

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
PUYALLUP SCHOOL DISTRICT)	CASE 12114-C-95-754
)	
For clarification of an existing)	DECISION 5764 - PECB
bargaining unit represented by:)	
)	
PUYALLUP ASSOCIATION OF)	ORDER CLARIFYING
EDUCATIONAL OFFICE PERSONNEL)	BARGAINING UNIT
)	
)	

Vandeberg, Johnson & Gandara, by Jamie L. Siegel,
appeared on behalf of the employer.

David Fleming, Attorney at Law, appeared on behalf of the
union.

On October 19, 1995, the Puyallup School District filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking to have the secretary to its director of employment services excluded, as a "confidential employee", from a bargaining unit represented by the Puyallup Association of Educational Office Personnel. A hearing was held at Puyallup, Washington, on April 24, 1996, before Hearing Officer Jack T. Cowan. Both parties filed post-hearing briefs. Authority to determine this eligibility dispute has been delegated to the Hearing Officer under WAC 391-35-190.

BACKGROUND

The Puyallup School District (employer) serves approximately 17,000 students with approximately 2,000 employees staffing three high schools, six junior high schools, twenty elementary schools, and

related support operations.¹ A total of eight bargaining units are organized within the employer's workforce.

The Puyallup Association of Educational Office Personnel (PAEOP), an affiliate of Public School Employees of Washington, is the exclusive bargaining representative of all of the employer's office-clerical employees. There are approximately 109 employees in that bargaining unit. The employer and PAEOP were parties to a collective bargaining agreement covering the period from September 1, 1992 through August 31, 1995, in which the bargaining unit was described as follows:

RECOGNITION AND POSITION DESCRIPTIONS

Section 1.1 The District hereby recognizes the Association as the exclusive representative of all employees in the secretarial/clerical general job classification, excluding one secretary to the Superintendent, one secretary to the Executive Director of Personnel and Pupil Services, and one secretary to the Director of Employee Relations. Additionally, the positions currently held by Linda Grandorff, Jean Duckworth, Kathy Drahos, Maureen Murphy and Carol Wood shall be excluded from the bargaining unit while filled by the current incumbents. However, at such time that any of these positions vacate, the position shall be returned to the bargaining unit, unless PERC rules to the contrary. The Association recognizes the responsibility of representing the interests of all such employees.

Aside from the position at issue in this proceeding, there are currently five persons who are excluded from the PAEOP bargaining unit based upon confidential duties:

- * Francine Rouse, secretary to Executive Director of Personnel Molly Ringo;
- * Donna Van Duin, secretary to Superintendent Dick Svode;

¹ An additional elementary school was under construction at the time of the hearing in this matter.

* Lois Williams, secretary to Director of Employee Relations Caroline Lacey;

* Carol Wood, secretary to Executive Director of Support Services Gary Floyd; and

* Jean Duckworth, secretary to Executive Director of Business Larry Carney.

The recognition clause of the parties' contract was modified in 1994, as a result of certain organizational changes: Larry Carney was promoted to his current position in August of 1994, and Caroline Lacey joined the employer's staff at that time as director of employee relations. Carney continued to be involved in labor negotiations, however, and it was necessary for his secretary, Jean Duckworth, to be involved in the related confidential activity. The employer desired to create a new exempt secretarial position for the business service area, and it raised the matter with the union. The union indicated it would agree to the requested exclusion of Duckworth, if the employer would agree to restore certain other positions (as listed in the contract language quoted above) to the bargaining unit when those positions became vacant.² The employer felt the existing positions could remain in their present status as excluded positions, but agreed to take a second look at them as they were vacated and to decide if they should remain exempt or revert to the bargaining unit. Under the agreed-upon language, the employer could ask for a continued exemption and the final determination to the Public Employment Relations Commission.

Among the positions named in the 1994 language, the first to become vacant was the one that had been held by Linda Grandorff. When that vacancy occurred, the employer reviewed the duties and agreed that the position should revert to the bargaining unit.

² The union was seeking some protection, and hoped to preclude the possibility that all of the named positions could or would become exempt or confidential positions.

The Disputed Position

Maureen Murphy worked as secretary to Director of Employment Services Gwen Dewey, until Murphy resigned to accept a position outside the employer's workforce. A question arose as to whether the position should revert to the bargaining unit, and Dewey discussed the possibility of continuing the exclusion with Ed Wolf, who was then the union representative for the PAEOP bargaining unit. Both Lacey and Dewey testified that the union and employer agreed that the position formerly held by Murphy would continue to be excluded, so long as the position description did not change.

Kathy Drahos served as an assistant to the superintendent until her position was eliminated as part of an organizational change initiated by the superintendent. Drahos had previous secretarial experience from serving as secretary to Tony Apostle, while he was director of administrative services, and the superintendent placed Drahos in the position vacated by Murphy. The job vacancy was not posted,³ but a dispute concerning whether the position is "confidential" has been submitted to the Commission for determination.

Over the years, Dewey has been a member of the employer's bargaining team for negotiation with the teachers, para-educators, food service workers, and the PAEOP unit. In addition to bargaining, Dewey shares responsibility for contract management for classified employees. She is involved in investigations and in grievance resolution. Day-to-day personnel assignments of varied types are frequently transferred between Ringo, Lacey and Dewey.

Dewey relies heavily on Drahos for assistance. Dewey testified that she shares everything with Drahos, and that Drahos has access to everything (i.e., information, files and records). Dewey and Drahos share a common computer file. Dewey discusses bargaining

³ No grievance was filed by the union for that action.

issues with Drahos, and assigns Drahos to gather information needed for collective bargaining negotiations. Dewey consults with Drahos about the feasibility of various bargaining proposals. Drahos maintains wage and hour information necessary for negotiations and contract administration, and Dewey uses that information to calculate costs for various parts of the contract.

Overflow work from Lacey's office (and from Lois Williams' activities as Lacey's secretary) goes to Drahos. Lacey also utilizes Drahos as an information resource on those occasions when Dewey is absent or unavailable.

Drahos' work area is located in a small building which was a bank in times past. Her desk is situated in close proximity to those of Lois Williams and Donna Van Dubin. The secretarial area is proximate to offices occupied by Sovde, Lacey and Dewey. Conversations are somewhat audible to other persons in the facility, because of the close proximity of the desks. Even conversations had in offices are not totally private, because of the positioning of the offices and their separation only by glass/wood partitions.

POSITIONS OF THE PARTIES

The employer contends that Kathy Drahos is a confidential employee in her capacity as the secretary to Dewey, and that her position should be excluded from the PAEOP bargaining unit. It notes that Dewey is actively involved in the formulation, administration and effectuation of the employer's labor relations policies, and that Drahos has regular and ongoing duties which require her to process sensitive, confidential labor relations material.

The union maintains there is no real need for Drahos to be classified as a confidential employee, that her existing duties do not justify her classification as a confidential employee, and that

certain of her assigned tasks which are alleged to be confidential could be more appropriately assigned to one of the other secretaries already excluded as a confidential employee. The union urges that an employee should not be deprived of the right to union representation without a compelling reason of employer necessity.

DISCUSSION

The issue here is whether it is appropriate to exclude the secretary to the director of employment services from the office-clerical bargaining unit. The exclusion of "confidential" employees is based on RCW 41.56.030(2), which provides as follows:

(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 ...**

[Emphasis by **bold** supplied.]

In IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978), the Supreme Court of the State of Washington endorsed looking to the parallel exclusion and definition in the Educational Employment Relations Act, Chapter 41.59 RCW, for guidance in such matters. RCW 41.59.020(4) provides as follows:

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formation of labor relations policy, the preparation for or conduct 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.

Moreover, the Supreme Court's Yakima decision clearly enunciated a "labor nexus" test for "confidential" status. Having access to sensitive information unrelated to labor-management relations is not a basis for exclusion from a bargaining unit.

Review of the organization chart of any enterprise might give rise to reasonable questions such as, "How many "management" personnel are necessary to ensure effective operation of that enterprise?" In this case, the union is entitled to question whether the five positions already excluded as "confidential" are adequate, or could be utilized in such a manner as to preclude a need for another confidential exclusion. In other words, "How many are enough?" Since classifying an employee as confidential deprives the person of access to all collective bargaining rights,⁴ the employer bears an obligation of reasonableness in assigning its confidential work. City of Chehalis, Decision 4709 (PECB, 1994). The number of confidentials within a particular organization is not, however, determined by some fixed formula. Within the broad range of what is "reasonable", employers have the prerogative to structure an organization in whatever reasonable form they choose. They can base their decisions on whatever suits their needs; whatever works best and in the most effective manner.

The present organizational structure in place in the Puyallup School District includes a need for Dr. Dewey's activities in the labor-management arena. Dewey is an active participant in the employer's overall labor relations process. Her ongoing involvement also includes serving in Lacey's behalf, or as needed. Dewey's position and activities are bonded to labor relations and those activities necessitate secretarial/clerical support.

The needs related to Dewey are not singular, but also include the participatory duties and functions of Kathy Drahos in her role as

⁴ Olympia School District, Decision 4736-A (PECB, 1994).

secretary to Dewey. Drahos is required to perform many of those tasks which are normally performed by persons acting in a "confidential" role of/for the employer in the collective bargaining process. The evidence shows that Drahos has access to all pertinent files and that she does process sensitive information for bargaining, grievances and investigations. See, Oak Harbor School District, Decision 3581 (PECB, 1990), citing Edmonds School District, Decision 231 (PECB, 1977).

While close proximity is not conclusive, it is a legitimate consideration in this case. In something akin to sitting beside the drummer, the occupants of neighboring work areas may be forced into a degree of participation despite a lack of interest or intent. In this case, the offices of upper echelon officials are so closely united as to make it extremely difficult, if not impossible, for the employer to maintain strict privacy in the area of labor relations. The union's request for a change of assignments to avoid Drahos' designation as a confidential employee would create undue restraint on the employer in the performance of its labor relations activity.

The secretary to the director of employment services is properly excluded from the bargaining unit as a confidential employee.

FINDINGS OF FACT

1. The Puyallup School District, headquartered in Puyallup, Washington, is a public employer under RCW 41.56.030(1).
2. The Puyallup Association of Educational Office Personnel, an affiliate of Public School Employees of Washington and a bargaining representative within the meaning of RCW 41.56.030-(3), is the exclusive bargaining representative of all full-time and regular part-time office-clerical employees of the Puyallup School District, excluding confidential employees.

3. As secretary to the director of employment services, Kathy Drahos is regularly assigned support functions to an employer official who participates in representing the employer in ongoing labor relations activity. Drahos processes sensitive information for bargaining, grievances and investigations, and has regular access to confidential labor relations policies of the employer.

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 position of secretary to the director of employment services in the Puyallup School District 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 secretary to the director of employment services is excluded from the bargaining unit referred to in paragraph 2 of the foregoing findings of fact.

Issued at Olympia, Washington, on the 2nd day of December, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, 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 391-35-210.