

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL LONGSHOREMEN'S AND) CASE 12176-C-95-761
WAREHOUSEMEN'S UNION, LOCAL 27)
) DECISION 5648 - PECB
for clarification of a bargaining)
unit of employees of:)
) ORDER CLARIFYING
PORT OF PORT ANGELES) BARGAINING UNIT
)
)
_____)

Russel Felton, President, appeared on behalf of the union.

Stephen C. Moriarty, Attorney at Law, appeared on behalf of the employer.

On November 20, 1995, Port of Port Angeles Employees Local 27, International Longshoremen's and Warehousemen's Union, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a ruling as to whether a secretary/receptionist position should be included in a bargaining unit of Port of Port Angeles employees represented by the union. A hearing was held at Port Angeles, Washington, on June 6, 1996, before Hearing Officer William A. Lang. The parties made closing arguments on the record, rather than submitting post-hearing briefs.

BACKGROUND

The Port of Port Angeles operates marine and airport terminals, marinas and other properties in Clallam County. Employer policies are set by an elected board of commissioners. The operations are under the administration of Executive Director M. Christine

Anderson. The employer's administrative offices are located in the city of Port Angeles.

Port of Port Angeles Employees Local 27, International Longshoremen's and Warehousemen's Union, is the exclusive bargaining representative of various bargaining units of Port of Port Angeles employees (referred to by the parties as "sections"). While the units were organized at different times, they were consolidated under a single collective bargaining agreement signed on December 21, 1995.¹ That contract is in effect until June 1, 1999.

In the summer of 1994, the employer combined two office-clerical positions in its administrative office. Positions titled "executive secretary/office manager" and "administrative secretary/receptionist" which had formerly been paid on a salaried basis were replaced by a "secretary/ receptionist" position paid on an hourly basis at a rate lower than was paid to the predecessor positions. This is now the only office-clerical position in the employer's administrative office. The role includes reception area greeting and referral functions, but the employer installed a new telephone system which relieves the secretary/receptionist of many telephone duties.

Suzie Breitbach transferred into the secretary/receptionist position in the summer of 1994, and held it until resigning in the autumn of 1995. It appeared, however, that the employer intended to continue the position in existence on the same basis as when Breitbach was the incumbent.

During the parties' negotiations for their current contract, the union made a request for negotiations on whether the secretary/

¹ Bargaining for boat and equipment operators and maintenance employees dates back to 1970. A bargaining unit of account clerks was certified by the Commission in Port of Port Angeles, Decision 473 (PORT, 1978).

receptionist should be placed in the bargaining unit.² On October 18, 1995, the employer declined to bargain over the position, claiming it was a confidential assistant that fell under exclusions set forth in Section 1, Coverage (d)4 of the language already tentatively agreed upon by the parties in their negotiations for a new collective bargaining agreement.³ The union filed the petition to initiate this matter prior to the parties' signing the current contract.

POSITIONS OF THE PARTIES

The union acknowledges that the disputed position has processed some confidential labor relations materials, but contends they are not sufficient to exclude an employee from bargaining rights, and that such information could be handled by other exempt employees. Noting the change from salaried to hourly pay and the reduced rate of pay, the union argues that the disputed position is now similar to bargaining unit employees. The union claims that other employees represented by the union, such as the account clerks, have similar responsibility for not disclosing confidential matters.

The employer contends the secretary/receptionist position should be excluded from the bargaining unit as a confidential employee under RCW 41.56.030(2), based on working directly with the employer's executive director and routine handling of confidential informa-

² The union's letter dated October 10, 1995 was directed to the employer's assistant executive director, who has responsibility for collective bargaining matters.

³ The cited language provides:

Employees excluded from the bargaining unit shall be restricted to managerial, administrative personnel, their confidential assistants and security personnel.

tion. The employer also claims the position should be excluded under the language of the parties' collective bargaining agreement, because it calls for routine processing of correspondence and proposals involving labor relations.

DISCUSSION

Scope of Inquiry

The only issue to be decided in this proceeding is whether the secretary/receptionist is a "confidential employee" within the meaning of the two state collective bargaining statutes applicable to this employer. RCW 53.18.010 includes the following definition:

"Employee" shall include all port employees except managerial, professional, and administrative personnel, and their confidential assistants.

RCW 41.56.030(2), which applies to this case under RCW 53.18.015, provides:

(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 ...

The Legislature has delegated authority to the Commission to determine appropriate bargaining units. RCW 41.56.060.

The employer's claim of exclusion based upon the terms of the parties' contract is not before the Commission in this statute-based proceeding. Unit determination is not a subject for bargaining in the usual mandatory/permissive/illegal sense, and the agreements made by parties on unit matters are not binding on the

Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).⁴

The Exclusion of "Confidential Employees"

The Supreme Court of the State of Washington has given the "confidential" exclusion a narrow interpretation:

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

[Emphasis by **bold** supplied.]

The Commission has applied that "labor nexus" test when determining the status of claimed confidential employees in numerous subsequent cases.

⁴ Parties should act with caution when purporting to agree on inclusion or exclusion of positions from bargaining units, because they do so under risk of liability. See: Castle Rock School District, Decision 4722-B (1995), where an employer and union were found guilty of unfair labor practices because they included a position in a bargaining unit when it was not appropriate to do so.

Reporting Relationships -

The fact that the disputed position reports to the employer's director of human resources/treasurer presents some difficulty for the employer. The existence of a "continuous trust" relationship with the executive director or the board of commissioners cannot be presumed without some corroborating evidence, but the fact of having multiple reporting relationships does not compel rejection of a claim of "confidential employee" status. An individual can have a "derivative" confidential relationship with the executive head or body of an employer through their immediate supervisor. See, Edmonds School District, Decision 231 (PECB, 1977), cited with approval in City of Yakima, supra.

The record indicates that the disputed position does provide some clerical assistance to the employer's executive director and assistant executive director, as well as for various department heads and the employer's attorney. Finding of a "continuous trust" relationship is particularly apt where, as here, there is only one office-clerical employee in the employer's administrative office.

Pay Status and Rate -

The union's claim that the wage level for the disputed position is not sufficient to justify a confidential exclusion is premised on an inference that the pay cut and the downgrade from salaried to hourly compensation indicates that the employer intends to place less fiduciary responsibility in the new position. There is no salary level or salary methodology test in the precedents on the confidential exclusion, however. The secretary to a city manager was excluded as confidential in City of Goldendale, Decision 4448-A (PECB, 1994), even though that person was paid on an hourly basis and was compensated for overtime work at a premium rate.

Availability of Other Exempt Personnel -

A substantial difficulty with the union's argument that the limited labor relations materials handled by the secretary/receptionist

could be processed by other exempt employees is that the disputed position is the only office-clerical employee available to the employer's managers. Commission precedent on the "confidential" exclusion generally permits employers to exclude at least one office-clerical position to assist managers and executives with the handling of labor relations materials. The secretary to the superintendent of a school district was found to be confidential in Pateros School District, Decision 3911 (PECB, 1991), because she prepared the superintendent's correspondence on personnel matters and prepared the employer's proposals for collective bargaining.⁵

Non-Labor Matters -

The job description calls for administrative and clerical work of varying degrees of difficulty, but many of those tasks would not warrant a "confidential" exclusion. Opening and sorting incoming mail, preparing routine reports compiling data from various sources, typing and formatting correspondence, and handling travel arrangements for employer officials, are routine. Breitbach staffed meetings with the department heads and executive director where decisions were made on the agendas for meetings of the board of commissioners, but no "labor nexus" was shown as to those meetings. She took and transcribed minutes at meetings of the board of commissioners, but was excluded from executive sessions where labor policy matters were likely to be discussed.

The employer cites the processing of correspondence concerning real estate transactions and general litigation, but such activities are not persuasive here. Unauthorized disclosure of sensitive information might be a basis for censure of persons who fall within the definition of "public employee", including bargaining unit

⁵ Exclusion of a financial officer was denied in Pateros School District, Decision 3911-B (PECB, 1992), upon a conclusion that the employee disseminated financial information to union and employer officials alike, and so failed to meet "confidentiality" requirement.

members, but disclosure of matters outside of the "labor nexus" test would not cause injury to the collective bargaining relationship. As interpreted by the Supreme Court in Yakima, the focus of the confidential exclusion in RCW 41.56.030(2)(c) is limited to the protection of the collective bargaining process.

Labor Nexus Materials -

The materials handled by the secretary/receptionist have included collective bargaining proposals and negotiation summaries prepared for use by the assistant executive director in negotiations with the union, as well as letters and statements relating to employee grievances and hearings. Breitbach prepared correspondence for the director of human relations on personnel matters. These are "labor nexus" activities under the Yakima test. Based on the record, the position of secretary/receptionist must be excluded from the bargaining unit as a confidential employee.

FINDINGS OF FACT

1. The Port of Port Angeles is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).
2. The Port of Port Angeles Employees Union Local 27, International Longshoremen's and Warehousemen's Union, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the Port of Port Angeles.
3. A position titled "secretary/receptionist" functions as the only office-clerical employee in the employer's administrative office. The position performs some assignments for the board of commissioners and the executive director, and has indirect reporting relationships with the executive head or body of the employer through other employer officials.

4. In addition to providing general clerical support on matters unrelated to collective bargaining, the secretary/receptionist provides the only clerical assistance to the assistant executive director on matters related to collective bargaining and the administration of collective bargaining agreements. As such, the secretary/receptionist is privy to confidential information concerning the employer's labor policies.

CONCLUSIONS OF LAW


1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW, Chapter 53.18 RCW, and Chapter 391-35 WAC.
2. The secretary/receptionist in the administrative office of the Port of Port Angeles is a confidential employee within the meaning of RCW 41.56.020(2)(c).

ORDER

The secretary/receptionist position is excluded from the bargaining unit represented by Local 27.

Issued at Olympia, Washington, on the 26th 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.