

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
NORTH KITSAP SCHOOL DISTRICT)	CASE 7711-C-88-413
)	
For clarification of an existing bargaining unit of its employees represented by:)	DECISION 3405 - PECB
)	
NORTH KITSAP ASSOCIATION OF CLASSIFIED EDUCATIONAL EMPLOYEES)	ORDER CLARIFYING BARGAINING UNIT
)	
)	

Hanson & Dionne, by James Dionne, Attorney at Law, appeared on behalf of the employer.

Eric Nordlof, General Counsel, appeared on behalf of the union.

On December 7, 1988, North Kitsap School District No. 400 filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit of its employees represented by North Kitsap Association of Classified Educational Employees, an affiliate of Public School Employees of Washington. Specifically, the employer seeks exclusion of one claimed "confidential employee" from the bargaining unit. A hearing was conducted before Hearing Officer Rex L. Lacy on October 16, 1989, at Poulsbo, Washington. The parties filed post-hearing briefs.

BACKGROUND

North Kitsap School District No. 400 provides basic educational opportunities in kindergarten through 12th grade for approximately 5060 students who attend the employer's six schools. Superinten-

dent of Schools Clifford Campbell is the chief executive officer of the employer. James Dionne is the employer's labor relations consultant.

The North Kitsap School District has about 500 employees, of which approximately 240 are classified employees. Three bargaining units have been organized among those classified employees, and those units are represented by two different organizations. Public School Employees of North Kitsap is the exclusive bargaining representative of two of the classified employee bargaining units, including the unit composed of aides and office-clerical employees that is involved in this matter. The parties have executed a series of collective bargaining agreements. At the time of the hearing, the parties' contract for the period from September 1, 1986 to August 31, 1989 had expired and the parties were involved in collective bargaining negotiations for a successor agreement.

The parties' 1986 - 1989 collective bargaining agreement provided that the secretary to the superintendent, a personnel office secretary, a personnel accountant and a public relations officer /executive secretary to the superintendent were to be excluded from the bargaining unit.

In July of 1986, Dr. Clifford Campbell replaced Robert Alford as Superintendent of Schools. During his tenure, Alford had personally typed all of his correspondences and other documents, including those related to labor relations matters. Campbell's appointment altered the manner in which work was accomplished in the superintendent's office, as Campbell assigns such functions to the office-clerical personnel in the office. An additional change occurred when the person holding the public relations / executive secretary position, Judy Campana, was relieved of her secretarial duties. Working under the job title of "public information officer /office manager, Campana's duties are now related mostly to her

responsibilities as public information officer for the school district. Her office-clerical responsibilities were transferred to the current secretary to the superintendent and to the central office receptionist / secretary which is at issue here.

The central office receptionist / secretary position is supervised by the secretary to the superintendent. The position has historically been included in the bargaining unit. From the time she was hired until 1989, Jan Nicholson's primary responsibility was to effectively, efficiently, and to cheerfully operate the employer's central communication center, greet visitors, answer visitor's questions, maintain bulletin boards and calendars, coordinate student hearings, receive and distribute mail, process purchase orders for the superintendent's office, prepare enrollment data for state reports, receive and process requests for interdistrict student transfers and releases, and other routine clerical duties. She also performed routine office-clerical duties in conjunction with her primary responsibility as telephone receptionist, but she was not involved in clerical tasks related to confidential labor relations materials.

By the autumn of 1989, the telephone system was modified to permit callers to contact individual school and maintenance buildings directly, without going through the receptionist located in the superintendent's office. Currently, Nicholson answers the telephone only for the building where she works. The reduction of Nicholson's telephone responsibilities was offset by transfer of some of Campana's office-clerical duties to Nicholson. Included in the transfer of Campana's duties was responsibility for providing clerical support to the superintendent. That includes typing and reproduction of confidential labor relations materials for negotiations between the employer and the exclusive bargaining representatives of its employees. Nicholson has typed and processed several confidential labor relations documents.

In November of 1989, the employer amended the job descriptions of the public information officer / office manager and central office receptionist / secretary positions, to reflect the new duties and responsibilities of those positions.

POSITIONS OF THE PARTIES

The employer contends that the position of central office receptionist / secretary should be excluded from the bargaining unit pursuant to RCW 41.56.030(2)(c), because the employee holding that position is required to type and reproduce confidential labor relations materials.

The union contends that it is not necessary for the disputed employee to handle confidential labor relations materials, because there are sufficient other excluded employees to perform such tasks. Therefore, the union asserts that the employer has no legitimate need to have the affected employee excluded from the bargaining unit.

DISCUSSION

RCW 41.56.030(2)(c) provides for exclusion from bargaining units of employees "whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit. . . ". In I.A.F.F. v. City of Yakima, 91 Wn.2d 101 (1978), the Supreme Court of the State of Washington held:

[I]n order for an employee to come within the exception of RCW 41.56.030(2)(c), 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 the close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including the formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

The party proposing exclusions of an employee from all rights under the collective bargaining statute bears a heavy burden of proof. City of Seattle, Decision 689-A (PECB, 1979).

The small size of the office space occupied by the superintendent and his staff affords an opportunity for an intimate working relationship, but such factors are not, by themselves, sufficient to justify exclusion of an employee as a "confidential employee" under the provision of the statute. The disputed employees in Pe Ell School District, Decision 1068-A (PECB, 1981) and San Juan School District, Decision 1321 (PECB, 1982), worked in small office settings as part of small administrative support staffs, but the determinations on their exclusion as "confidential employees" was made on the basis of their duties as clerical employees. In Pe Ell and San Juan, the disputed employees were excluded under RCW 41.56.030(2)(c), because they routinely received, typed, and processed communications and documents dealing with the employer's labor relations policies, collective bargaining proposals, and personnel practices.

Since Campana's promotion to exclusively performing "public information" and "office manager" functions, Nicholson routinely types and processes documents and communications relating to the employer's labor relations policies relating to collective bargaining negotiations with one or more of the six units within the employer's workforce. The evidence indicates, further, that Nicholson will continue typing and processing confidential labor relations materials in the future, as part of changes that have

expanded her clerical duties and reduced her receptionist duties. In effect, Nicholson has ascended to the second secretarial exclusion historically recognized in the superintendent's office. Examination of Nicholson's duties thus yields the conclusion that she should be excluded from the bargaining unit as a "confidential" employee.

If a question exists concerning the number of "confidential" exclusions that are to be "necessarily" implied under RCW 41.56-.030(2)(c) in the North Kitsap School District, such a question does not lie with the "central office receptionist / secretary" position that has been put before the Commission in this case. In Wapato School District, Decision 788-A (PECB, 1980), a decision was based on the duties of the particular position that had been called into question. There was indication that the duties which justified the "confidential" exclusion had been stripped away from one or more positions formerly excluded as "confidential", but those had not been called into question in the case. A number of claimed "confidential" exclusions, including at least one central office word processing position, were rejected as not being "necessary" in Clover Park School District, Decision 2243, 2243-A (PECB, 1987), but that case arose in the context of a representation proceeding in which all such positions were properly brought before the Commission. In the case at hand, the jointly filed petition frames an issue only as to the "superintendent's receptionist (secretary/receptionist)" position. The legitimacy of the other "confidential" exclusions existing within the North Kitsap School District are not before the Commission in this case.

FINDINGS OF FACT

1. North Kitsap School District No. 400 is organized and operated pursuant to Title 28A. RCW, and is a public employer within the meaning of RCW 41.56.030(2).

2. North Kitsap Association of Classified Educational Employees, an affiliate of Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of a bargaining unit of office-clerical and aide employees of North Kitsap School District No. 400.
3. Prior to the events giving rise to these proceedings, the employer had three office-clerical employees assigned to the office of its superintendent of schools. The individual then employed as superintendent did a substantial amount of his own typing. Office-clerical positions titled: "public information / executive secretary" and "secretary to the superintendent" were excluded, as "confidential employees", from the bargaining unit. A "central office receptionist / secretary" had responsibility for answering incoming telephone calls for all of the employer's facilities, and was included in the bargaining unit.
4. The individual currently employed as superintendent of schools does not type his own materials, and assigns such work to the office-clerical employees in the superintendent's office.
5. The employer has installed new telephone equipment which permits callers to make direct contact with the facilities operated by the employer. This reduced the telephone answering duties of the "central office receptionist / secretary".
6. The position of "public information / executive secretary" has been re-titled as "public information officer / office manager", and the office-clerical duties formerly performed by that position have been transferred to the "secretary to the superintendent" and the "central office receptionist / secretary".

7. As the "central office receptionist / secretary", Jan Nicholson performs a variety of clerical and receptionist duties in the superintendent's office. Nicholson has access to the superintendent's files concerning confidential labor relations matters and, as part of her assigned duties, she routinely types and reproduces confidential documents and communications concerning the employer's labor relations policies.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists, and the Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The central office receptionist / secretary is a confidential employee within the meaning of RCW 41.56.030(2)(c).

ORDER

The position of "central office receptionist / secretary", presently occupied by Jan Nicholson, shall be excluded from the bargaining unit.

Dated at Olympia, Washington this 29th day of January, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-230.