

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
CITY OF CLARKSTON) CASE 9832-C-92-564
)
For clarification of an existing) DECISION 4524 - PECB
bargaining unit of employees)
represented by:)
)
WASHINGTON STATE COUNCIL OF COUNTY) ORDER CLARIFYING
AND CITY EMPLOYEES.) BARGAINING UNIT
)
)
)
_____)

Roy Wesley, Labor Relations Consultant, appeared on behalf of the employer.

John Cole, Deputy Director, appeared on behalf of the union.

On June 8, 1992, the City of Clarkston (employer) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, under Chapter 391-35 WAC. The employer sought exclusion of certain positions from a bargaining unit of its employees represented by Washington State Council of County and City Employees (union). A hearing was conducted on February 26, 1993, in Kennewick, Washington, before Hearing Officer Rex L. Lacy. The parties submitted post-hearing briefs. Authority to determine this "eligibility" dispute has been delegated to the Hearing Officer under WAC 391-35-190.

BACKGROUND

City of Clarkston, Washington (employer), is a "public employer" within the meaning of RCW 41.56.030(1). The city is governed by a Board of Councilpersons consisting of five members elected by popular vote. Howard Clovis is the current mayor of Clarkston.

The employer provides the customary range of municipal services to its residents, including the operation of a fire department.

Washington State Council of City and County Employees (union) is the exclusive bargaining representative of a bargaining unit of certain full-time and regular part-time office-clerical and supervisory employees of the City of Clarkston.

The bargaining relationship between this employer and union dates back to Resolution 91-22 adopted by the Clarkston City Council on December 23, 1991. That resolution granted voluntary recognition to the union for the bargaining unit comprised of administrative (office-clerical) and supervisory employees of the employer. Included in the bargaining unit at that time were two deputy clerk-treasurers, two secretaries, the street superintendent, the sewer superintendent, the building inspector, the assistant fire chief, and the fire chief. The employer and union were in the process of negotiating their first collective bargaining agreement when the petition in this matter was filed.¹

The petition filed by the employer in this proceeding involved positions titled "fire chief / emergency medical services officer" and "finance director". The employer sought to have both positions excluded from the bargaining unit, on the basis that they were both "confidential employees" within the meaning of RCW 41.56.030(2)(c). During the course of the proceedings, the employer produced evidence that the finance director position had been eliminated. The proceedings have thus been limited to the fire chief position.

Robert Berreman was the incumbent fire chief at the time of the hearing in this matter. The duties and responsibilities of that position were set forth in a job description, as follows:

¹ The parties had not reached an agreement by the time the hearing in this matter was held.

FIRE CHIEF/EMERGENCY MEDICAL SERVICES OFFICER**Nature of work**

Administrative work in planning, organizing and implementing a well rounded program of Fire Prevention, Fire Protection and Emergency Medical program for the City of Clarkston. Work is reviewed by the Mayor and City Council through conferences, analysis of reports, and observations of program effectiveness.

Examples of Work

Overall administration of the department; planning departmental operations with respect to equipment, apparatus and personnel; and implementation of such plans.

Plans, organizes and directs a program of Fire Prevention Inspection of buildings and installation throughout the City.

Reviews the training of paid and volunteer firefighters as to effectiveness of the overall goals and objectives of the Fire Department.

Shall work closely with subordinate officers in reviewing their training programs and overall departmental goals and objectives.

Preparing departmental budget with respect to cost effectiveness and departmental goals and objectives.

Working with Asotin County Commissioners, Mayor and City Council of the City of Asotin on budget cost for Rescue One program.

Performs other related work as required.

Desirable Knowledge, Abilities and Skills

Thorough knowledge of the principles, practices, and procedures of modern firefighting, fire prevention, fire administration and training.

Thorough knowledge of the rules and regulations of the Fire Department.

Thorough knowledge of the geography of the City, and the location of streets, principle buildings and fire hydrants.

Thorough knowledge of the principles and practices of fire safety and of inspection techniques.

Ability to plan, install, and carry out programs of departmental operations and activities, personnel training and fire prevention.

Ability to express ideas clearly and concisely, orally, and in writing, to groups and individuals.

Ability to establish and maintain effective working relationships with civic and official groups, representatives of cooperating agencies and subordinates.

Ability to plan, install and carry out an emergency medical system for the Cities of Clarkston, Asotin and Asotin County.

The non-supervisory "paid" fire fighters employed by the City of Clarkston are organized for the purposes of collective bargaining under Chapter 41.56 RCW. Together with the employer's labor relations consultant, Berreman sat at the bargaining table on behalf of the employer in collective bargaining negotiations with the union representing his subordinates.

POSITIONS OF THE PARTIES

The employer contends that its fire chief should be excluded from the administrative / supervisory bargaining unit, because he is a "confidential" employee within the meaning of RCW 41.56.030(2)(c). It points out that the fire chief has represented the employer in labor relations matters with the union representing its fire fighters.

Although the union acknowledges that the fire chief may be a "confidential" employee with regard to the bargaining unit of fire fighters under his supervision, it contends that he is not a "confidential" employee as defined by RCW 41.56.030(2)(c) in regard to the administrative / supervisory bargaining unit which it represents. It contends that the fire chief is not involved in the formulation, implementation, or effectuation of the employer's

labor relations policies and practices with regard to the unit in which he is included, and that he should remain in that unit.

DISCUSSION

Statutes and Precedents on "Confidential" Exclusion

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 the employer in the collective bargaining process. Clover Park School District, Decision 2243-A (PECB, 1987). The statutory definition of "public employee" in RCW 41.56.030(2) excludes employees "**whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship**" from the coverage of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Interpreting that definition in City of Yakima v. IAFF, 91 Wn.2d 101 (1978), the Supreme Court of the State of Washington held:

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 by **bold** supplied.]

In Yakima, the Supreme Court took direction from the definition of "confidential employee" found in the Educational Employment Relations Act, Chapter 41.59 RCW.²

The Public Employment Relations Commission and the Supreme Court of the State of Washington had previously ruled that "supervisors" are "public employees" within the meaning and coverage of Chapter 41.56 RCW. City of Tacoma, Decision 95-A (PECB, 1977); Municipality of Metropolitan Seattle (METRO), 88 Wn 2d 930 (1977). The Yakima case involved battalion chiefs in that city's fire department, who were undoubtedly "supervisors", but lacked the "labor nexus" to be declared "confidential" employees.

In a subsequent case, City of Yakima, Decision 2387, 2387-B (PECB, 1986), the Commission affirmed the Executive Director's dismissal of an unfair labor practice complaint in which the union that represented non-supervisory fire fighters there sought to assert bargaining rights concerning the "fire chief" position. The fire chief position was found to be excluded from the coverage of Chapter 41.56 RCW.

A "confidential employee" need not work on "labor nexus" matters exclusively, or even primarily, so long as the assignments can be described as "necessary", "regular" and "ongoing". The fiduciary relationship must be with the executive head of the bargaining

² RCW 41.59.020(4)(c) provides:

- (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 by **bold** supplied.]

unit, either directly or derivatively through another "confidential" employee.³

There are many examples where individuals have been excluded from bargaining rights based on having a "derivative" labor nexus. 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.⁴ See, also, City of Ocean Shores, Decision 2064 (PECB, 1984).

In this case, Berreman testified that he had directly participated in the formulation, effectuation, and implementation of the employer's labor relations policies for the fire fighter bargaining unit. Berreman participated in the employer's executive planning sessions, in face-to-face meetings with the fire fighters' union at the bargaining table, and he administered the collective bargaining agreement on behalf of the employer after the negotiations were concluded. The input and involvement of the fire chief clearly rose to the level of fiduciary responsibility that was of concern to the Supreme Court in Yakima, supra.

³ The Yakima court cited, with approval, the decision of the Executive Director in Edmonds School District, Decision 231 (PECB, 1977), where it was shown that the secretaries to top managers in a school district assisted and acted in a confidential capacity to persons who formulated, implemented, and effectuated management policies on labor relations. They had a confidential relationship to the executive head of the school district derivatively, through their managers.

⁴ 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.

The language of RCW 41.56.030(2)(c) does not differentiate between bargaining units. It clearly excludes "confidential" employees from the coverage of the Public Employees' Collective Bargaining Act. That necessarily excludes a "confidential employee" from any and all bargaining units that might be created under that statute. Berreman is no different from an office-clerical employee who is excluded from all bargaining units because of their confidential status. The fire chief position must be excluded from the voluntarily recognized bargaining unit.

FINDINGS OF FACT

1. The City of Clarkston, Washington, is a public employer within the meaning of RCW 41.56.030(1). As a part of its overall services, the employer operates a fire department which is supervised by Fire Chief Robert Berreman.
2. Washington State Council of County and City Employees, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain full-time and regular part-time administrative and supervisory employees of the City of Clarkston.
3. The bargaining relationship between the employer and union is the result of a voluntary recognition agreement between the parties embodied in a resolution adopted by the Clarkston City Council in December of 1991. The employer and union were in the process of negotiating their initial collective bargaining agreement for that bargaining unit as of June 8, 1992.
4. On June 8, 1992, the employer filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission. The employer sought to have the position of fire chief excluded from the bargaining unit of

administrative and supervisory employees, on the basis that it is a "confidential" position under RCW 41.56.030(2)(c).

5. The fire chief performs a variety of specialized administrative and managerial tasks associated with being the head of the fire department. The fire chief has responsibility for the formulation, effectuation and implementation of the employer's labor relations policies and procedures, including representing the employer in collective bargaining with the labor organization which represents the fire fighters.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The individual holding the position titled "fire chief" is a "confidential employee" within the meaning of RCW 41.56-.030(2)(c).

ORDER

The fire chief shall be excluded from the existing bargaining unit involved in this proceeding.

ISSUED at Olympia, Washington, on the 29th day of October, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Hearing Officer

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