

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
TEAMSTERS UNION, LOCAL 763	)	CASE 13122-C-97-826
	)	
For clarification of an existing	)	DECISION 6262 - PECB
bargaining unit of employees of:	)	
	)	ORDER CLARIFYING
CITY OF GRANITE FALLS	)	BARGAINING UNIT
	)	
	)	

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Greg Slaughter and Tom Krett, Business Representatives,  
appeared on behalf of the union.

Lyderson & Associates, by Cheryl Beyer, Attorney at Law,  
appeared behalf of the employer.

On April 28, 1997, Teamsters Union, Local 763, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking to have a position titled "secretary" included in a bargaining unit the union represents among employees of the City of Granite Falls. A hearing was held at Granite Falls, Washington, on November 18, 1997, before Hearing Officer Rex L. Lacy. The parties did not file briefs. Authority to determine this eligibility dispute has been delegated by the Executive Director to the Hearing Officer, pursuant to WAC 391-35-190.

BACKGROUND

The City of Granite Falls (employer) is governed by an elected city council and mayor. Rella Morris is the current mayor. The employer operates a Police Department, which is headed by Chief of Police Charles Allen.

Teamsters Union, Local 763 (union), is the exclusive bargaining representative of a wall-to-wall bargaining unit of the employer's employees, excluding confidential employees. The bargaining unit was established by means of representation proceedings before the Commission, in which the union was described as follows:

All full-time and regular part-time employees of the Town of Granite Falls, excluding elected officials, officials appointed for fixed terms, supervisors and confidential employees.

Town of Granite Falls, Decision 2617-A (PECB, 1987)

The employer and union have been parties to a series of collective bargaining agreements, the latest of which covers the period from January 1, 1997 through December 31, 1999.

Nansi Cisnerose holds the disputed "secretary" position. She was hired as a full-time employee in January of 1996, and was assigned to work half-time at City Hall and half-time at the Police Department. The employer does not have an official job description for the position, but the evidence in this record includes an exhibit which sets forth the duties and responsibilities of the position, as follows:

City Hall:

Confidential correspondence to various agencies.

Payroll assistance.

Receipting and balancing of all utilities accounts

Filing

Reception

Assist in sending out utility bills and shut-off notices

Completing claim vouchers monthly for City's bills, and completing warrants for same.

Calling Council, Parks Committee and Planning Commission members

Other related duties

Police Department:

Entry of all traffic infractions, criminal citations and criminal cases filed into police computer system

Typing memorandums and distributing same

Open mail and distribute accordingly

Compilation of all monthly crime/UCR reports, for forwarding to Washington Association of Sheriffs and Police Chiefs and to the FBI.

Traffic Grant monthly reports

Domestic Violence monthly reports

Hate Crimes quarterly reports

Various administrative assistant duties for all officers

Secretary-Treasurer of Granite Falls Police Officers Association

Maintenance of all records including criminal, personnel general office, infractions, sex offenders, juveniles

Compilation of procedures manuals as pertains to position

Issuance and maintenance of concealed weapons and firearms dealer permits

Fingerprinting

Maintenance and entry of all pawn tickets

Maintenance and entry of all firearms transfers

Other related duties.

Cisneros is the only office-clerical employee in the employer's work force. She types and processes correspondence for the mayor, including responses to grievances and other collective bargaining matters. In response to requests from the mayor and the employer's negotiator, she provided information that was used in the employer's most recent negotiations with its police officers. Cisneros reports directly to the mayor and receives most of her daily requests for clerical support from the mayor. When the mayor is unavailable, Cisneros receives direction from the city clerk, Gerry James.

#### POSITION OF THE PARTIES

The union notes that it initiated this unit clarification proceeding when it was not successful in reaching a negotiated solution with the employer. It contends that the employee holding the "secretary" position is performing essentially the same duties, and

has the same responsibilities, as are generally attributed office-clerical employees eligible for union membership in similar employment situations. The union argues that the disputed employee shares a community of interest with other public employees.

The employer contends that the employee holding the "secretary" position is a "confidential" employee within the meaning of RCW 41.56.030(2)(c), that the parties' collective bargaining agreement excludes confidential employees and supervisors from the bargaining unit, and that the "secretary" position should be excluded from the bargaining unit.

## DISCUSSION

### The "Confidential" Claims

The law on "confidential" exclusions is clear. Under specific language found within the definition of "public employee" in RCW 41.56.030(2)(c), 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 employer in the collective bargaining process:

RCW 41.56.030 DEFINITIONS. As used in this chapter:

...

(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 confi-**

**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, executive head or body of the public employer.

[Emphasis by **bold** supplied.]

The Supreme Court of the State of Washington interpreted that definition in City of Yakima v. International Association of Fire Fighters, 91 Wn.2d 101 (1978), where it wrote:

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.

In Yakima, 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, 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.

Because a "confidential" exclusion deprives the individual of collective bargaining rights under the Public Employees' Collective Bargaining Act, such exclusions are not lightly granted. A heavy evidentiary burden is placed on the party which proposes a "confidential" exclusion. City of Seattle, Decision 689-A (PECB, 1979); Pateros School District, Decision 3911-B (PECB, 1992).

The record in this matter clearly indicates that Nansi Cisneros has been involved in the formulation, effectuation, and implementation of the employer's labor policies and practices. She has been involved in procuring and compiling information which was used in the latest negotiations between the employer and its police officers. Moreover, Cisneros' supervisor at the Police Department, Police Chief Charles Allen, was to become the employer's chief negotiator for that unit in January of 1998. Thus, Cisneros will be performing confidential duties for both the mayor and police chief. It can easily be inferred that her "labor nexus" duties and responsibilities will be "necessary" and "ongoing". The position is properly excluded from the unit as a "confidential" employee.

Community of Interest

The union correctly notes that office-clerical employees have been and are included in bargaining units. It urges that the disputed employee has a community of interest with the bargaining unit employees, based on the unit determination criteria set forth in RCW 41.56.060. However, both the certification issued on March 30, 1987, and the statute itself exclude confidential employees before one ever gets to considering factors such as "duties, skills and working conditions of the public employees; the history of collective bargaining ..., the extent of organization ..., [or] the desire of the public employees." The conclusion here that this position is "confidential" does not express or imply any opinion based on the unit determination criteria, so that the inclusion or exclusion of any non-confidential office-clerical positions added in the future will remain an open question.

FINDINGS OF FACT

1. The City of Granite Falls, Washington, is a municipal corporation within the meaning of RCW 41.56.020, and a public employer within the meaning of RCW 41.56.030(1). The employer's labor relations policies are determined by an elected City Council and mayor. The employer's chief of police serves on the employer's negotiating team for collective bargaining, and is involved in the formulation, implementation, and effectuation of the employer's labor relations policies and procedures.



2. Teamsters Union, Local 763, a bargaining representative within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of the employer's employees, excluding confidential employees and supervisors. The bargaining unit was created by certification in 1987.
  
3. In January 1996, the employer created an office-clerical position to provide support for the mayor and police department. Nansi Cisneros was hired into the position which requires her to work 20 hours weekly at the police department and 20 hours weekly at city hall. Cisneros is responsible for preparing the mayor's correspondence, including responses to grievances and other labor relations matters. Cisneros has accumulated information for use by the employer in the formulation, implementation, and effectuation of its labor relations policies and procedures. The employer has no other office-clerical employees available to perform such work.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.
  
2. The employee holding the "secretary" position in the City of Granite is a "confidential employee" within the meaning of RCW 41.56.030(2)(c).

ORDER

The "secretary" position at issue in this proceeding shall be excluded from the bargaining unit represented by Teamsters Union, Local 763.

Issued at Olympia, Washington, this 16<sup>th</sup> day of April, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Rex L. Lacy".

REX L. LACY, Hearing Officer

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).