

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| |) | |
| GRAYS HARBOR COUNTY |) | CASE 11381-C-94-677 |
| |) | |
| For clarification of an existing |) | DECISION 5438 - PECB |
| bargaining unit of employees |) | |
| represented by: |) | |
| |) | |
| WASHINGTON STATE COUNCIL OF COUNTY |) | ORDER CLARIFYING |
| and CITY EMPLOYEES, LOCAL 275 |) | BARGAINING UNIT |
| |) | |
| |) | |

Perkins Coie, by Michael T. Reynvaan, Attorney at Law, appeared on behalf of the employer.

John Cole, Deputy Director, appeared on behalf of the Washington State Council of County and City Employees.

On October 1, 1994, Grays Harbor County, Washington, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking exclusion of a claimed "confidential employee" from a bargaining unit represented by Washington State Council of County and City Employees, Local 275. A hearing was held at Montesano, Washington, on August 30, 1995, before Hearing Officer Paul T. Schwendiman. The parties filed post-hearing briefs on October 20, 1995. Authority to decide this eligibility dispute has been delegated by the Executive Director to the Hearing Officer pursuant to WAC 391-35-190.

BACKGROUND

Grays Harbor County (employer) is headquartered at Montesano, Washington. The elected Board of County Commissioners sets policy for the employer. Among other services to residents, the county

maintains and operates a Public Works Department. Michael F. Daniels was the director of public works from 1986 to June of 1995, His title was then changed to "director of public services", and his scope of responsibility was expanded to include the employer's Environmental Health Department, Planning and Building Department, and Facilities Services Department.

The Washington State Council of County and City Employees (WSCCCE), Local 257 (union), is the exclusive bargaining representative of certain full-time and regular part-time employees of the employer's Public Works Department of public works. The WSCCCE also represents two other bargaining units of Grays Harbor County employees.

The employer and union have been parties to a series of collective bargaining agreements, the latest of which was initially effective from January 1, 1994 to December 31, 1995. That agreement was mutually extended to December 31, 1996. A position titled "executive secretary" has historically been included in that bargaining unit.

Until he was promoted to his present position, Daniels was involved with collective bargaining, but only on behalf of the Public Works Department. Since attaining his current position, Daniels serves on the employer's negotiating teams for three bargaining units. Daniels has a full range of collective bargaining responsibilities, including serving as one of the employer's representatives at the bargaining table, and being fully involved in the formulation, implementation, and effectuation of the employer's labor policies and practices. He prepares notes and memos to the commissioners, and prepares offers and counter offers to the unions. He also adjusts employees' grievances, and can discipline employees up to and including termination of employment.

The position at issue in this proceeding is titled "Executive Secretary to the Director of Public Works". Darlene Williams has

held the position since 1989. She reports directly to Daniels, and is supervised by him. The job description for the position sets forth its duties and responsibilities, as follows:

BASIC FUNCTION:

To perform the secretarial, clerical, statistical duties, and communication tasks necessary to support the effective functions of the Department of Public Works.

ACCOUNTABLE TO:

This position reports to the Director through the Chief Accountant of the Department.

NATURE AND SCOPE:

This position performs as personal and confidential secretary to the Director, including taking shorthand dictation and transcribing to the finished, typewritten form correspondence, reports, memoranda, and all other written communications. Also preparation of independent composition of correspondence and acts as pool typist for the Department. This position is also expected to exercise full skills in typing and processing large contract documents on a computerized word processor.

PRIMARY RESPONSIBILITIES:

Duties of this position also include scheduling meetings, conferences, and appointments; operate a computerized work processor with documents up to 100 pages, relating to contractual and statistical typing to final copy; and type letters and documents with responsibility for meeting deadlines. Receive, sort, and distribute mail and other communication directed to the Director and other departmental members, and do outgoing mail log. Update CRP and HRP list - update, run and distribute project list at appropriate intervals to insure supervisors and Sheriff's Office have current information. Must be familiar enough with other clerical duties to backup position when necessary including operation of the telephone station, memory typewriter, etc.

The ability to be aware of the function of the other departments within the County and to work with them. Keeping open the lines of communication and cooperation is necessary to this position.

The Executive Secretary serves as the Director's receptionist, receiving members of the public, answering questions, both in person and by telephone, and taking independent action within the scope of authority of the position, often requiring diplomacy and tact.

The title for the disputed position was not changed following the title change and expansion of duties of her supervisor, but Williams's duties now include matters concerning the departments which have been added to Daniels' responsibilities.

POSITIONS OF THE PARTIES

The employer contends that the disputed employee is a "confidential" employee within the meaning of RCW 41.56.030(2)(c), that she reports to and is directly supervised by a person with collective bargaining responsibilities for several bargaining units, that she has duties and responsibilities which include typing and handling labor relations materials, and that she types collective bargaining proposals made on behalf of the director and employer.

The union contends that the executive secretary is not a "confidential" employee within the meaning of RCW 41.56.030(2)(c), that her role has not changed sufficiently to warrant exclusion from the bargaining unit, that her involvement with collective bargaining is limited to preparing the final draft of the outcome of negotiations, and that the position should remain in the bargaining unit.

DISCUSSION

The determination and modification of bargaining units under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. ...

Parties may agree on unit matters, but such agreements do not guarantee that the result agreed upon is or will continue to be appropriate. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

The "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 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**". Interpreting that definition in City of Yakima v. IAFF, 91 Wn.2d 101 (1978), the Supreme Court 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.¹

A "confidential employee" need not work exclusively, or even primarily, on "labor nexus" matters, 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 unit, either directly or derivatively through another "confidential" employee.²

¹ 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.]

² The Yakima court cited Edmonds School District, Decision 231 (PECB, 1977), where 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.

Application of Standards

The present duties and responsibilities of the director of public services include active participation in the formulation, implementation, and effectuation of the employer's labor relation policies and practices. He actively serves on the employer's negotiating teams for at least three bargaining units. Daniels exemplifies the type of individual referred to in RCW 41.56.030(2)(c) as the "executive head of the applicable bargaining unit", and his position necessarily implies a fiduciary relationship with the employer.

The employee at issue in this proceeding reports directly to Daniels, and has her work station near the director's office. Williams' clerical duties and responsibilities for Daniels involve the typing and production of employer proposals to be used in collective bargaining, as well as other materials used in the collective bargaining process. This is clearly within the type of position defined in RCW 41.56.030(2)(c) as the "administrative assistant or secretary" to the executive head of the applicable bargaining unit. As presently constituted, her position necessarily implies a fiduciary relationship with the employer within the labor relations arena.

FINDINGS OF FACT

1. Grays Harbor County is a public employer within the meaning of RCW 41.56.030(1). As a part of its overall services to its residents, the employer maintains and operates a Department of Public Works. As director of public services, Michael Daniels has responsibility for the Public Works Department and two other departments.

2. The Washington State Council of County and City Employees, Local 275, a "bargaining representative" within the meaning of RCW 41.56.030(1), is the exclusive bargaining representative of certain full-time and regular part-time employees of the Grays Harbor County Public Works Department.
3. The employer and union have been parties to a series of collective bargaining agreements, the latest of which is effective from January 1, 1994 to December 31, 1996.
4. On October 17, 1994, the employer filed a petition for clarification of an existing bargaining unit, seeking to have the position titled "executive secretary to the director of public works" excluded from the bargaining unit as a "confidential employee" pursuant to RCW 41.56.030(2)(c).
5. The duties and responsibilities of the former "director of public works" position were expanded in June of 1995, to encompass the administration of two additional departments, and the title of that position has been changed to "director of public services". The director now has responsibility for collective bargaining matters in all three departments.
6. The individual holding the disputed position performs clerical duties including typing and filing of correspondence, maintaining departmental records, compiling periodic reports, and recommending administrative policies and procedures. Some of the materials produced by the executive secretary involve the formulation, implementation, and effectuation of the employer's labor relations policies and practices.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.


2. The "executive secretary to the director of public works" is a "confidential" employee within the meaning of RCW 41.56.030-(2)(c), and is not a public employee within the meaning of Chapter 41.56 RCW.

ORDER

The employee holding the position titled "executive secretary to the director of public works" is excluded from the existing bargaining unit involved in this proceeding.

DATED at Olympia, Washington, this 9th day of February, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



PAUL T. SCHWENDIMAN, HEARING OFFICER

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-270.