

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
NORTH FRANKLIN SCHOOL DISTRICT	)	CASE 13017-C-97-817
	)	
For clarification of an existing	)	DECISION 6499 - PECB
bargaining unit represented by:	)	
	)	
PUBLIC SCHOOL EMPLOYEES OF	)	ORDER CLARIFYING
NORTH FRANKLIN	)	BARGAINING UNIT
	)	
	)	

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Robert D. Schwerdtfeger, Labor Relations Consultant,  
appeared on behalf of the employer.

Elyse B. Waldman, Field Attorney, appeared on behalf of  
the union.

On March 4, 1997, the North Franklin School District (employer) 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 "personnel secretary" position excluded from a bargaining unit represented by Public School Employees of North Franklin, an affiliate of Public School Employees of Washington (union). A hearing was held at Connell, Washington, on February 4, 1998, before Hearing Officer Rex L. Lacy. The parties filed post-hearing briefs. Authority to decide this eligibility dispute has been delegated to the Hearing Officer by the Executive Director, under WAC 391-35-190(2).

BACKGROUND

The North Franklin School District provides educational services for about 1900 students in kindergarten through high school. The

overall operation is under the direction of a five-member board of elected directors. Day-to-day operations are under the direction of Superintendent Otis Fall. The employer operates five schools: One high school, one middle school, and three elementary schools.

The employer has approximately 250 classified and certificated employees. Public School Employees of North Franklin is the exclusive bargaining representative of a wall-to-wall bargaining unit of the employer's classified employees. The employer and union have been parties to a series of collective bargaining agreements, the latest of which was signed on February 27, 1997, and covers the period from September 1, 1994 through August 31, 1997. The parties were in the process of negotiating a successor contract at the time of the hearing in this case.

Faye Colley was hired by the employer in the autumn of 1997, as an office-clerical employee working under the title of "personnel secretary". The initial job description for that position includes the following:

MISSION STATEMENT:

To perform those duties outlined below, or as assigned by immediate Supervisor, in a positive, confidential, and professional manner that will support the achievement of District and work site goals.

REPORTS TO: Business Manager

DESCRIPTION:

Professional conduct is to be demonstrated by positive and supportive communication to peers and school community of the common purposes, goals, decisions, and collective judgments of the Board, administration, and staff.

QUALIFICATIONS:

High school graduate or GED equivalent. Additional college and/or business college preferred.

Experience and/or background in personnel, employee benefits and accounting preferred.

Working knowledge of Macintosh computers and other office equipment.

Proficiency in word processing

Demonstrated ability to handle highly confidential materials and information.

Be able to work independently and meet deadlines.

Ability to work well with a variety of persons from other organizations as well as North Franklin School District.

DUTIES AND RESPONSIBILITIES:

General secretarial duties, including answering telephones and greeting visitors.

Provide confidential support to Payroll and Personnel Departments.

Work cooperatively with applicants and staff.

Maintain confidential personnel files.

Assist Payroll Department in payroll completion, benefit administration and preparation for collective bargaining.

Assist in preparation and distribution of personnel postings, scheduling of bid sessions and interviews and coordination of applications for open positions.

Complete annual State personnel report (S275).

Complete monthly student enrollment reports.

Proofread documents regularly, including confidential documents.

Perform other duties as assigned.

Demonstrates professional conduct and positive communication, through word, deed and without innuendo. Injurious gossip is cause for immediate discipline and is to be avoided.

Positive support of the common purposes, goals, decision and collective judgments of the Board of Directors is an expectation of district employment.

That job description was revised on February 4, 1998,<sup>1</sup> and the responsibilities of the position were expanded as follows:

REVISED Labor Relations Related  
Duties of the Personnel Secretary  
February 4, 1998

Extracurricular Contract Petition -

Formulated response and documentation for Public Employment Relations Commission including staff listing, salaries, years of experience and contract coverage

North Franklin Education Association Master Contract -

Proofread contract, composed, compiled and submitted Summary of Contract Deadlines presented in calendar and by topic order to Superintendent and Executive Secretary.

Composed, submitted and distributed definition of certificated substitute pay to all substitutes according to the new Master Contract with NFEA.

Second Chance Agreement -

Prepared Second Chance Agreement from David Griffith, Department of Social and Health Services (DSHS), for presentation to North Franklin School District legal counsel Mike Rorick of Dionne & Rorick.

Collated and presented the legal advice of Mike Rorick in comparison to the agreement presented by David Griffith, DSHS.

Collated, prepared and presented a new Second Chance Agreement combining all NFSD legal advise and David Griffith's agreement offering, which was signed by Dr. Otis Falls and submitted to David Griffith, DSHS, with copies sent to James Gamble, Commander/ Director Connell Boot Camp, Wayne Johnson, Office of the Superintendent of Public Instruction, and Candy Curl, Juvenile Rehabilitation Administrator.

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<sup>1</sup> The revision appeared to have been prepared in contemplation of the hearing, which was held on February 4, 1998.

Staffing Survey of ten comparable districts -  
Contact, correspondence, and collation of  
ten-district staffing survey of salary, posi-  
tion responsibilities, and location of dis-  
trict administration employees for NFSD com-  
parison and return to survey respondents.

Process and complete Superintendent's corre-  
spondence in response to staff requests.

Responsible for notification to classified  
employees of probation end and PSE options.

Process Washington State Patrol and FBI back-  
ground check and results for certified and  
classified employees.

Responsible for notification to principals and  
supervisors of classified evaluation deadlines  
and submission to them of proper evaluation  
forms.

Responsible for classified Reasonable Assur-  
ance of Employment notices per the Gibbens  
Company guidelines.

Compile data of legal billing for insurance  
coverage on legal issues.

Proofread contracts, documents and correspon-  
dence.

Compile and document staff composition statis-  
tics.

Certified personnel filing creation of files  
and maintenance including correspondence and  
evaluation.

Classified personnel filing creation of files  
and maintenance including correspondence and  
evaluation.

Calculate and document FTE's.

Payroll registration of new employees.

Compile employee packets.

Colley testified that she participated in the latest round of  
collective bargaining negotiations between the employer and the  
organization representing its certificated employees. Her role  
throughout that process was limited, however, to obtaining

information for the employer's negotiating team, and taking notes during bargaining sessions.

#### POSITIONS OF THE PARTIES

The employer contends that the personnel secretary is a confidential employee within the meaning of RCW 41.56.030(2)(c), and that Colley should be excluded from the bargaining unit on that basis.

The union contends that the personnel secretary is performing some, but not all, of the clerical duties previously performed by the business manager and executive secretary with regard to collective bargaining, and that Colley does not meet the statutory requirements to be excluded as a confidential employee. The union also argues that the employer does not need to have the disputed position excluded from the bargaining unit, because three other individuals are already excluded as confidential employees.

#### DISCUSSION

##### Applicable Legal Standards

The law on confidential exclusions is clear. Under a specific exclusion found in the definition of "public employee", 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 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 exclusion narrowly 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.**

[Emphasis by **bold** supplied.]

In Yakima, the Supreme Court 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, 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.]

Because exclusion as a "confidential employee" deprives the individual of all 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).

#### Application of the Standard

Both the superintendent and Colley testified about Colley's role in the collective bargaining process involving the employer's certificated employees. Furthermore, their testimony indicates that Colley will perform in a similar role in future collective bargaining negotiations. That testimony is not, however, sufficient to warrant a confidential exclusion.

Colley collected information regarding salaries and benefits from other school districts at the request of the business manager, but most or all of that information is public information that is obtainable, by request, under state statutes concerning public



records. Additionally, the information obtained by Colley is given to the business manager or other exempt employee, who performs any cost calculations to be used in contract negotiations. Colley does not analyze the data she collects or present the results of any calculations to the employer's negotiators. Thus, Colley's limited role as a conduit between the sources of public information and the people who will actually use the information in the development of the employer's labor relations policies or strategies does not rise to the level that warrants a "confidential" exclusion.

Colley has taken notes at collective bargaining sessions, but the statements made by the parties' representatives in bilateral negotiations are clearly not privileged or confidential. Thus, the mere recording of what is said at the bargaining table is not a "confidential" function. See, Pateros, supra, where exclusion was denied for a person who prepared and provided information to both parties in collective bargaining.

Colley has proofread contract language negotiated at the collective bargaining table, but the evidence indicates that the documents involved were prepared by the union party to the negotiations. As with things said across the bargaining table, there is nothing privileged or confidential about proposals already presented to the opposite party or about language already agreed upon by parties.

Colley assists the executive secretary, who is also the employer official responsible for recruiting new employees. The gathering of applications, background, and fingerprint information, and similar materials typically found in a personnel file do not equate with the labor nexus information of concern to the Supreme Court in Yakima, supra. With regard to the preparation and filing of reports to the Superintendent of Public Instruction, documents such

as the S-275 form merely restate information on salaries being paid under contracts already in existence under contract or policy, so that the information is not privileged or confidential. While Colley does some typing for the superintendent, the evidence does not establish that activity as necessarily involving confidential labor relations materials.

Colley assists the payroll clerk with fingerprint checks, new employee orientation on payroll matters, maintaining and updating personnel files, notifying department heads of the status of any probationary employees under their supervision, and notifying supervisors of the dates when employee evaluations are due. None of those tasks have the required labor nexus to warrant exclusion as a confidential employee.

In summary, Colley's involvement in the collective bargaining process does not meet the statutory requirement that the individual excluded as a confidential employee be involved in the formulation, effectuation, and implementation of the employer's labor relations policies and practices. Colley performs routine clerical tasks that fall short of the fiduciary role that the Supreme Court requires for employees to be excluded from bargaining units as confidential employees.

#### Claim of Excess Exclusions

As in past cases, the union has argued here that the employer has sought an excessive number of "confidential" exclusions. It notes that the business manager, the executive secretary, and the payroll clerk have already been excluded from the bargaining unit by agreement of the parties, and that they remain available to perform the work of obtaining information for the employer's negotiators,

as well as typing, proof-reading, and reproducing collective bargaining agreements. The Commission has consistently rejected a numeric approach, and has held that determinations on confidential exclusions must relate to the actual duties and responsibilities of the particular employee, not upon any numerical ratio or formula. In Wapato School District, Decision 788-A (PECB, 1980), the Commission wrote:

Since the early Ford Motor Company cases, in which definitions theretofore accorded the term "confidential employee" were reexamined, the Board has consistently excluded from bargaining units as confidential employees persons who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. Although announcing its intention in the Ford Motor Company case to limit the term "confidential" so as to embrace only such employees, the Board has from time to time since that decision, expanded its view as to what constitutes a confidential employee by designating as "confidential", for example, secretaries to persons involved in the handling of grievances and cashiers having access to labor relation policy data.

Upon further reexamination of our holdings in the instant connection, we are still of the opinion expressed in the Ford Motor Company case that any broadening of this definition of the term "confidential" as adopted in that decision needlessly precludes employees from bargaining collectively together with other employees sharing common interests. Consequently, it is our intention herein and in future cases to adhere strictly to the definition and thus, to limit the term "confidential" so as to embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.

In Cowlitz County, Decision 1652-A (PECB, 1983), the Commission held that:

Confidentiality questions are not determined on a "percentage of time" test. Rather, it is the regularity of contact with confidential information which is determinative. See: Tacoma Pierce County Law Enforcement Support Agency, Decision 89-A (PECB, 1977), as compared to Tacoma Pierce County Law Enforcement Support Agency, Decision 537 (PECB, 1978).

Thus, the decision in this case must be, and has been, based on Colley's actual duties and responsibilities at the present time.

These parties have, through the years, agreed to exclude three positions from the bargaining unit as confidential employees. That is neither an excessive nor impracticable number for this employer to meet its obligations under state collective bargaining laws. In order to increase that number, the employer would need to meet the heavy burden to demonstrate the need for another exclusion.<sup>2</sup> It has not met that obligation in this case. It is clear from this record that the personnel secretary was given only a small portion of the duties of the business manager, executive secretary, and payroll clerk which relate to collective bargaining. Those duties could be performed by any clerical employee, and do not meet the labor nexus test for exclusion as a confidential employee.

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<sup>2</sup> Conversely, an individual can lose confidential status if they (or the person they assist) ceases to be involved with the formulation, effectuation, and implementation of the employer's labor relations policies and practices. See, Richland School District, Decision 2208 (PECB, 1985), where the secretary to a business manager was lawfully re-included in an office-clerical bargaining unit after the person she assisted was reassigned to responsibilities which did not include participation in the employer's labor relations affairs.

FINDINGS OF FACT

1. The North Franklin School District, a public employer within the meaning of RCW 41.56.030(1), operates public schools under Title 28A RCW.
2. Public School Employees of North Franklin, a "bargaining representative" within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of a bargaining unit of all classified employees of the North Franklin School District, including office-clerical employees.
3. The "personnel secretary" position was newly created in 1997, and has been held by Faye Colley since 1997. Colley performs routine office-clerical duties on behalf of the employer, including gathering public information for analysis by other employer officials for use in collective bargaining, taking notes during bilateral collective bargaining negotiations, and proofreading contract language resulting from collective bargaining negotiations.
4. The evidence does not establish that Colley participates in the formulation, effectuation and implementation of the employer's labor relations policies, or that she has necessary and ongoing access to confidential information concerning the employer's labor relations policies and practices.

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 "personnel secretary" position in the North Franklin School District is not a "confidential employee" within the meaning of RCW 41.56.030(2)(c).

ORDER

The "personnel secretary" position in the North Franklin School District shall be included in the bargaining unit of classified employees represented by Public School Employees of North Franklin.

Issued at Olympia, Washington, this 24<sup>th</sup> day of November, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
REX L. LACY, 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.