

Benton County, Decision 5646 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
BENTON COUNTY)	CASE 11910-C-95-743
)	
For clarification of an existing)	
bargaining unit of employees of:)	DECISION 5646 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	ORDER CLARIFYING
AND CITY EMPLOYEES, LOCAL 874-HC)	BARGAINING UNIT
)	
)	

Menke, Jackson and Beyer, by Anthony F. Menke, Attorney at Law, appeared on behalf of the employer.

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

On August 17, 1995, Benton County filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking a ruling as to whether an accounting support supervisor should be excluded from a bargaining unit represented by the Washington State Council of County and City Employees. A hearing was held at Kennewick, Washington, on January 11, 1996, before Hearing Officer Frederick J. Rosenberry. The parties submitted post-hearing briefs.

BACKGROUND

Benton County is located in south-central Washington and includes part of the "Tri-Cities" urban area. It has a population of approximately 118,500. The county seat is located at Prosser.

On October 5, 1987, the Commission certified the Washington State Council of County and City Employees as the exclusive bargaining representative of a bargaining unit described as:

Included: All full-time and part-time employees of the following offices and departments: auditor, assessor, treasurer, clerk, central services, and clerical employees in the cooperative extension services, road and engineering, prosecuting attorney, district courts, superior court, planning department, building department and park department.

Excluded: All elected officials and appointed department heads in above departments (where no elected officials) [sic] all administrative assistants in departments referred to herein above; two (2) confidential secretaries to board of county commissioners, appraisers of the assessors office and all other employees of the employer.

Benton County, Decision 2719-A (PECB, 1987).

The parties are signatory to a collective bargaining agreement that is effective from January 1, 1995 to December 31, 1997.

This controversy arises out of the county auditor's office. The incumbent in the disputed position, Jeffrey Kison, was hired in October of 1993. He worked initially as a licensing agent in the auditor's office, and was given the "accounting support supervisor" title in April of 1994.¹

In early 1995, the employer completed a protracted installation period and commenced operating what it describes as a complex and sophisticated electronic data processing system that includes both accounts payable and payroll functions. Kison was trained to operate the new system.² He acquired the technical knowledge to

¹ The record is not clear, but it appears that the "accounting support supervisor" title was created for Kison at that time. There is no evidence that such a title was used prior to his assignment.

² The evidence suggests that these new systems are a part of an electronic network that extends throughout the county administration. The record does not establish the scope or extent of the employees who have access to it.

enter and retrieve accounts payable information and labor cost data from the system, and is responsible for the processing and management of the payroll segment of the system's capabilities. Kison's job description calls for the routine operation of the "computerized" electronic data system for payroll matters, vouchers and financial documents.

Chief Accountant David Sparks oversees the payroll segment of the employer's operation, but he testified that his workload is such that he has not undertaken a detailed study of the new payroll system and does not have time to operate it. Sparks testified that he relies on Kison to provide essential information.

According to Sparks, the new technology caused changes in the manner in which the county conducts its collective bargaining with the approximately 10 bargaining units. The employer has, in fact, changed the composition of its team for collective bargaining. In the past, the "accounting service officer" was included primarily to provide analysis of wage and benefits data,³ and an "administrative financial accountant" from the treasurer's office was included to analyze and determine costs of union and employer proposals,⁴ but they are no longer members of the employer's bargaining teams. The employer's bargaining team is now normally made up of Sparks, an elections/recording administrator, a licensing supervisor, an attorney employed by the county (David Dunkirk), and an outside attorney contracted by the employer to represent it for labor relations (Anthony Menke). The team has two components: Those who normally meet "face to face" with the unions in collective bargaining, and those who normally provide "behind the scenes" support. Sparks has sat in on actual negotiations, but normally serves in a

³ Although the position is no longer directly involved in collective bargaining, the employer still considers it to be "confidential".

⁴ The duties of this position no longer include labor relations matters.

support role, offering recommendations to the negotiators and elected officials based on county budget considerations.

During recent labor negotiations, Sparks needed help operating the payroll system to access fiscal data and other information needed to determine the cost of proposals that came up in collective bargaining. Sparks relied on Kison, who is most familiar with the operation of the system and has the technical knowledge to retrieve labor cost data (regarding matters such as salary range and step data, data on specific positions, anniversary dates, and salary progression information), and pass it on to management officials in a usable form. This information may include calculations and analysis regarding increased direct labor costs associated with salaries and employees insurance benefit premiums, as well as indirect costs based on different scenarios and circumstances.

Kison has been assigned to provide routine supervision and oversee the performance of the payroll specialist and the accounting assistant, both of whom work in the same area. He assists them with meeting work production schedules and answering questions. He relays his performance assessments to Sparks, who prepares performance evaluations. According to the employer, Kison will be involved in recruiting and hiring employees and he has the authority to issue oral and written reprimands. Kison can change schedules to accommodate work flow and approve vacation time and sick leave. Office policy requires that family leave requests be submitted directly to the auditor, and overtime work requires Sparks' approval.

POSITION OF THE PARTIES

The employer maintains that the accounting support supervisor serves as a confidential employee who should be removed from membership in the bargaining unit. The employer claims that the

accounting support supervisor's work duties include the compilation of sensitive labor relations fiscal data for management officials who are involved in the formulation, implementation and effectuation of the employer's labor relations policies and practices. The employer also maintains that Kison has supervisory responsibility for scheduling work, evaluating performance, recommending merit salary increases, and maintaining discipline. Accordingly, the employer maintains that Kison should be removed from the bargaining unit that includes his subordinates, in order to avoid a "conflict of interest" between his supervisory duties and continued membership in the bargaining unit.

The union disputes the employer's claim that the duties of the accounting support supervisor position warrant a confidential exclusion. The union argues that the payroll information that the accounting support supervisor has access to is labor cost statistical data that is general information and has nothing to do with the formulation of labor relations policy. Moreover, the union contends that the employer has an adequate number of confidential employees to meet its collective bargaining obligations. The union also rejects the employer's supervisory claim, maintaining that the disputed position has been assigned minimal supervisory authority that is insufficient to pose a conflict of interest with the other employees in the bargaining unit. Accordingly, the union urges that the employer's petition should be dismissed in its entirety.

DISCUSSION

The "Confidential Employee" Claim

Collective bargaining contemplates a flexible exercise in which an employer and an exclusive bargaining representative negotiate at arms length, with the goal of achieving an agreement regarding employment-related matters. Such agreements are expected to result

from mutual good faith commitments, which may include compromises and concessions. While the process is designed to deal with conflicts that inevitably arise between employers and employees, it protects the institutional interests of both employers and labor organizations against internal conflicts. Both the prohibition against employer domination of unions (RCW 41.56.140(2)) and the exclusion of confidential employees from collective bargaining rights (RCW 41.56.030(2)(c)) operate in harmony, to protect the independence of both parties to the process.

The law regarding confidential exclusions is well developed under Chapter 41.56 RCW. The Supreme Court of the State of Washington has given RCW 41.56.030(2)(c) a narrow interpretation, limiting it to those having a "labor nexus":

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 officer or executive head of the bargaining unit, including formation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

City of Yakima v. IAFF, 91 Wn.2d 101 (1978).

In Yakima, supra, the Supreme Court took direction from the 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, ... 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 judgement; and
 - (ii) Any person who assists and acts in a confidential capacity to such person.

The Supreme Court indicated a desire in Yakima to fashion a similar test for confidentiality under Chapter 41.56 RCW.

Employers are allowed a reasonable number of personnel who are exempt from exercising 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 labor nexus may result from an association with only one bargaining unit in a multiple bargaining unit environment, but any conferral of confidential status results in the complete exclusion of the individual from all bargaining units. King County, Decision 3338 (PECB, 1990). Thus, a confidential exclusion is not to be taken lightly, and such exclusions are not automatic.

The Public Employment Relations Commission has decided in numerous cases that a confidential exclusion is warranted where the contested status entails job responsibilities that include the generation of confidential fiscal data regarding various aspects of labor cost and collective bargaining. Franklin County, Decision 3694 (PECB, 1991). Personnel who process sensitive labor relations related information for management officials responsible for collective bargaining may have a confidential relationship such that exclusion is warranted. Olympia School District, Decision 4736-A (PECB, 1994). Confidential exclusion is warranted where management officials delegate technical responsibility to subordi-

nates who are called upon to prepare negotiations material, particularly where that technician has necessary and continuing access to the material used by the employer for collective bargaining. University Place School District, Decision 2584 (PECB, 1987). A confidential employee need not work primarily on confidential work so long as the confidential assignments can be described as "necessary", "regular" and "ongoing".

Notwithstanding claims of access to confidential information, the confidential exclusion has been denied where the labor nexus is absent. City of Sunnyside, Decision 1178 (PECB, 1981); City of Ocean Shores, Decision 2064 (PECB, 1984). Routine access to personnel files and administration of payroll is not inherently confidential. Snohomish County, Decision 346 (PECB, 1981); City of Lacey, Decision 396 (PECB, 1978). Consistent with that approach, reorganization of job duties that results in the elimination of the labor nexus has resulted in an order returning a previously excluded position to a bargaining unit. Richland School District, Decision 2208-A (PECB, 1985).

The Disputed Position -

The employer has a legitimate interest in having a fiscal technician who can be relied upon to provide financial data to management officials for their use in collective bargaining, and to assurance that the nature and details of that information will not be improperly divulged. The intimate fiduciary relationship referred to by the Court in Yakima and subsequent cases must be with a department head or other management official responsible for policy formulation. The relationship between Kison and management officials satisfies that test.

While job descriptions are by no means conclusive evidence of the proper categorization of individual employees or positions, the employer's written summary of Kison's position is consistent with the labor nexus duties described in the testimony:

TITLE: **ACCOUNTING SUPPORT SUPERVISOR**
DEPARTMENT: **AUDITOR**
REPORTS TO: **CHIEF ACCOUNTANT**

SUMMARY:

Plans, organizes, and supervises payroll/accounts payable activities for Benton County. Researches and prepares confidential cost studies of union proposals as requested by the County's Chief Negotiator or Labor Attorney. Responsible for maintaining the County's automated payroll and accounts payable systems in conjunction with the Central Services Department. Assists the chief accountant and accounting services officer in maintaining the County's general ledger, preparing the annual budget, and annual financial report. Develops reports regarding labor negotiations and participates in confidential management strategy meetings pertaining to negotiations.

EXAMPLES OF JOB DUTIES

(Any one position may not include all of the duties listed nor do the listed examples include all of the tasks which may be found in positions of this class.)

Supervises and evaluates accounting assistants II, III, and the payroll specialist on a daily and yearly review basis.

Preparation of confidential costing of union or county contract proposals as requested by the County's negotiating team. Participates in confidential strategy analysis meetings regarding negotiations.

Posts and balances all recurring entries to the General Ledger for each fund operated by the County and reconciles control accounts with subsidiary ledgers; assists with year end, closing, and special entries to the General Ledger.

Reconciles and audits County checking accounts, documenting discrepancies, and reporting on cash flow.

Assists in verifying and inputting changes to the Chart of Accounts and the Fund and Department Coding files.

Provides assistance to other accounting staff on accounting and clerical functions involving

accounts receivable, posting to subsidiary ledgers, voucher auditing, warrants and data input.

Reviews entries and documents to assure accurate recording, balancing and classification of all income and expenditure to the proper accounts, in accordance with **BARS** and County procedures.

Responsible for editing, verifying, and printing as well as distribution of payroll checks for monthly payroll, and draw pays.

Balances the accumulation of accounting information distributed to the Deferred Comp. Program.

Random yearly physical inventory of General Fixed Assets for Benton County.

Provides payroll support to department administrators and monitors and maintains sick and vacation leave reports in accordance with state and federal laws.

Performs and supervises contributions and beneficiary changes, notice of retirement and reconciles monthly statements in accordance with state standards for various retirement programs. Acts as liaison between employees and the State Retirement System.

Prepares statistical reports regarding employee numbers and wages for State of Washington Employment Security Department, and is responsible for the accuracy of the report, if filed with errors, can result in the county being fined.

Prepares employer's quarterly 941 federal payroll tax return, balancing totals on wages, income tax with holdings, social security and Medicare taxes and is responsible for the accuracy of the report, if filed with errors, can result in the county being fined.

Resolves complaints and problems affecting county payroll procedures as well as answering inquiries. Coordinates assigned functions with other departments and agencies; provides advice and assistance as requested.

Remains current on legislation, and union contract changes pertaining to employers and the unions. Develops, recommends, and implements approved procedures to assure efficient and effective operations in compliance with county goals and new legislation. Must be familiar

with all union contracts and how each one affects the payroll for the departments covered by that contract. Recommends labor contract language changes pertaining to economic issues and benefits.

WORKING CONDITIONS

Work is primarily performed in an office, but also requires traveling to meetings.

KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge of the practices, principles, and procedures in municipal or governmental accounting and Washington State Budgeting, Accounting and Reporting Systems.

Knowledge of Washington State law in RCW and WAC rulings as they pertain to assigned functions.

Knowledge of all union contracts between the county and all unions.

Knowledge of modern principles and practices supervision.

Knowledge of computer systems and programs used in automated payroll system.

Must maintain absolute confidentiality.

Ability to interpret and apply RCW and WAC rulings.

Ability to establish and maintain effective working relationships with employees, other agencies, and the general public.

Knowledge of Generally Accepted Accounting Principles and financial reporting requirements.

Ability to communicate effectively, both orally and in writing.

Thorough knowledge of and ability to apply and explain department operations, functions, policies, and procedures and legal requirements applicable to area of assignment.

Ability to organize and prioritized [sic] accounting projects to meet deadlines and demands of workloads with a minimum of supervision while maintaining accuracy and attention to detail.

...

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

With the implementation of the new computer system, Kison is an integral part of the employer's collective bargaining process and is privy to confidential information that management officials rely on to intelligently evaluate the merits of collective bargaining proposals advanced by both the employer and the union in collective bargaining. Although the union argues that Kison does not formulate labor policy and does not actively participate in the collective bargaining process, there is no doubt that he "assists and acts in a confidential capacity" to the management officials who participate directly in the collective bargaining process so as to meet the definition of confidential employee embraced by the Supreme Court.

Availability of Others -

The union claims that others have done the confidential cost calculations in the past, or could do them in the future. It is clear, however, that the employer has changed the membership of its bargaining teams. Even if the continued viability of historical confidential exclusions might now be subject to question under the changed circumstances, those issues have not been raised by the petition or the proceedings in this case. See, Wapato School District, Decision 788-A (PECB, 1980).

The "Supervisor" Claim

In order to avoid conflicts of interest within bargaining units, supervisors are routinely excluded from the bargaining units which include their subordinates.⁵ City of Richland, Decision 279-A

⁵ Early in its history, the Commission ruled that Chapter 41.56 RCW, differs from the National Labor Relations Act with respect to the status of supervisors. City of Tacoma, Decision 95-A (PECB, 1977). The Supreme Court agreed that public sector "supervisors" have collective bargaining rights under Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), citing Packard Motor Car Co. v. NLRB, 300 U.S. 485 (1947).

(PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Separations of supervisors from rank-and-file bargaining units are made on a case-by-case basis, as an exercise of the Commission's unit determination authority under RCW 41.56.060.⁶ Although there are some general supervisory characteristics,⁷ each position requires a separate analysis of function and responsibility to determine whether it has independent authority to act or to effectively recommend action on behalf of the employer. Thurston County, Decision 1064 (PECB, 1980). The record does not support making such a determination in this case, however.

The foregoing finding of confidential employee entirely excludes Kison from the coverage of the statute, so his supervisory status need not be addressed in this case. If the employer were to reorganize its operations in a manner sufficient to warrant a reexamination and possible revocation of the status of Kison (or any successor incumbent of the disputed position) as a confidential employee, a full examination of the scope of job duties of the incumbent (including the existence and exercise of authority as a supervisor) would no doubt be warranted.

⁶ During the course of the hearing, Kison was asked whether he desired to continue to be included in the bargaining unit. The Hearing Officer properly sustained an objection to that question, on the basis that the response would not be a basis for a ruling and was irrelevant. Although the "desires of the employees" is one of the unit determination criteria listed in RCW 41.56.060, such testimony is inherently coercive and inappropriate. Valley Communications Center, Decision 4465 (PECB, 1994); City of Seattle, Decision 1229-A (PECB, 1982); City of Everett, Decision 1883 (PECB, 1983).

⁷ Chapter 41.56 RCW does not define the term "supervisor", so the definitions found in the National Labor Relations Act and the Educational Employment Relations Act, Chapter 41.59 RCW, have been looked to for guidance in making such determinations.

FINDINGS OF FACT

1. Benton County, Washington, is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local 874HC, 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 employees of Benton County, including employees in the auditor's office.
3. The employer and union are parties to a collective bargaining agreement which is effective for the period from January 1, 1995 to December 31, 1997.
4. As the "accounting support supervisor" in the office of the Benton County Auditor since 1994, and following implementation by the employer of a new computerized accounts payable and payroll system in 1995, Jeffrey Kison is now regularly assigned ongoing responsibilities for technical support of employer officials who formulate or assist in the formulation of the employer's labor relations, and of the team of negotiators who represent the employer in collective bargaining with various unions representing Benton County employees. In that role, Kison has regular and ongoing access to information concerning the confidential labor relations policies of the employer, including processing information that encompasses potential bargaining proposals.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.

2. As presently constituted, the accounting support supervisor in the office of the Benton County Auditor 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 accounting support supervisor shall be excluded from the bargaining unit referred to in paragraph 2 of the foregoing findings of fact.

Issued at Olympia, Washington, on the 23rd day of August, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.