

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
RICHLAND ASSOCIATION OF)	CASE 8182-C-89-456
EDUCATIONAL SECRETARIES)	
)	DECISION 3626 - PECB
For clarification of an existing)	
bargaining unit of employees of:)	
)	ORDER CLARIFYING
RICHLAND SCHOOL DISTRICT)	BARGAINING UNIT
)	
)	

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

Robert D. Schwerdtfeger, Labor Relations Consultant, appeared for the employer.

On September 20, 1989, the Richland Association of Educational Secretaries, an affiliate of Public School Employees of Washington (PSE), filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit. At issue is whether a "payroll supervisor" is a "confidential employees" within the meaning of RCW 41.56.030(2)(c). A hearing was held at Richland, Washington, on June 27, 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 Richland School District is governed by an elected board of directors, and provides services to approximately 7100 students in Benton County, Washington. Superintendent Marge Chow serves as secretary of the board and as chief executive officer. Gary EuBanks is assistant superintendent for support services.

Among approximately 750 employees of the Richland School District, about 400 are certificated employees represented by the Richland Education Association, and approximately 170 are classified employees represented by PSE. The remaining 180 employees are either represented by other labor organizations, are unrepresented administrative personnel, or are exempt employees.

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 below, and the Association recognizes the responsibility of representing the interests of all such employees.

Section 1.2 Nothing contained herein shall be construed to include in the bargaining unit any person whose duties as 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 includes classified employees in the following job classifications: Secretarial. This unit does not include the following: Secretary to the Superintendent, Secretary (for Classified Personnel) to the Director of Personnel, Secretary (for Certificated Personnel) to the Director of Personnel, Print Shop Supervisor. Maintenance coordinator will remain in the exempt classification until the present employee no longer holds the position, at which time the position will revert to the bargaining unit.

That collective bargaining agreement is effective from September 1, 1989 to August 31, 1992.

Lyda Lowrance commenced her employment with the Richland School District on June 1, 1987, initially working under the title of "Secretary/Payroll" at a pay rate of \$7.45 per hour. Prior to June, 1989, the position was included in the PSE bargaining unit.

On June 14, 1989, Assistant Superintendent Roger Lehnert notified PSE Field Representative Bud Meyers of the employer's claim that the position held by Lyda Lowrance should be excluded from the bargaining unit, effective on July 1, 1989, on the basis of her being a "confidential employee". At the same time, the employer changed Lowrance's title to "payroll supervisor", and her pay rate was increased to \$10.26 per hour.¹

Lowrance's general responsibilities includes preparation of the employer's payroll. She supervises one employee with the job title of "benefits technician-payroll". Part of Lowrance's specific duties includes assisting the assistant superintendent of personnel in the formulation and disposition of salary and benefits proposals for use by the employer in collective bargaining negotiations between the employer and the exclusive bargaining representatives of its employees. During the most recent round of negotiations, Lowrance actually provided information concerning the cost of proposals made by the various unions, costs and method of accumulating sick leave, and medical benefits costs. She attended strategy meetings where the formulation of the employer's collective bargaining proposals were being considered, before the proposals were presented to the various unions.

POSITION OF THE PARTIES

The employer contends Lyda Lowrance is a "confidential employee" within the meaning of RCW 41.56.030(2)(c), because her regular

¹ Lowrance is currently paid \$11.20 per hour.

assigned duties include processing and reproducing cost analyses for negotiations proposals for employer officials who are involved in the formulation, implementation, and effectuation of the employer's labor relations policies and practices. Further, the employer contends that Lowrance is a supervisor whose duties and responsibilities further support her position's exclusion from the bargaining unit.

PSE contends that the affected employee is not a "confidential employee" pursuant to the statute, because her processing of confidential labor relations materials consumes only a small portion of her total work time. The union contends that it is not necessary for Lowrance to be excluded from bargaining rights, because the assistant superintendent of business is available to process confidential materials. PSE asserts that Lowrance provides only routine clerical support which does not qualify her for exemption from the statute. Further, the union contends that Lowrance is a low level supervisor much like the building foreman and 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 exempted 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 or a clerical employee a "confidential employee" excluded from the coverage of the statute.

Exclusion has been ordered in a number of cases where the "labor nexus" has been established. 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 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. See, also, City of Ocean Shores, Decision 2064 (PECB, 1984).

Where the "confidential" exclusion has been denied, the focus has been on the absence of the "labor nexus". Thus, 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) and City of Ocean Shores, Decision 2064 (PECB, 1984). Consistent with that approach, a previous case involving these parties involved re-inclusion of a clerical employee of the Richland School District in the bargaining unit when a reorganization resulted in her loss of the "labor nexus" that had originally caused her exclusion from the unit. Richland School District, Decision 2208-A (PECB, 1985).

In the instant case, the change of title from "secretary/payroll" to "payroll supervisor" constitutes a significant change of circum-

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

stances. While the affected employee performed general payroll duties under her former title, she was not asked to produce the financial data used in confidential labor relations matters. The change of her title was accompanied by an assignment of "labor nexus" duties, as she is now required to provide data used by the employer in collective bargaining negotiations. The new functions of Lowrance now fit her within the definition of a "confidential employee" found in case precedent.³

PSE would have this analysis focus on the fact that Lowrance does not independently formulate labor policy, and does not participate in all of the meetings where such policy is developed. While those factual claims may be 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

³

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, 454 U.S. 170 (1981), 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.

(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. 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 Lowrance processes and is the custodian of confidential materials.

PSE nevertheless questions the necessity of Lowrance's involvement with confidential materials. The changes in Lowrance's responsibilities appear to be a logical solution to the employer's need for a resource person who can provide financial data to be used in collective negotiations. 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 Lowrance and her superiors fulfill that test.

FINDINGS OF FACT

1. Richland School District is a "public employer" within the meaning of RCW 41.56.030(1).
2. Richland Association of Educational Secretaries, 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, 1992, in which the union has been recognized as the

exclusive bargaining representative of office-clerical employees of the Richland School District other than "confidential" employees. The secretary to the superintendent has historically been excluded from the bargaining unit as a "confidential employee".

4. On June 14, 1989, the employer notified the union that the bargaining unit position historically referred to as "payroll clerk" would be upgraded to "payroll supervisor" and would be removed from the bargaining unit on the basis that the employer considered the position to be held by a "confidential employee" within the meaning of RCW 41.56.030(2)(c).
5. As the incumbent of the "payroll supervisor" position, Lyda Lowrance is now regularly assigned ongoing responsibilities for clerical 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.
6. Lowrance now has regular and ongoing access to materials involving the confidential labor relations policies of the employer, including processing of information that encompasses potential bargaining proposals and communications with the several separate bargaining units representing employees of the Richland School District.

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 "payroll supervisor", Lyda Lowrance 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

The bargaining unit described in paragraph 3 of the foregoing Findings of Fact is clarified to exclude the payroll supervisor.

DATED at Olympia, Washington, this 7th day of November, 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.