

Darrington School District, Decision 5573 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                   |   |                      |
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| In the matter of the petition of: | ) |                      |
|                                   | ) |                      |
| PUBLIC SCHOOL EMPLOYEES OF        | ) | CASE 12143-C-95-758  |
| DARRINGTON                        | ) |                      |
|                                   | ) |                      |
| For clarification of an existing  | ) | DECISION 5573 - PECB |
| bargaining unit of employees of:  | ) |                      |
|                                   | ) |                      |
| DARRINGTON SCHOOL DISTRICT        | ) | ORDER CLARIFYING     |
|                                   | ) | BARGAINING UNIT      |
|                                   | ) |                      |
|                                   | ) |                      |

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David Fleming, Attorney at Law, and Ed Wolf, Field Representative, appeared for the union.

William Edwards, Superintendent, appeared for the employer.

On November 2, 1995, Public School Employees of Darrington filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. PSE sought a ruling which would include an information systems technologist position in a bargaining unit of classified employees of the Darrington School District. A hearing was held before Hearing Officer J. Martin Smith at Darrington, Washington, on January 24, 1996. Briefs were filed to complete the record.

BACKGROUND

The Darrington School District serves about 550 students in the eastern portion of Snohomish County and Skagit County. William Edwards is the superintendent. The employer operates three schools on one campus.

Public School Employees of Darrington, an affiliate of Public School Employees of Washington (PSE) is the exclusive bargaining representative, under Chapter 41.56 RCW, of a bargaining unit of classified employees of the Darrington School District. That unit consists of approximately 29 employees filling 19.7 full time equivalent (FTE) positions.

#### The Information Systems Technologist

In June of 1995, the employer's school board approved the creation of a new position under a job description which states that the successful candidate will "facilitate technological development, implementation, and maintenance throughout the district". The job requires a bachelor's degree in computer science or a "strong background" in computers. Marshall Byrd was hired for this position in September of 1995.

In addition to designing software and networks for use by the employer's students, the employer realized it had storage problems for its student and employee files. Computers seemed to be the ideal solution to increase the employer's recordkeeping capacity. There is no disagreement that many of the records to be saved are not available to the general public.

Mr. Byrd did not testify in this proceeding. His first task was to establish a network, so that approximately 100 personal computers in the employer's facilities could be interconnected. Currently, he is purchasing computer hardware and software in order to design programs for students to use in their classrooms and learning centers. His hours may vary, but he works from 9:30 a.m. to 6:00 p.m. if he needs to work on the computers in classrooms.

In the near future, Byrd's tasks will include designing and implementing transfer of all of the employer's paper files on payroll, personnel, and student data onto microfiche or diskette-

based storage. According to the superintendent, the data transfer tasks would have these features:

(1) Some records would have to be kept in document form (e.g., student transcripts which are still in occasional demand;

(2) Most of the records would not be employee records;

(3) Some data transfers involve an employee reading the information from one form and transferring them to the computer in a different format;<sup>1</sup>

(4) Many records (e.g., WSIPC S-275 forms) are non-identified, and merely refer to gross numbers of employees by category and/or pay grade;

(5) The plan has been for Byrd and the two payroll clerks in the employer's administrative office to have access to the data by means of a computer code, so that the data would be characterized as "non-public domain".<sup>2</sup>

The superintendent indicated that Byrd is supervised by the high school principal and librarian, although Byrd's offices and work tables are in the elementary library area, adjacent to the high school.

#### The History of Bargaining

There is indication that PSE initially believed the new position would be a certificated position outside of its bargaining unit.<sup>3</sup> It is clear, however, that Byrd is not a certificated employee and that any bargaining rights would be under Chapter 41.56 RCW.

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<sup>1</sup> The superintendent indicated that scanner equipment may be used to enter some documents into the computer without rereading or retyping.

<sup>2</sup> The superintendent indicated he would have access to the computer codes, as well.

<sup>3</sup> The employer has a separate bargaining relationship with a local affiliate of the Washington Education Association for a bargaining unit of certificated employees.

The parties' collective bargaining agreement does not refer to a "systems technology" or "computer coordinator" position. Fran Arnold, who is the PSE unit president, testified that she discussed Byrd's job with Ed Wolf of PSE after Byrd was hired, and that the figure of \$18.75 was arrived at as an hourly wage for the new position.<sup>4</sup> This wage was seen as somewhat comparable to that of surrounding districts.

During negotiations for a successor contract during the autumn of 1995, the employer asserted that Byrd was a confidential employee who ought to be excluded from the bargaining unit. The parties agreed to submit a unit clarification petition to the Commission.

The superintendent indicated that he has been the employer's principal negotiator in collective bargaining over the last eight years. He has performed that function alone, without assistance from a consultant or either certificated or classified staff. The information technologist plays no role in the negotiation of collective bargaining agreements.

#### POSITIONS OF THE PARTIES

The employer argues that the information technology position should be excluded from the bargaining unit represented by PSE. It reasons that, since the superintendent's secretary, the business manager and payroll clerks are excluded from the classified bargaining unit because of their confidential status, the new position which is exposed to and expected to enter "confidential" data into the new computer filing and retrieval system should be treated in the same manner. The employer also appears to raise a

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<sup>4</sup> This testimony would appear to be in contrast to statements made by counsel in opening argument that "the District unilaterally implemented and filled the position and unilaterally set the pay rate at \$18.75 an hour."

"community of interest" argument in contending that the information technologist position is better characterized as a "specialist" position which should not be in the bargaining unit.

The union argues that the employer has not made out a sufficient case to support a finding that the new position is confidential, and that his role in entering data into new computer storage systems lacks the "labor nexus" required by precedent.

## DISCUSSION

### The "Confidential" Exclusion

The primary issue presented in this case is whether the information technologist is a "confidential employee" within the meaning of RCW 41.56.030(2)(c), as interpreted by the Supreme Court of the State of Washington in IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978). The rule of that case is:

[I]n 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 officer or executive head of the bargaining unit **including formulation of labor relations policy.**

Yakima at WPERR CD-65 [emphasis by **bold** supplied].

The burden to show that an individual is properly excluded as a "confidential employee" is on the party who seeks the exclusion. Pateros School District, Decision 3911-B (PECB, 1992).

The information technologist at Darrington is, at most, vested with some authority to access confidential documents involving student and personnel records. Whether current or prospective, such authority does not, standing alone, warrant a "confidential" exclusion. Snohomish County, Decision 346 (PECB, 1981).

Even if Byrd has the same access to personnel and payroll records as others who are now excluded from the bargaining unit as "confidential employees", that does not establish a "labor nexus". Most personnel and payroll records on individual employees are necessarily historical in nature (e.g., showing when the employee was hired, at what rates they have been paid, and when they have been promoted or disciplined), and employees generally have access to their own personnel files, so that there is no risk of damage to the collective bargaining process. None of those materials are likely to reveal the employer's labor relations policy or strategy in current or future negotiations with unions representing either of the bargaining units existing within the employer's workforce.

Having expertise or interest in personal computers does not, standing alone, create an "intimate fiduciary relationship" under the test of City of Yakima, supra.<sup>5</sup> Bargaining on behalf of this employer is accomplished solely by the superintendent, and no evidence suggests that Byrd will be involved in future collective bargaining on behalf of the employer. Further, no inference is available that Byrd's records storage project would ever encompass any sensitive files maintained by the superintendent for his use in collective bargaining.

Given that the employer already apparently has at least four persons excluded from the PSE bargaining unit as "confidential", any future assignment of "labor nexus" responsibilities to Byrd would have to be evaluated at that time against the standards of

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<sup>5</sup> City of Deer Park, Decision 4237-C (PECB, 1993).

Clover Park School District, Decision 2243 (PECB, 1987). With one or more building principals, the superintendent's secretary, the business manager, and two payroll clerks available to it, the need for the employer to have Byrd handle sensitive labor relations materials cannot be assumed.

#### The Community of Interests

In the absence of a "confidential" exclusion, the information technologist at the Darrington School District has collective bargaining rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Accordingly, care must be taken to assure that the rights of the individual employee will not be prejudiced.

As historically constituted, the bargaining unit represented by PSE has encompassed all of the non-supervisory employees of the employer who are "public employees" within the meaning and coverage of Chapter 41.56 RCW. Exclusion from that unit (e.g., on the basis that he is a "specialist") would strand Byrd or his successor without any way to implement rights under Chapter 41.56 RCW, since a one-person bargaining unit would not be appropriate. Town of Fircrest, Decision 246-A (PECB, 1977). Such an exclusion must be rejected. City of Vancouver, Decision 3160 (PECB, 1989).

#### FINDINGS OF FACT

1. The Darrington School District is organized and operated under Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1). Superintendent William Edwards has responsibility for collective bargaining on behalf of the employer, and has been the employer's sole negotiator in collective bargaining negotiations for at least eight years.

2. Public School Employees of Darrington is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The employer and union have a collective bargaining relationship with respect to a bargaining unit which has historically encompassed all of the non-supervisory employees of the Darrington School District who are "public employees" within the meaning of RCW 41.56.030(2). At least four employees in the employer's administrative office are excluded from that bargaining unit as "confidential employees".
4. In 1995, the employer created and filled a new "information technologist" position which is responsible for the hardware and software needs for a school-based network of personal computers. The employer is in the process of entering some of its business, personnel and student records into that computer system.
5. The information technologist has no role in negotiating collective bargaining agreements on behalf of the employer.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.060 and Chapter 391-35 WAC.
2. The information technologist employed by the Darrington School District is a public employee within the meaning and coverage of Chapter 41.56 RCW, and is not a confidential employee under RCW 41.56.030(2).
3. Exclusion of the information technologist from the bargaining unit at issue in this proceeding would improperly strand the individual in a bargaining unit which would be inappropriate



under RCW 41.56.060, and would thereby prejudice the rights of the employee under Chapter 41.56 RCW.

ORDER

The information technologist is included in the existing bargaining unit represented by Public School Employees of Darrington.

Issued at Olympia, Washington, on the 19th day of June, 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.