

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	CASE 9787-C-92-560
UNION, LOCAL 6)	
)	
For clarification of an existing)	
bargaining unit of employees of:)	
)	
CITY OF MOUNTLAKE TERRACE)	
)	
<hr/>)	
In the matter of the petition of:)	
)	
CITY OF MOUNTLAKE TERRACE)	CASE 9815-C-92-563
)	
For clarification of an existing)	DECISION 4637 - PECB
bargaining unit of its employees)	
represented by:)	ORDER CLARIFYING
)	BARGAINING UNIT
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 6)	
)	
)	
<hr/>)	

Terry Costello, Business Representative, appeared on behalf of the union.

Cabot Dow, Management Representative, appeared on behalf of the employer.

On May 11, 1992, Service Employees International Union, Local 6, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking a ruling concerning the status of a position titled "administrative secretary to the police chief" with respect to an existing bargaining unit of office-clerical employees of the City of Mountlake Terrace.¹

On June 1, 1992, the City of Mountlake Terrace filed a petition for clarification of an existing bargaining unit with the Commission,

¹ Case 9787-C-92-560.

seeking a ruling concerning the status of a position titled "administrative secretary to the fire chief" with respect to the same bargaining unit involved in the union's petition.²

The two petitions were consolidated for further proceedings. A hearing was held on June 16, 1993, before Hearing Officer Katrina I. Boedecker. Both parties submitted post-hearing briefs to complete the record. Authority to determine these "eligibility" issues has been delegated by the Executive Director to the Hearing Officer, pursuant to WAC 391-35-190.

BACKGROUND

The City of Mountlake Terrace (employer) is a suburban community located in Snohomish County, to the north of Seattle, Washington. The employer operates under the council-manager form of municipal government.³ The Mountlake Terrace city council has appointed a city manager pursuant to RCW 35A.13.010, and has created a fire department and a police department pursuant to RCW 35A.13.090.⁴

² Case 9815-C-92-563.

³ Mountlake Terrace is an optional code city under Chapter 35.18 and Title 35A RCW.

⁴ RCW 35A.13.010 grants the city council of a code city the authority (and obligation) to appoint the city manager, who is the head of the administrative branch of the city government and is

... responsible to the council for the proper administration of all affairs of the code city.

RCW 35.13.090 grants the city council the authority to create, upon recommendation of the city manager or upon its own action,

... departments, offices, and employments as it may find necessary or advisable and may determine the powers and duties of each department or office.

The employer has collective bargaining relationships with labor organizations representing four bargaining units:

SEIU Local 6 has represented a bargaining unit of approximately 18 office-clerical employees since 1974;

An independent association represents a bargaining unit of the employer's police officers;

A local affiliate of the International Association of Fire Fighters, AFL-CIO, represents a bargaining unit of the employer's fire fighters; and

A local affiliate of the International Brotherhood of Teamsters, et al., AFL-CIO, represents a bargaining unit of public works and parks maintenance employees.

The employer's principal representative for purposes of collective bargaining with all of the bargaining units is its labor relations consultant, Cabot Dow.

Prior to 1991, one employee working in the capacity of "public safety records coordinator" served as secretary to both the police and fire chiefs. That position was held by Nan Abbott, and was within the SEIU bargaining unit. Confidential materials concerning labor relations matters were directed to the secretary-coordinator/deputy city clerk at that time.⁵

During 1991, a new police station was being completed so that the fire and police chiefs were no longer located in the same building. A new position titled "administrative secretary to the police chief" was created in August of 1991, and Ardis Smith was hired to

⁵ On May 21, 1990, the employer filed a unit clarification petition with the Commission, seeking to exclude the "secretary-coordinator/deputy city clerk" from the SEIU bargaining unit as a confidential position. A hearing on that matter was held on February 11, 1991. The hearing officer's order, issued August 16, 1991, included the position in the bargaining unit. The Commission overruled that order, and excluded the position from the SEIU bargaining unit. Decision 3832-A (PECB, 1991).

fill that position. The employer took the position that the new position was confidential, and was to be excluded from the bargaining unit. The union did not agree that the position should be excluded, and stated that it would discuss the question either at that time or during negotiations for a successor agreement.⁶ The employer chose to defer that discussion until the contract negotiations.

The position description for the disputed position of administrative secretary to the police chief is as follows:

ADMINISTRATIVE SECRETARY - POLICE DEPARTMENT

REPORTS TO: Chief of Police

NATURE OF WORK:

This is clerical and office management work in support of the Police Department, Police Chief, and Police Commanders.

EXAMPLE OF DUTIES:

Serves as secretary to Police Chief and two Commanders; screens visitors and phone calls; routes calls or answers questions and handles general problems as appropriate; maintains appointment calendar.

Develops and maintains extensive filing system, including confidential files; maintains records of permits, orders and other documents; locates files, documents and other information as necessary.

Maintains budgetary control; records and distributes monthly financial reports.

Provides clerical assistance in preparation of annual budget.

Composes, edits, and types routine correspondence, memoranda, reports, specifications, minutes of meetings and other material from handwritten notes and drafts. Answers routine correspondence.

Provides help to Public Safety clerks when needed; may fill shifts on an emergency basis;

⁶ The collective bargaining agreement then in effect between the parties was to expire December 31, 1991.

assists with orientation and training of new staff employees.

Maintains department personnel files; prepares and processes personnel status reports for hiring, terminations, promotions, salary increase and other personnel matters; processes performance evaluation forms. Types and processes confidential correspondence including disciplinary actions and internal investigation; maintains conference room schedule.

Types and distributes revisions to Department manuals.

Responds to public and departmental requests for information.

Types and prepares Council Agenda items originating in the Police Department.

Observes safety practices and procedures, reports accidents as required, and encourages concern for safety among office employees.

Serves as secretary for the Community Policing Advisory Board; schedules meetings; takes and transcribes minutes and determinations.

Maintains time records for department employees; prepares data for payroll as requested.

Arranges for office machine maintenance. Operates the teletype machine for administrative needs.

Formats and enters accurate data on a PC to create spreadsheets, data bases and organization charts for various applications.

Transfers records to archives; periodically removes and destroys records according to State record retention requirement.

Acts as Civil Service secretary including duties attached.

Performs other related duties.

SUPERVISION RECEIVED:

Under general supervision of the Police Chief and Commanders, the employee manages the office activities; establishing methods and priorities; and makes decisions within the framework of policies and regulations. The supervisor is consulted on special projects, unusual situations or policy questions.

MINIMUM QUALIFICATIONS:

Knowledge of:

Word Perfect and Lotus 123 software on PC
General office practice and procedures
Planning and organization of work flow
Business English, letter composition, report preparation
Budget monitoring and control
Requisition, invoices, purchase orders

Ability to:

Develop and maintain complex filing systems
Communicate effectively, orally and in writing
Respond to and work effectively with the public and other employees
Work independently
Type 65 wpm
Work flexible [sic] when needed
Detail oriented individual with strong organizational skills

EDUCATION:

Graduate from high school or the equivalent including or supplemented by courses in office practice and secretarial skills.

EXPERIENCE:

Three years of secretarial or office management experience required. Previous experience in municipal government desirable.

Abbott continued to serve as secretary to the fire chief. The position description dated July 16, 1991 for the disputed position in the fire department is as follows:

ADMINISTRATIVE SECRETARY - FIRE DEPARTMENT

Reports To: Fire ChiefNature of Work:

This is clerical and office management work in support of the Fire Department, Fire Chief, Deputy Fire Chief, and Fire Marshal.

Example of Duties:

Serves as secretary to Fire Chief, Deputy and Chief and Fire marshal; screens visitors and phone calls; routes calls or answers questions and handles general problems as appropriate; maintains appointment calendar.

Develops and maintains extensive filing system, including confidential files; maintains records of permits, orders and other documents; locates files, documents and other information as necessary.

Assists in preparation of annual budget and annual report; gathers and organizes supporting data.

Composes, edits, and types correspondence, memoranda, confidential reports, specifications, minutes of meetings, and other material from handwritten notes and drafts. Answers routine correspondence.

May fill in as necessary to provide back-up coverage for the Police Department Administrative Secretary.

Maintains department personnel files; prepares and processes personnel status reports for hiring, termination, promotions, salary increase and other personnel matters; processes performance evaluation forms. Types and processes confidential correspondence including disciplinary actions and internal investigation; maintains conference room schedule.

Types and distributes revisions to Department manuals.

Responds to public and departmental requests for information.

Responds and prepares Council Agenda items originating in the Fire Department.

Types draft proposals and confidential documents used in labor negotiations.

Observes safety practices and procedures, reports accidents as required, and encourages concern for safety among fellow employees.

Performs blood pressure checks for walk-in citizens when firefighters are out.

Prepares and mails CPR cards to participants in monthly CPR classes, as well as students from Edmonds School District.

Maintains time records for department employees; prepares data for payroll as requested.

Researches and reviews specifications for purchase and maintenance of office equipment.

Formats and enters accurate data on a PC to create spreadsheets; [sic] data bases and organization charts for various applications.

Processes confidential L.E.O.F.F. medical claims with the State and Snohomish County Disability Board. Coordinates payment of benefits with insurance carriers and medical providers. Audits claims and initiates action where fraud is suspected.

Performs other related duties.

SUPERVISION RECEIVED:

Under general supervision of the Fire Chief, the employee manages the office activities; establishing methods and priorities; and makes decisions within the framework of policies and regulations. The supervisor is consulted on special projects, unusual situations or policy questions.

MINIMUM QUALIFICATIONS:

Knowledge of:

Word Perfect and Sunstar software on PC
General office practice and procedures
Planning and organization of work flow
Business English, letter composition, report preparation
Budget monitoring and control
Requisition, invoices, purchase orders

Ability to:

Develop and maintain complex filing systems
Respond to and work effectively with the public and other employees
Work independently
Type 65 wpm
Work flexible [sic] when needed
Detail oriented individual with strong organizational skills

EDUCATION:

Graduate from high school or the equivalent, including or supplemented by courses in office practice and secretarial skills.

EXPERIENCE:

Three years of secretarial or office management experience required. Previous experience in municipal government desirable.

[Emphasis by underline and **bold** in original.]

The employer and union attempted to resolve questions about the inclusion or exclusion of both the police department and fire department positions during the course of bargaining on a successor contract in 1991. The parties were not successful in reaching an agreement on these two positions.

In January of 1992, Walter Fehst became the city manager.⁷ He brought significant changes to the employer's operations, including delegation of secretarial support to the department level for matters formerly handled at the city manager's level. The deputy city clerk was no longer available to do work for the police chief or the fire chief, including work dealing with confidential labor relations materials. Those secretarial tasks and responsibilities were thus shifted to the administrative secretary positions in the respective departments.

POSITION OF THE PARTIES

The employer contends that the position of administrative secretary to the fire chief was reconstructed, during and following the term of the parties' 1990-1991 labor agreement, to provide full-time secretarial/administrative support to the fire chief which includes handling materials related to labor negotiations and grievance matters. The employer also contends that, during the same time period, a new position was created to provide similar full-time secretarial/administrative support position to the police chief, whose duties also include labor negotiations and administration of labor agreements. The employer claims that the positions in question have an intimate fiduciary relationship with the fire and police chiefs, and that both positions meet the "labor nexus"

⁷ The previous city manager retired after holding the position for approximately 25 years.

standard for exclusion from the bargaining unit as confidential employees.

The union's position is that neither of the positions has enough necessary, sufficient, or regular exposure to material related to the collective bargaining process (either contract negotiations or contract administration) to exclude them from the bargaining unit as confidential employees. The union contends that neither of the incumbents in the disputed positions was exposed to labor relations or budget information sufficient to warrant their exclusion from the bargaining unit. Further, the union contends that contact with labor relations material is not necessary, and that such work should be reassigned to the deputy city clerk position already excluded as a confidential employee.

DISCUSSION

The Legal Standard on "Confidential" Status

"Confidential" employees are excluded from the coverage of the Public Employees' Collective Bargaining Act by RCW 41.56.030(2)(c), which provides:

DEFINITIONS. As used in this chapter:

... (2) "Public Employee" means any employee of a public employer **except any person** ... or (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 or resolution for a specified term of office by the executive head or body of the public employer.

[Emphasis by **bold** supplied.]

That definition was interpreted in International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978), which established the "labor nexus" test, as follows:

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 officer 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.]

The "confidential" exclusion is not limited to those who directly participate in the formulation of labor relations policy, but also extends to support personnel who process sensitive materials related to labor relations, at the direction of those responsible for collective bargaining matters.⁸ The Supreme Court found the definition of "confidential" employee contained in the Educational Employment Relations Act to be "instructive" and worthy of consideration. That statute provides:

RCW 41.59.020 Definitions. As used in this chapter:

... (4) The terms "employee" ... means any certificated employee of a school district, except:

... (c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of

⁸ See, Edmonds School District, Decision 231 (PECB, 1977), cited with approval by the Supreme Court in Yakima, and Franklin Pierce School District, Decision 3371 (PECB, 1991).

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.

The Supreme Court thus focused on avoiding inconsistencies between Chapter 41.56 RCW (which covers school district classified employees) and Chapter 41.59 RCW, both of which might be applicable to the same employer.

The "confidential employee" need not work exclusively, or even primarily, on labor nexus work, but must have an intimate fiduciary relationship with a department head or other management official responsible for labor policy matters, and the "confidential" assignments must be describable as "necessary", "regular", and "ongoing". City of Cheney, Decision 3693 (PECB, 1991).

The requirement that contact with labor relations matters be "necessary" precludes the exclusion of individuals performing a limited amount of labor relations work that could be readily assigned to others already excluded from the bargaining unit as confidential employees; persons who handle other types of correspondence, or who have only sporadic contact with labor relations matters, have not been excluded as "confidential employees".⁹ What amounts to "regular" contact must be decided on the facts of each case; once in five years may not be enough, but a specified percentage of time working on confidential labor relations documents is not required.¹⁰ The requirement that contact be "ongoing" precludes the exclusion of individuals whose contact with

⁹ Clover Park School District, Decision 2243-B (PECB, 1987).

¹⁰ City of Tukwila, Decision 451-A (PECB, 1978).

sensitive matters has ceased, or whose alleged confidential status is based solely on speculation as to the employee's use in the future.¹¹ The fiduciary relationship must be with the executive head of the bargaining unit, either directly or derivatively through another "confidential" employee.¹²

There are many examples where individuals have been excluded from bargaining rights based on having a "derivative" labor nexus. The secretary to a police chief was held to be a confidential employee 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 for the employer's dealings with the union. See also, City of Ocean Shores, Decision 2064 (PECB, 1984).

Exclusion of a position as "confidential" deprives the individual holding the position of all collective bargaining rights. For that reason, the Commission has long emphasized that the party proposing a "confidential" exclusion bears a heavy burden of proof.¹³

Application of Precedent

Police Department Position -

The chief of police in Mountlake Terrace is the chief executive officer for the police department. His duties include hiring and

¹¹ Benton County, Decision 2719-B (PECB, 1989); City of Winslow, Decision 3520-A (PECB, 1990).

¹² In Edmonds School District, *supra*, it was shown that the secretaries to several top managers 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.

¹³ City of Seattle, Decision 689-A (PECB, 1979); City of Winslow, Decision 3520-A (PECB, 1990).

firing of subordinates, other personnel decisions, management decisions, and the overall operation of the police department. He is involved in the formulation of labor relations policies concerning both the SEIU bargaining unit and the police guild bargaining unit. He is a member of the employer's bargaining team, and is a participant in strategy sessions leading to collective bargaining.

Two commanders, who report directly to the police chief, oversee police operations and support services. Both commanders are also involved in the formulation of labor relations policy for the police department.

The administrative secretary to the police chief provides clerical support for the police chief and the two commanders. None of that work can be routed to the confidential deputy city clerk position, per the directive of the city manager. The disputed individual is the custodian of the police department's personnel and internal affairs files, prepares the minutes of internal investigations and accident review boards, and handles correspondence regarding fit-for-duty evaluations. The administrative secretary types preliminary drafts of letters to employees and union(s) regarding disciplinary matters, and management responses to grievances. The current administrative secretary has attended meetings with the chief of police in which policy regarding labor negotiations was discussed. She is expected to support the chief and the two commanders in connection with the collective bargaining process, preparation for arbitration, labor negotiations correspondence, typing drafts of language proposals for use in collective bargaining, and routing telefacsimile to the employer's labor negotiator or attorney. The administrative secretary has also been privy to conversations between the police chief and commanders regarding contract proposals to be placed on the table during negotiations with SEIU and the police guild.

The only access to the chief's office is through the work area occupied by the disputed secretary. Together with the chief and the two commanders, the administrative secretary is one of only four employees issued the key that unlocks every door in the office except the evidence room.

The administrative secretary to the police chief is also responsible for acting as secretary to the employer's civil service commission. In that capacity, she works closely with the chief examiner of the civil service commission, who is also the coordinator of the employer's labor relations activities involving all four of the bargaining units.

The Fire Department Position -

The fire chief at Mountlake Terrace is the chief administrator for the fire department. His responsibilities include budget decisions, personnel decisions, labor negotiations, fire command responsibility, overseeing approximately 20 employees, and any other tasks having to do with the overall management and operation of the fire department. The fire chief is a member of the employer's bargaining team for negotiations with the IAFF, and is involved in the formulation of labor relations policies and strategy concerning that bargaining unit. As a member of the employer's management team, he participates in strategy sessions concerning collective bargaining with unions representing all of the employer's employees.

The administrative secretary in the fire department reports directly to the fire chief. She does 100% of the typing for the fire chief, including drafts of letters to employees and/or the union regarding disciplinary matters, letters involving the formulation of management responses to union or employee grievances, recommendations to the city manager concerning management positions to be taken in collective bargaining, and proposed contract language for presentation to the IAFF in contract

negotiations. The administrative secretary has also typed preliminary documents related to the fire department budget. The administrative secretary to the fire chief also provides secretarial support for an official having employer-wide personnel responsibilities, is secretary to the disability board, and coordinates all disability claims and retiree medical claims for police officers and firefighters under the Law Enforcement Officers and Fire Fighters (LEOFF) retirement system. The person in this position is the sole custodian of files containing sensitive documents regarding fire department personnel.

The office of the administrative secretary is located adjacent to the fire chief's office, with only a partition between them. The fire chief described his working relationship with his secretary as "extremely close" and confidential, and the record indicates that he has worked very closely with Abbott on a range of issues, including labor matters.

Conclusions

The position in the employer's fire department was revised, and the position in the police department was created, to incorporate the intimate fiduciary relationship required of confidential employees. This was not based on speculation about what kind of work might be entailed in the revised positions, or about what kind of relationship could develop between the secretaries and the respective chiefs. Rather, the record shows that this requirement was a result of two factors: First, there was a physical change of facilities with the building of a new police station, so that the fire and police chiefs were no longer located in the same building; and second, there were changes in work assignments determined by the new city manager. Neither change can be criticized as an unreasonable exercise of management discretion, or as an abuse of the "confidential" exclusion.

The administrative secretaries to both the police chief and fire chief assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. In that capacity, both positions are expected to deal with documentation and information whose premature disclosure would detrimentally impact the collective bargaining process and betray the intimate confidential nature of the relationship between the administrative secretary positions and the employer. Thus, inclusion of the disputed positions in the bargaining unit would place those employees in a position of compromised loyalty. While neither of the positions requires the performance of confidential work exclusively, the record is persuasive that their "labor nexus" assignments are sufficiently regular, necessary, and ongoing to support the exclusion of the positions from the bargaining unit as "confidential" employees.

In this case, it is the nature of the expectations of the positions, including the relationship of trust and confidentiality with the police and fire chiefs, as well as the actual documents to which the administrative secretaries have had access, that is most compelling regarding determination of the status of the positions. The positions of administrative secretary to the police chief and to the fire chief must be excluded from the bargaining units because of their confidential status.

FINDINGS OF FACT

1. The City of Mountlake Terrace, Washington, is a public employer within the meaning of RCW 41.56.030(1). As part of its overall services, the employer operates a fire department and a police department as two separate departments.
2. Service Employees International Union, Local 6, a bargaining representative with the meaning of RCW 41.56.030(3), is the

exclusive bargaining representative of office-clerical and related employees of the City of Mountlake Terrace.

3. The police chief and fire chief are responsible for overall management and direction of their respective departments, and each of them participates in the formulation of management positions for collective bargaining and the negotiation of collective bargaining agreements with unions representing various bargaining units of the employer's employees.
4. During 1991, the employer completed and occupied a new facility for its police department, and it was no longer practical for one office-clerical employee to provide secretarial support to both the police chief and the fire chief. The existing position was revised to provide secretarial support for the fire chief, and a new position was created to provide secretarial support for the police chief.
5. A new city manager who took office at the beginning of 1992 reorganized management functions and directed that secretarial support for the police and fire chiefs, including confidential materials concerning labor relations, be processed at the departmental level. Under that reorganization, the office-clerical employee(s) working directly for the city manager were no longer available to perform assignments for the police and fire chiefs.
6. The administrative secretary to the police chief and the administrative secretary to the fire chief are each privy to confidential information concerning the labor relations policies and positions to be taken by the employer, prior to its dissemination to the general public or the unions which represent the employer's employees.

CONCLUSIONS OF LAW

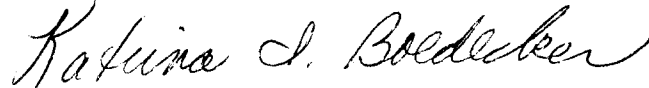
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The administrative secretary to the police chief of the City of Mountlake Terrace is a "confidential employee" within the meaning of RCW 41.56.030(2)(c), and is not a public employee within the meaning of RCW 41.56.030(2).
3. The administrative secretary to the fire chief of the City of Mountlake Terrace 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 CLARIFYING BARGAINING UNIT

The positions of administrative secretary to the police chief and administrative secretary to the fire chief are excluded from the bargaining unit represented by SEIU Local 6.

Issued at Olympia, Washington, the 28th day of February, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATRINA I. BOEDECKER, Hearing Officer

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