the "secretary I" position in 1988. Furth's position continued to be included in the bargaining unit.

In addition to Furth, the employer has one other office-clerical employee who works under the job title of "secretary II". That employee occupies a work station in the employer's school facility, adjacent to the principal's office. That office-clerical position is included in the bargaining unit represented by PSE.

The job description adopted for the secretary I position in 1988 sets forth the position's duties and responsibilities as follows:

Typing:

Superintendents correspondence.
Board packet materials assembly.
Miscellaneous typing as assigned for Superintendent.
Miscellaneous typing as assigned for Business Office.

Lunch Program:

Sell lunch tickets/keep lunch log.
Lunch count reconciliation.
Pick up attendance and high school lunch counts.
Supervise lunchroom in absence of administrator.

Monthly lunch carryovers.
Month end state, federal, and district reports.
Mail charge letters.
Prepare listing of charges and carryovers.

Principal's Office:

Cover main office any time Secretary II is absent.

Miscellaneous:

Safety Committee Chairperson.
Materials Safety Data Sheet update.
Laminating for teachers as required.
Other duties as assigned by business manager or Superintendent.

Furth is currently employed for 189 days per year. Her work station is located at one end of the board room in the district's administrative office, at the opposite end of the room from the superintendent's office.³

Throgmorton testified that he, the principal, and the business manager routinely use the conference table located in the board room to discuss negotiations proposals and counterproposals for negotiations with both the certificated and classified employees. He indicated that they also discuss employee grievances and other financial considerations that are confidential in nature. Furth testified that she is able to hear all of the conversations that occur at the conference table.

Furth was selected to serve on the PSE negotiating team in 1988. Her uncontroverted testimony indicated the existence of turmoil between her job and her union membership, because she was asked to disclose confidential information regarding the employer's positions on PSE's proposals, based on what she had overheard, and because she felt that she could not ethically answer.

³ The board room is approximately 15 feet wide and 20 feet long.

POSITIONS OF THE PARTIES

The employer contends that the secretary to the superintendent, Debbie Furth, is a "confidential" employee within the meaning of RCW 41.56.030(2)(c). It asks that the position be excluded from the classified employees' bargaining unit.

The union contends that the secretary to the superintendent is not a "confidential" employee within the meaning of the statute, that it is not necessary for Furth to be involved in the processing of confidential materials, and that the disputed position should continue to be included in the bargaining unit.

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 narrowly 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.

The party seeking exclusion of a "confidential" employee has a heavy burden in establishing the required "labor nexus". City of Seattle, Decision 689-A (PECB, 1979).

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).⁴ The administrative secretary to a city's director of public works was found to be 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

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

be a confidential employee 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 Commission has also dealt on several occasions with the problems of small offices in public school settings. In Pe Ell School District, Decision 1068-A (PECB, 1981), an office-clerical employee was excluded from the bargaining unit, because she processed and typed materials concerning the employer's labor relations with the unions that represented its classified and certificated employees. See, also, San Juan School District, Decision 1321 (PECB, 1981); Quinault School District, Decision 1474 (PECB, 1982).

In this case, the relocation of the administrative offices from the school facility to their current location constitutes a significant change of circumstance. In the past, the superintendent had secretarial support from the principal's office, which was located in the same facility. Such arrangements were no longer practical after the superintendent's office moved out of the school building. Because her desk is located in the board room, Furth has access to conversations regarding the formulation, effectuation, and implementation of the employer's labor policies. That circumstance is sufficient to warrant her exclusion from the bargaining unit.

The union would have this analysis focus on the fact that Furth is not required to work on confidential labor relations materials on a "regular" basis. While it is true that Furth has not been involved in such duties with great frequency, it is also clear that

she is the custodian of, and has access to, the employer's labor relations materials and records. While it is also true that Furth does not perform confidential work exclusively, or even a high volume of confidential work, her "labor nexus" assignments can be properly described as necessary and ongoing. Those assignments are logically responsibilities of the superintendent's secretary position, as well as logical arrangements at the new work site. 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 superintendent and Furth fulfills that test.

The union correctly points out that grievance processing (i.e., the interpretation or application of an existing collective bargaining agreement) has been minimal since Furth assumed her current position. The union's attempt to minimize the ongoing potential for grievance-related work⁵ does not undermine the existence of a confidential relationship. Grievance administration is, itself, a "supervisory" function, rather than a "confidential" function. City of Seattle, Decision 1797-A (PECB, 1985). Even if there were no such work, that would not change the fact that Furth is privy to confidential information concerning the employer's positions in contract negotiations.

Finally, the union argues that it is not necessary for Furth to perform work related to confidential matters and materials. PSE contends that McDougall could continue to provide secretarial services for such information. That argument overlooks the fact that Furth has already done confidential work, that the physical arrangements in the employer's administration office virtually assures her hearing sensitive information, and that she will continue to do so in the future.

⁵ The union believes that the 20 grievance letters actually typed since 1986 was unusual, and due to extraordinary circumstances that no longer exist.

The record clearly establishes that Furth is very much aware of the confidential nature of some of her work. She is also aware of the conflict of interest that such knowledge creates. Thus, the evidence indicates that the fiduciary relationship between the confidential secretary and employer has been clearly established.

FINDINGS OF FACT

1. The Wishkah Valley School District, a "public employer" within the meaning of RCW 41.56.030(1), provides educational services to residents of Grays Harbor County, Washington.
2. Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a district-wide bargaining unit of classified employees of the Wishkah Valley School District. The employer voluntarily recognized PSE as exclusive bargaining representative on November 17, 1977.
3. The employer and the union have been parties to a series of collective bargaining agreements. The agreements signed by the parties from 1978 to 1986 excluded the superintendent's secretary from the bargaining unit. The bargaining unit is defined in the parties' 1988-1991 collective bargaining agreement as:

Section 1.2 The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general classifications: Secretarial/Clerical, Aide, Custodial/-Maintenance, and Transportation; provided, however, the Business Manager is excluded from the bargaining unit, based upon confidential relationship to the Board of Directors or Superintendent.

The position of "secretary I" or "secretary to the superintendent" has been included in the bargaining unit since 1986.

4. Debbie Furth, the employee currently holding the "secretary I" position, has served as the secretary to the superintendent since early in the 1988-1989 school year. Furth performs a variety of office-clerical duties, including preparing letters and correspondence regarding labor relations materials for the superintendent of schools. She has access to all of the collective bargaining proposals which are prepared for later discussion during negotiations with the unions representing the employer's certificated and classified employees.
5. Furth also provides clerical support to the employer's elected school board. She prepares packets of information for the school board which contain materials dealing at times with collective bargaining and personnel-related matters, including discipline and discharge. These are confidential materials not generally available to the public.
6. Furth's work station is located in the board room within the employer's administrative offices, and she is able to overhear conversations between the superintendent and other employer officials that are conducted at the conference table in that room, including discussions of confidential labor relations policies of the employer.
7. Furth is aware of the sensitive nature of the labor relations information which she possesses, and of her fiduciary obligation to maintain the confidentiality of that information. She is further aware of the potential for conflicts of interest which have arisen, and would continue to arise, if her position remains within the bargaining unit.

CONCLUSIONS OF LAW

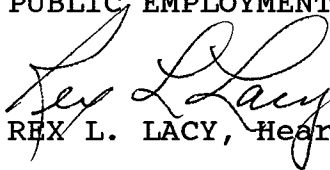
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC, and no question concerning representation currently exists in the appropriate bargaining unit described in paragraph 3 of the foregoing Findings of Fact.
2. The employee holding the position of "secretary I" is a confidential employee within the meaning of RCW 41.56.030-(2)(c).

ORDER CLARIFYING BARGAINING UNIT

The position of "secretary I", as presently performed by Debbie Furth, is excluded from the bargaining unit represented by the Public School Employees of Washington.

DATED at Olympia, Washington, this 12th day of November, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


REX L. LACY, Hearing Officer

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