

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
AMALGAMATED TRANSIT UNION,)	CASE 7916-C-89-421
LOCAL 1598, AFL-CIO)	
)	
For clarification of an existing)	DECISION 3662 - PECB
bargaining unit of employees of:)	
)	
SPOKANE TRANSIT AUTHORITY)	ORDER CLARIFYING
)	BARGAINING UNIT
)	

Monte DeChenne, Labor Relations Representative, appeared on behalf of the union.

Thomas Kingen, Attorney at Law, appeared on behalf of the employer.

On April 17, 1989, Amalgamated Transit Union, Local 1598, AFL-CIO (ATU) filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit of employees of Spokane Transit Authority (STA). Specifically, the ATU seeks to have positions titled "office manager", "office manager, special transportation", and "systems analyst" included in the bargaining unit represented by the union. A hearing was held at Spokane, Washington, on May 31, 1990, before Hearing Officer Frederick J. Rosenberry. 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 Spokane Transit Authority is a public transportation benefit area corporation headquartered at Spokane, Washington. The employer is engaged in providing public transportation services to citizens of the City of Spokane and parts of Spokane County. The

employer's operations include a van service for the elderly and disabled. Robert Schweim is executive director. Charles Fleck is director of transit operations, and is responsible for managing the STA's transportation and maintenance functions. The three positions at issue in this proceeding are within the group of employees under Fleck's supervision.

Amalgamated Transit Union, Local 1598, is the exclusive representative of two separate bargaining units of employees of the STA. The larger unit, consisting of bus operators, dates back to the STA's predecessors. The second bargaining unit, consisting of supervisory employees, was created by certification. See: Spokane Transit Authority, Decision 1642 (PECB, 1983). The latter unit includes all full-time unit supervisors of the mass transit division, supervisor/dispatchers of the special transportation division, and other supervisory employees of the transit system.

During the course of a hearing conducted by Executive Director Marvin L. Schurke on March 4, 1983, in the proceedings which led to Decision 1642, the parties stipulated that the "system analyst" was not a supervisor. They further agreed to exclude that position from the "supervisors" unit sought by the union in that case.

On July 8, 1983, shortly before the union was certified as exclusive representative of the "supervisors" bargaining unit, the parties agreed upon the exclusion of the "superintendent of transportation" classification from that supervisor bargaining unit.

On August 2, 1983, the Commission issued a certification which described the "supervisors" bargaining unit as follows:

All full-time and regular part-time supervisors and dispatchers employed by Spokane Transit Authority, excluding confidential employees, and non-supervisory employees.

Spokane Transit Authority, Decision 1642-A (PECB, 1983).

After the creation of the "supervisors" bargaining unit, Frank Heidt worked under the title of "chief supervisor". Heidt served as the assistant to the transportation superintendent. He worked with the bus operators and dispatchers, scheduled bus operators, and filled in for the superintendent in his absence. He was involved in hiring of bus operators, could discipline bus operators, worked with bus operators on mark-ups, did timing runs for bus schedules, and was involved in adjusting the grievances of bus operators. Additionally, Heidt was the first line supervisor of the other supervisors. Finally, he worked with the systems analyst on tasks involving the transit computer system. Heidt was a member of Local 1598.¹

Heidt retired at an unspecified time in 1987. The employer thereafter created the two "office manager" positions at issue in this proceeding. Heidt's duties and responsibilities were divided amongst the systems analyst and the two newly created positions.

The job descriptions for the "office manager" and "office manager, special transportation" positions are similar in duties and responsibilities. Each is responsible for assisting a division director (i.e., the director of transit operations or the director of special transportation) in the management and administration of the personnel, activities, and work flow of the division to which they are assigned. Such work is performed with considerable independence, and requires the incumbent to plan, arrange, and prioritize their own work. The disputed employees coordinate divisional efforts with the operations of other transportation divisions, departments, and public agencies, to assure an effective, efficient, and accessible public transportation system.

¹ It appears that the "chief supervisor" title was created solely for Heidt. That title does not appear on the salary grid in any collective bargaining agreement since ATU was certified as exclusive bargaining representative of the "supervisor" unit.

Specific duties include assisting in planning, organization, and direction; directing, supervising, and evaluating the work of subordinates engaged in all facets of transportation service delivery; assisting in rectifying complex or unusual work problems; assisting in implementing an affirmative action plan; assisting in developing division and organizational procedures and positive labor management relations; monitoring the departmental budget; and developing changes in organization, staffing, and work processes to improve effectiveness. The office managers represent the division before the board of directors, executive director, various committees, agencies, organizations, and the general public.

The office managers at issue in this proceeding can effectively recommend the hiring and firing of employees under their direction. They are involved in scheduling and evaluating departmental employees, and are involved in grievances at the supervisor step in the contract. They participate on the management team during negotiations with ATU, and are involved in both the planning and face-to-face discussions of the issues raised during negotiations.

The parties have had a series of collective bargaining agreements. Their latest agreement, which is effective from January 1, 1990 through December 31, 1992, was signed after the petition in this proceeding was filed. The job classification of "supervisor of transportation, chief supervisor", is one of the positions included in the "supervisors" bargaining unit by that agreement.

POSITIONS OF THE PARTIES

The union contends that the two "managers" are public employees within the coverage of the statute, that they are the alter egos of the departed "chief supervisor" who was a member of the bargaining unit, and that their duties are collectively the same as those performed by their predecessor. Therefore, according to the union,

the positions should be included in the bargaining unit. Finally, the union contends that the systems analyst should now be included in the "supervisors" unit, because he performs some of the duties of the former "chief supervisor", who was a member of that unit.

The employer contends that the employees holding the disputed "manager" positions are the supervisors of the employees in the supervisory bargaining unit, and that they should not be included in the same unit with their subordinates. Further, the employer contends that the managers are "confidential employees" within the meaning of RCW 41.56.030(2)(c), because of their participation on behalf of the employer in the collective bargaining process. The employer contends that there has been no change in circumstances regarding the systems analyst, who the parties agree is not a supervisor. Therefore, the employer contends that position does not share a community of interest with the employees in the supervisors unit.

DISCUSSION

The Confidential Employee Issue

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, ...
[emphasis supplied]

That definition was interpreted in City of Yakima v. IAFF, 91 Wn.2d 101 (1978), where the Supreme Court 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. [emphasis supplied]

Numerous subsequent decisions of the Public Employment Relations Commission have applied that "labor nexus" test, 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.

Secretaries who reported directly to members of a school district's top management were excluded from a bargaining unit in Edmonds School District, Decision 231 (PECB, 1977), 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.²

Similarly, the administrative secretary to a 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 employer's labor relations policies. The secretary to a chief of police was held to be a confidential employee in City of Pasco, Decision 939 (PECB, 1980), where it was shown that the individual was privy to budgetary and personnel information prior to its general dissemination, and that she typed materials dealing with internal operations and the union. See, also, City of Ocean Shores, Decision 2064 (PECB, 1984).

The direct participation of the disputed employees in collective bargaining negotiations between the employer and the union is a significant fact supporting a "confidential" exclusion. It is also a change in the relationship between the parties, as Heidt's testimony clearly indicates that he did not participate in the formulation, effectuation, or implementation of the employer's labor relation policies. Unrefuted evidence and testimony establishes that the "office manager" and the "office manager, special transportation" are both now involved in preliminary deliberations involving the employer's positions on issues presented in negotiations. Additionally, they now actually sit at the bargaining table on behalf of the employer in alternate years. The union would have this analysis focus on the fact that the disputed individuals do not formulate labor policy, and do not participate in all 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

²

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

definition of "confidential employee" found in the Educational Employment Relations Act, 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. It follows that actual participation in the formulation of labor relations policy is not necessary, so long as the collective bargaining support provided by the individual(s) at issue includes the processing of sensitive materials. It is clear that the two "managers" at issue here process and are the custodian of confidential materials. They clearly meet the "labor nexus" standard set forth by the Supreme Court in Yakima.

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 the disputed individuals and their superiors fulfill that test.

The Supervisor Issue

Because it is concluded that the "office manager" and "office manager, special transportation" are excluded from the coverage of the Public Employees' Collective Bargaining Act as "confidential

employees" within the meaning of RCW 41.56.030(2)(c), they cannot be included in any bargaining unit. It is therefore not necessary to address the "supervisor" issue raised in this matter with regard to the two "manager" positions.

The Systems Analyst

The evidence clearly establishes, and the parties agree, that Systems Analyst Frank Stoltz is not a supervisor. The position was excluded from the "supervisors" unit when it was created in 1983 because of that fact.

Nothing in this record indicates that there has been a change of circumstances sufficient to require a change in the historical status of that position. Stoltz has acquired the small amount of responsibility for the computer system that was formerly vested in Heidt. That merely places all of the computer systems work on Stoltz's shoulders, but does not give Stoltz any of the supervisory responsibilities formerly vested in Heidt. The change does not require that Stoltz's position be included in the bargaining unit.

FINDINGS OF FACT

1. Spokane Transit Authority is a public transportation benefit area operating pursuant to Chapter 36.57A RCW in Spokane County, Washington, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Amalgamated Transit Union, Local 1598, AFL-CIO, is a labor organization and a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. ATU Local 1598 is the exclusive bargaining representative of a bargaining unit of supervisory employees of the Spokane

Transit Authority. That bargaining relationship results from representation proceedings before the Public Employment Relations Commission in 1983, when the parties stipulated that the position of "systems analyst" was excluded from the bargaining unit. A position titled "chief supervisor" was included in the bargaining unit.

4. During or about 1987, the incumbent of the "chief supervisor" position retired, and the position was left vacant.
5. In September, 1987, the employer notified the union that positions titled "office manager" and "office manager, special transportation" would be created, and, further, that the new positions would be excluded from the bargaining unit on the basis that the employer considered them to be "confidential employees" within the meaning of RCW 41.56.030(2)(c).
6. The union filed a unit clarification petition on April 17, 1989, seeking to have the newly-created "manager" positions included in the bargaining unit, and seeking to have the "systems analyst" position included in the bargaining union on the basis of changed circumstances.
7. The "supervisors" bargaining unit is described in the current collective bargaining agreement between the parties as follows:

All full-time and regular part-time supervisors and dispatchers employed by Spokane Transit Authority, excluding confidential employees, and non-supervisory employees.

That collective bargaining agreement was signed subsequent to the filing of the petition in this case, and remains in effect from January 1, 1990 through August 31, 1992.

8. The employees holding the job classifications of "office manager" and "office manager, special transportation" are regularly assigned ongoing responsibilities concerning the employer's preparation for collective bargaining, and they have an intimate fiduciary relationship with employer officials who formulate or assist in the formulation of the labor relations policies of the employer. They alternately participate in collective bargaining negotiations on behalf of the employer. They have regular and ongoing access to materials involving the confidential labor relations policies of the employer.
9. The employee holding the title of "systems analyst" is not a supervisor. The position has acquired certain computer system tasks, but not the supervisory authority, formerly possessed by the "chief supervisor".

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 current incumbents of the positions titled "office manager" and "office manager, special transportation" are "confidential employees" within the meaning of RCW 41.56.030-(2)(c), and are not public employee within the meaning of RCW 41.56.030(2).
3. The incumbent in the classification of "systems analyst" is not a supervisor, and does not share a community of interest with employees of the existing supervisor bargaining unit, so

that allocation of the "systems analyst" position to that bargaining unit would not be appropriate under RCW 41.56.060.

ORDER

The bargaining unit described in paragraph 7 of the foregoing findings of fact is clarified to exclude the classifications "office manager", "office manager, special transportation", and "systems analyst".

DATED at Olympia, Washington, this 20th day of December, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



FREDERICK J. ROSENBERRY, Hearing Officer

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