

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| OAK HARBOR SCHOOL DISTRICT |) | CASE 7970-C-89-425 |
| For clarification of an existing bargaining unit of employees represented by: |) | DECISION 3581 - PECB |
| PUBLIC SCHOOL EMPLOYEES OF OAK HARBOR |) | ORDER CLARIFYING BARGAINING UNIT |

Perkins Coie, by Thomas E. Platt, Attorney at Law, appeared for the employer.

Eric T. Nordlof, General Counsel, appeared for the union.

On May 12, 1989, Oak Harbor School District filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit. At issue are the incumbents in two secretary positions which the employer claims to be "confidential employees" within the meaning of RCW 41.56.030(2)(c). A hearing was held at Oak Harbor, Washington, on May 24, 1990, before Hearing Officer Walter M. Stuteville. The parties filed post-hearing briefs. Authority to decide the dispute has been delegated to the Hearing Officer under WAC 391-35-190.

BACKGROUND

The Oak Harbor School District provides services to approximately 5800 students in Island County, Washington. The school district is governed by an elected board of directors. Superintendent Roger Woehl serves as secretary of the board and as chief executive officer. Three other administrators assist the board and superintendent in the formulation and effectuation of the employer's labor

relations policies: Assistant Superintendent Rick Schulte, Business Manager Pam Ross, and Personnel Administrator Ernie Erkes.

Among approximately 520 employees of the Oak Harbor School District, about 300 are certificated employees represented by the Oak Harbor Education Association and 200 are classified employees represented by Public School Employees of Oak Harbor, an affiliate of the Public School Employees of Washington (PSE). Approximately 15 administrators are represented by the Oak Harbor Building Administrator's Association. Twelve employees are excluded from all of those bargaining units, by agreements between the parties.

The bargaining unit represented by PSE is described in the parties' current collective bargaining agreement as follows:

ARTICLE I

Section 1.1 The District hereby recognizes the Association as the exclusive representative of all employees in the bargaining unit as described in Section 1.3 with exceptions as noted in Section 1.2.

Section 1.2 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 of the District pursuant to RCW 41.56.030(2).

Section 1.3 The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general job classifications: Accounting Assistants, Aides, Custodial, Food Service, Grounds, Maintenance, Secretarial-Clerical, Security, and Transportation. The parties agree that the following classified positions are excluded from the bargaining unit: Business Manager, Business Director, Maintenance Director, Transportation Director, NJROTC employees, Administrative Assistant, Community Relations Officer, and Shop Foreman.

That collective bargaining agreement is effective from September 1, 1989 to August 31, 1991.

Prior to the 1987-88 school year, the employer assigned clerical and secretarial work in its administrative office to a "pool" of employees supervised by Joan Gilmore.¹ Under that arrangement, Gilmore was responsible for typing and processing confidential information relating to the employer's labor relations policies and practices.

Superintendent Woehl assumed that position in 1987. Shortly thereafter, Woehl commenced a reorganization of the administration office. As a result of that reorganization, administrators were given new or different duties, and clerical employees were assigned to work for specific administrators. Lois Carrol became Eerkes' secretary, and Lyn Lupien became Schulte's secretary. Carrol and Lupien also do some clerical tasks for Business Manager Ross. Of importance to this case, Gilmore's labor relations duties and responsibilities were reassigned to Carrol and Lupien. Three other office clerical continue to do the remaining administrative clerical functions.

As part of his duties, Eerkes serves on the employer's negotiating teams for collective bargaining. Until 1989, he was the employer's spokesperson for bargaining with the certificated employees, and he assisted in the negotiations with the classified employees. He has continued to serve on both of those negotiations teams since 1989, but has not been the employer's chief spokesperson. Additionally, Eerkes participates, as the superintendent's designee, at step 3 of the grievance procedures for both certificated and classified employees. Eerkes routinely assigns Lois Carrol to type and process correspondence related to labor relations, contract

¹ Gilmore's title was "secretary to the superintendent" until 1989, when it was changed to "administrative assistant".

language proposals, minutes of negotiations sessions, and responses on grievance matters.

Schulte also serves on the employer's negotiations teams. Until 1989, he was the employer's chief spokesperson in negotiations for the classified employees bargaining unit. When designated by Woehl, Schulte hears and adjusts grievances at step 3 of both the classified and certificated collective bargaining agreements. In addition to other duties, Lupien provides clerical support to Schulte in connection with those functions.

During the most recent collective bargaining negotiations, Carrol and Lupien were assigned to provide clerical support to the employer's bargaining teams. They alternated in attending the bargaining sessions, and typed the employer's proposals and counter-proposals prior to their presentation to the union.

POSITION OF THE PARTIES

The employer contends Lois Carrol and Lyn Lupien are "confidential employees" within the meaning of RCW 41.56.030(2)(c), because their regular assigned duties include processing, typing, and reproducing written communications involving negotiations proposals, grievance matters, and other materials for employer officials who are involved in the formulation, implementation, and effectuation of the employer's labor relations policies and practices.

PSE contends that the affected employees are not "confidential employees" pursuant to the statute, because their processing of confidential labor relations materials amounts to a small portion of their total work time. The union contends that it is not necessary for Carrol and Lupien to be excluded from bargaining rights, because Gilmore is available to process confidential materials. PSE asserts that Carrol and Lupien do not attend

planning sessions involving collective bargaining matters, and that the affected employees provide only routine clerical support which does not qualify them for exemption from the statute.

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. As used in this chapter:

...

(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.

The Public Employment Relations Commission has decided numerous cases concerning "confidential employees", and particularly with respect to the job responsibilities that make a secretary a "confidential employee" excluded 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, implement, 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, Decision 231 (PECB, 1977).²

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 be a confidential employee within the meaning of RCW 41.56.030(2)(c) in City of

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

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.³ See, also, City of Ocean Shores, Decision 2064 (PECB, 1984).

In this case, the arrival of a new superintendent and his reorganization of the administrative office staff constitutes a significant change of circumstances. While the employer had utilized a "secretarial pool" to do routine clerical functions in the past, leaving Gilmore to process labor relations materials, such arrangements were no longer practical after the reorganization. The changes in the duties of Lois Carrol and Lyn Lupien appear to be a logical solution to the reallocation of work assignments. The new functions of those employees, as described by the superintendent and personnel director, now fit them within the definition of a "confidential employee" found in case precedent.⁴

³ On the other hand, a clerical employee in a police department was included in a bargaining unit in City of Sunnyside, Decision 1178 (PECB, 1981), upon a conclusion that she was not privy to confidential information concerning the employer's labor relations policies.

⁴ The actual duties, rather than the title, are controlling in making determinations on "confidential" exclusions. Holding a secretarial-clerical or administrative assistant position reporting directly to the superintendent of a school district or other chief executive officer does not automatically qualify that person as a "confidential employee". In Hendricks County Rural Electric Cooperative, ___ U.S. ___ (197), the Supreme Court of the United States affirmed the conclusion of the National Labor Relations Board held that the secretary to the president of the corporation was not a "confidential" employee. While not an issue in this case, it could be argued that, since the reorganization, Gilmore no longer possesses the duties and responsibilities for processing confidential labor relations materials that previously justified her exclusion from the bargaining unit.

The union would have this analysis focus on the fact that Carrol and Lupien do not themselves formulate labor policy, and do not participate in the meetings where such policy is developed. While those factual claims are true, they are not decisive. In Yakima, the Supreme Court took direction from the statutory definition of "confidential employee" found in the Educational Employment Relations Act, Chapter 41.59 RCW, at RCW 41.59.020(4)(c):

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(ii) Any person who assists and acts in a confidential capacity to such person. [Emphasis supplied]

The Supreme Court indicated a desire to fashion a similar test under Chapter 41.56 RCW, and it follows that actual participation in the formulation of labor relations policy is not necessary, so long as the clerical support provided by the individual(s) at issue includes the processing of sensitive materials. It is clear that Carrol and Lupien process and are the custodians of confidential materials.

A "confidential employee" need not work exclusively, or even primarily, on "confidential" work, so long as the assignments can be described as "necessary", "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 relationships between Carrol and Lupien and their superiors fulfill that test.

FINDINGS OF FACT

1. Oak Harbor School District is a "public employer" within the meaning of RCW 41.56.030(1).
2. Public School Employees of Oak Harbor, affiliated with Public School Employees of Washington, is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. The employer and the union are parties to a collective bargaining agreement in effect from September 1, 1989 through August 31, 1991. The secretary to the superintendent has historically been excluded from the bargaining unit as a "confidential employee".
4. The superintendent is the executive head of the bargaining unit and has a confidential relationship with the elected board of directors concerning the labor relations policies of the employer. The current superintendent, Roger Woehl, has held that office since 1987.
5. Between 1987 and 1989, Superintendent Woehl reorganized the duties and responsibilities of administrators and office-clerical employees in the employer's administrative office. Since that reorganization, clerical assistance on labor relations matters has been provided by personnel other than the superintendent's secretary.
6. Lois Carrol and Lyn Lupien are now regularly assigned ongoing responsibilities for clerical functions in support of employer officials who formulate or assist in the formulation of the labor relations policies of the employer, and who represent the employer in collective bargaining negotiations and contract administration.

7. Carrol and Lupien now have regular and ongoing access to materials involving the confidential labor relations policies of the employer, including the typing, filing and processing of information that encompasses potential bargaining proposals, grievances, and communications with the three separate bargaining units representing employees of the Oak Harbor School District. Both such employees attend bargaining sessions on behalf of the employer.
8. A dispute was framed by the parties during their negotiations for their current collective bargaining agreement, with respect to the propriety of continuing to include the positions held by Lois Carrol and Lyn Lupien in the bargaining unit. No agreement was reached on the matter. The petition to initiate this proceeding was filed on May 12, 1989, prior to the signing of the current collective bargaining agreement.

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. As the current incumbent of the position of assistant to the personnel director, Lois Carrol is a "confidential" employee within the meaning of RCW 41.56.030(2)(c), and is not a public employee within the meaning of RCW 41.56.030(2).
3. As the current incumbent of the position of secretary to the assistant superintendent and business manager, Lyn Lupien is a "confidential" employee within the meaning of RCW 41.56-.030(2)(c), and is not a public employee within the meaning of RCW 41.56.030(2).

ORDER

1. The bargaining unit described in paragraph 3 of the foregoing Findings of Fact is clarified to exclude the assistant to the Personnel Director

2. The bargaining unit described in paragraph 3 of the foregoing Findings of Fact is clarified to exclude the secretary to the assistant superintendent and business manager.

DATED at Olympia, Washington, this 1st day of October, 1990.

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.