

City of Centralia, Decision 6394 (PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS UNION, LOCAL 252)	CASE 13134-C-97-00828
)	
For clarification of an existing)	DECISION 6394 - PECB
bargaining unit of employees to:)	
)	ORDER CLARIFYING
CITY OF CENTRALIA)	BARGAINING UNIT
)	

Mike Mauermann, Business Agent, appeared for the union.

Craig A. Nelson, City Attorney, appeared for the employer.

On May 5, 1997, Teamsters Union, Local 252 filed a petition for clarification of existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, claiming positions titled "city clerk", "assistant city clerk", and "program specialist" at the City of Centralia are no longer confidential employees. A hearing was held on September 25, 1997, before Hearing Officer Martha M. Nicoloff. The parties were given until November 7, 1997, to file post-hearing briefs, but no briefs were filed. Authority to decide these eligibility issues has been delegated by the Executive Director to the Hearing Officer, under WAC 391-35-190.

BACKGROUND

The City of Centralia has a population of approximately 12,730 persons. The employer has the council-manager form of municipal

government.¹ Teamsters Union, Local 252 is the exclusive bargaining representative of a bargaining unit which is described in the parties' collective bargaining agreement as follows:

All full-time and regular part-time office clerical and support staff employees employed by the City of Centralia; excluding all department secretaries, professional, confidential, and supervisory employees, and all other employees.²

The salary plan in an appendix to the same contract indicates that the covered job titles include accountants, managers, coordinators and clerks.

Assignments within the employer's administrative staff have been in transition in the last several years. This apparently began with the departure, in 1995-1996, of former City Manager Bill DaVee and former City Clerk/Personnel [officer] Carol Lee Neely. Other city staff members then changed jobs to fill those vacancies, and to carry out a reorganization of responsibilities. For a time, the city manager and city attorney positions were held by the same person. Other administrative positions changed in this reorganization were the three positions which the union alleges in its petition no longer maintain their status as confidential: The "city clerk", the "deputy city clerk", and a new "program specialist" position in the utilities department.

¹ Directory of Washington City and Town Officials, 1997-1998.

² The record is silent as to why department secretaries or professionals would be specifically excluded from the bargaining unit. As confidential employees were also excluded, the Hearing Officer assumes that neither class was considered to be confidential employees.

City Clerk

The person holding this position functions as the clerk of the city council, and reports directly to the city manager. The job description for this position is as follows:

GENERAL FUNCTION

Administers the records management program for official City records and serves as custodian of the official records and seal as required by City ordinance and state statutes. Serves as clerk to the Council.

...

JOB DUTIES AND RESPONSIBILITIESA. Essential Functions

1. Must be able to attend regular and special Council meetings; oversee the accurate recording of those proceedings, preparation of the minutes in proper legislative terminology, recording, indexing and filing for the public record; distribute information as requested.
2. Must be able to serve as custodian of official City records and perform the official certification and recording for the City as required for legal documents and any other records requiring such certification; certify ordinance books; attest and record all applicable vital statistics.
3. Must be able to prepare and publish legal notices as directed and in accordance with established procedures and legal requirements; files ordinances and resolutions of the Council and prepares for codification in the City's municipal code.
4. Must be able to file deeds, easements, contracts, and agreements.
5. Must be able to respond to citizen in-house inquiries regarding ordinances, resolutions, permits, contracts, agreements and licenses.

6. Must be able to coordinate the operation of the City Clerk's Office and develop and coordinate forms, procedures and annual budget.
7. Must be able to compose letters and reports from brief instructions or notes using word processor or typewriter.
8. Must be able to voucher all bills on a bi-weekly basis.
9. Must be able to be responsible for processing the City's annual business licensing, annual animal licensing and quarterly gambling taxes.
10. Must be able to develop office procedures, routines and filing systems as necessary.
11. Must be able to conduct deposits on a regular basis.

The current incumbent in this position, Deena Ashmore, testified she attends a weekly meeting of the employer's department heads, although she is not herself a department head. She noted that the department heads occasionally discuss in those meetings issues which they had proposed for bargaining, but she did not elaborate on the content or frequency of those discussions. She did state that she did not participate in specific strategy sessions with the city manager.

Deputy City Clerk

The current incumbent of this position, Kathleen Thompson, described her job as being the city manager's confidential secretary and city council liaison. The job description for the position reads as follows:

GENERAL FUNCTION

Serves as assistant to the City Clerk, receptionist/clerical support to the City Manager's Office, including the City Manager, Assistant City Attorney, Grants Administrator, Personnel Officer, and City Clerk. Assists the Department of Community Development with clerical support for Growth Management Act issues. Acts as liaison between the City Council and City Departments. Accomplishes all duties necessary to aid the City Manager's Office and the City Council in office details and routine administrative matters. Performs a variety of related secretarial, and clerical details to support the office operations. Serves as clerk to the City Council in the absence of the City Clerk.

JOB DUTIES AND RESPONSIBILITIESA. Essential Functions

1. Must be able to coordinate the office operation of the City Manager's Office. Greet and assisting [sic] the general public, public officials and city staff, answer telephones, distribute mail, provide information of a general nature as authorized, and assist with other administrative and clerical tasks.
2. Must be able to deal with confidential and sensitive information from the departments within the City Manager's Office regarding labor and personnel issues; perform secretarial functions for the City Manager, Grants Administrator, Personnel Officer, and City Clerk, including acting as the confidential secretary for those positions.
3. Must be able to develop office procedures, routines and filing systems as necessary, and provide typing and filing support for the various departments within the City Managers [sic] office.
4. Must be able to assure a consistent schedule of appointments for the City Manager by screening incoming calls, mail, personal

visits, and evaluating the importance of each, referring as appropriate.

5. Must be able to process complaints and requests for information or service.

6. Must be able to attend regular and special City Council meetings in the absence of the City Clerk; oversee the accurate recording of those proceedings, prepare the agenda, prepare the minutes in proper legislative terminology, record, index and file for the public record; distribute information as requested.

7. Must be able to assist the City Clerk in serving as custodian of the official city records, perform the official certification and recording for the City as required on legal documents and any other records requiring such certification; certify ordinance books; attest and record all applicable vital statistics in the absence of or at the direction of the City Clerk.

8. Must be able to prepare and publish legal notices as directed and in accordance with established procedures and legal requirements; file deeds, easements, contracts, agreements, ordinances, and resolutions of the Council and prepare for codification in the City's Municipal Code.

9. Must be able to respond to citizen and in-house inquiries regarding ordinances, City Council actions, permits, contracts, and licenses.

10. Must be able to, from hand written drafts or verbal instructions, prepare a variety of letters, memos, forms, and reports using office machines such as a typewriter, word processor, computer or other equipment.

11. Must be able to voucher all bills.

12. Must be able to process the City's annual business and animal licenses and quarterly gambling taxes.

13. Must be able to attend Growth management meetings, accurately record those proceedings,

prepare the minutes in proper format and terminology, record, index and file for the public record; distribute information as requested.

14. Must be able to act as liaison between the City Council and various City departments.

15. Must be able to act as travel coordinator for City employees and Council persons traveling on City business; provide for adequate local or out-of-town reservations for conferences, transportation and lodging for city personnel, or visitors to the City; set up and coordinate interdepartmental, interagency, and other meetings, notify participants, and make room arrangements.

...

Thompson testified that she does not type contract proposals for the employer, does not participate in negotiations, and has not been involved in (or typed minutes of) negotiation strategy sessions. She does type correspondence and documents relating to grievances, some of which may be internal documents, but her involvement with this task during her tenure as deputy city clerk has been limited to perhaps three grievances.

Program Specialist

The incumbent of this new position, Sacia Graber, testified that she has been regularly assigned functions relating to special projects in the employer's utilities department, and particularly for statistical analysis. Her assignments have ranged across the spectrum from landfills to equipment rental. The job description for the position, as last used when the employer advertised the position, is as follows:

Job Standards/Qualifications

Facilitates and coordinates Utilities programs, establishes policies and procedures, performs complex mathematical and statistical calculations and tabulations, assimilates, verifies, classifies, and compiles confidential information and presents it in written, graphic, and/or verbal form to City Manager and/or City Council. Must be able to work independently, maintain confidentiality, research and analyze information, form logical conclusions, and make logical recommendations.

...

CLASSIFICATION DESCRIPTION

JOB DUTIES AND RESPONSIBILITIES**A. Essential Functions**

1. Must be able to effectively facilitate and coordinate Utilities programs and establish policies and procedures including but not exclusive to Equipment Rental.
2. Must be able to perform basic and complex mathematical and statistical calculations and tabulations.
3. Must be able to assimilate, verify, classify and compile confidential information and present in written, graphic and/or verbal form to City Manager or City Council.
4. Must be able to support and coordinate program efforts with Utilities staff to assure timely, efficient completion of all phases of assigned projects.
5. Must be able to manage assigned responsibilities with competing demands, changing priorities, stringent timelines and interpersonal/team interactions.
6. Must be able to research and analyze information, form logical conclusions, and make appropriate recommendations.
7. Must be able to work independently.

8. Must be able to develop and monitor program budgets.
9. Must be able to work confidentially on programs such as but not exclusive to payroll preparation.
10. Must be able to oversee the responsibilities of the Office Manager in his/her absence.
11. Must be able to participate in the selection and monitoring of employees and make recommendations if so directed by the Office Manager.
12. Must be able to gather, interpret and prepare data for negotiations (Union, contract, etc.), studies, and reports and make recommendations to the Office Manger.

The testimony of the incumbent indicates her only responsibility connected with collective bargaining has been the preparation of a salary survey of comparable jurisdictions, which was used in the employer's labor negotiations.

POSITIONS OF THE PARTIES

The union argues that the reorganization of the city staff in early 1996 changed the responsibilities of the three disputed positions, and that they do not now have duties warranting exclusion from bargaining as "confidential" employees. In particular, the union asserts that they are not involved in the "formulation, implementation or effectuation of the employer's labor relations policies or practices", and therefore, that the three positions should be included in the bargaining unit.

The employer contends that, even with the changes in the duties and responsibilities of the three positions, they are responsible for

confidential functions which should exempt them from participation in the collective bargaining process.

DISCUSSION

The "Confidential" Exclusion

The state of the law regarding confidential employees was reviewed in City of Auburn, Decision 5775 (PECB, 1996), as follows:

The law regarding "confidential" exclusions is well developed under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. In IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978), the Supreme Court of the State of Washington took direction from the definition of "confidential employee" found in the Educational Employment Relations Act, at RCW 41.59.020(4)(c), as follows:

(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 to fashion a similar "labor nexus" test for confidential status under Chapter 41.56 RCW. Thus, the intimate fiduciary relationship must be with either a department head or other management official responsible for formulating labor

policy, and the qualifying involvement with confidential material must be "necessary", "regular" and "ongoing". City of Cheney, Decision 3693 (PECB, 1991).

Because status as a confidential employee deprives the individual of all collective bargaining rights, the party proposing such an exclusion bears a heavy burden of proving the necessity for the exclusion. City of Seattle, Decision 689-A (PECB, 1979). Where the evidence offered in support of a confidential claim is ambiguous or contradictory, that heavy burden requires rejection of the proposed exclusion. Pateros School District, Decision 3911-B (PECB, 1992). Mere access to personnel files and current payroll data does not establish confidentiality within the meaning of the Act. City of Lacey, Decision 369 (PECB, 1978); City of Olympia, Decision 4736 (PECB, 1994). An employer may not obtain an excessive number of "confidential" exclusions by giving little bits of confidential duties to a large number of employees. Clower Park School District, Decision 2243 (PECB, 1987).

No arguments have been advanced in this case which would justify revisiting any of those principles or precedents.

Application of Standards

It is not apparent from the organization chart of the employer's administrative staff that there are any confidential employees at the City of Centralia, other than the three involved in this proceeding. The record is devoid of any direct mention of any other confidential positions.

Virtually nothing in the job description for the city clerk indicates the slightest involvement in labor relations activities of the type that were of concern to the Supreme Court in Yakima,

supra. Ashmore testified, however, that she attends weekly meetings with the employer's department heads, and that those meetings focus on bargaining issues during times when labor negotiations involving city employees are ongoing. Furthermore, she attends all of the city council meetings, including executive sessions. While she does not participate in discussions of labor relations strategy which may take place at those meetings, and has sometimes been asked to leave a meeting while the council engaged in a specific discussion, she is the official keeper of the city council records. Being mindful of the Commission's decision in City of Mountlake Terrace, Decision 3832-A (PECB, 1992), it is likely that the city clerk may be the only position that could fulfill the employer's need for at least one confidential employee:

It is reasonable to allow an employer at least one confidential employee in its business office. Secretaries to labor relations policy-makers have been excluded on the basis of confidentiality in prior cases.

Thus, even though it is difficult to state that the employer has met the "heavy burden of proof" required by Commission precedent, it would appear that, under these specific circumstances, the city clerk is appropriately excluded from the bargaining unit as a confidential employee.

The job description for the deputy city clerk refers to "confidential and sensitive information ... regarding labor and personnel issues", but the somewhat vague testimony of the incumbent only supports a conclusion that her work is more in the nature of handling general correspondence of a sensitive or confidential nature. It was clear from Thompson's testimony that she does not participate in collective bargaining negotiations, nor has she

provided clerical support for the employer's negotiators. While she acts as the secretary to the city manager, who is the executive head of the bargaining unit, she did not testify as to any work other than correspondence involving specific employees, that could remotely be related to labor relations. See, Hendricks County Rural Electric, 454 U.S. 170 (1981), holding that the confidential personal secretary to the employer's manager still had bargaining rights in the absence of access to confidential *labor relations* information. The employer has failed to carry its burden of proof that the deputy city clerk is a confidential employee, and that position is appropriately included in the bargaining unit.

The program specialist position was created in approximately 1996, to support the utilities administrator. The position does not appear to have an ongoing focus other than "special projects", and the job duties have varied from administering programs to interviewing prospective employees. The involvement of this position in collective bargaining appears to have been limited to one data collection project: A survey in which the incumbent tabulated salaries and benefits from cities judged comparable to Centralia, for use in the employer's negotiations with a union representing electrical workers. All of the data gathered was apparently a matter of public record, however, and there is no indication that Graber was involved in decisions concerning or utilization of the data she obtained. Activities such as acquiring raw data for bargaining are not, by themselves, enough to classify a position as confidential. The scope of the utilities department program specialist is so broad and changeable that there is no indication that such activities would necessarily be repeated as a necessary and ongoing part of her duties. Without the requisite involvement in or contact with the formulation of labor policies or bargaining

proposals, the position does not fit the definition of confidential under Yakima, supra.

Community of Interest Argument

From the employer's questioning of the program specialist, it seemed to be asserting that Graber does not share a community of interest with the "office clerical and support staff", and should be excluded from the bargaining unit on that basis. If that was the employer's intent, it was mixing apples and oranges. Under RCW 41.56.030(2)(c), classification as "confidential" altogether removes the individual from the coverage and rights of the statute; under RCW 41.56.060, the duties, skills, working conditions, history of bargaining, extent of organization, and desires of employees are to be considered for the purpose of allocating employees who qualify for coverage under the statute into bargaining units. A "confidential" question is jurisdictional, and may be raised at any time under WAC 391-35-020(1); changes of unit status under RCW 41.56.060 must be raised in a timely manner under WAC 391-35-020(2), and are generally limited to "changed circumstances" situations. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). In this case, the employer's position ever since the creation of the program specialist position in 1996 is understood to have been that it was a "confidential" position. The petition in this case contested the employer's claim of "confidential" status. The employer's community of interest arguments are inapposite to that question.

FINDINGS OF FACT

1. The City of Centralia is a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 252, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of office-clerical and support employees of the City of Centralia.
3. The employer and union are parties to a collective bargaining agreement.
4. During the period from 1995 through 1997, the employer's administrative staff went through a series of reorganizations, including the departure of a city manager, and the combining of the city manager and city attorney positions for a period of time. Administrative responsibilities supporting these positions were also revised. A new "program specialist" position was created in the utilities department during that time period.
5. Prior to the onset of this proceeding, the employer categorized the city clerk, deputy city clerk and program specialist positions as "confidential" employees, and excluded those positions from the bargaining unit on that basis. The evidence presented appears to indicate that they were the only City of Centralia employees so designated.
6. The city clerk attends meetings of the city's department heads, and attends city council meetings, including executive

sessions. She is privy to discussions of labor relations strategy which may take place at those meetings. She is the official custodian of the city's records.

7. The deputy city clerk provides administrative and clerical support to the city manager, the assistant city attorney, the employer's grants administrator, the personnel officer, and the city clerk. She does not participate in labor negotiations, and is not privy to discussions of labor relations strategy.
8. The program specialist works on special projects, primarily related to the utilities department and in support of the work of the utilities manager. On one occasion, she gathered wage and benefit data for use by the employer's negotiating team. Such data was apparently public information, and she did not participate in the actual utilization of the data.

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. The city clerk has a confidential relationship with the city council, the city manager and the employer's department heads, including confidential labor relations information, so that position is confidential under RCW 41.56.030(2)(c).

3. The testimony and evidence presented do not support a conclusion that the deputy city clerk is a confidential employee within the meaning of RCW 41.56.030(2)(c).
4. The testimony and evidence presented do not support a conclusion that the program specialist in the utilities department is a confidential employee within the meaning of RCW 41.56.030(2)(c).

ORDER

1. The bargaining unit of City of Centralia employees represented by Teamsters Union, Local 252 is clarified to exclude the position of city clerk.
2. The bargaining unit of City of Centralia employees represented by Teamsters Union, Local 252 is clarified to include the position of deputy city clerk and the position of program specialist in the utilities department.

Issued at Olympia, Washington, this 19th day of August, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARTHA M. NICOLOFF, Hearing Officer

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.