

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of:)	
PE ELL SCHOOL DISTRICT NO. 301)	CASE NO. 2308-C-79-103
For clarification of an existing bargaining unit of employees represented by)	DECISION NO. 1068-A PECB
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON)	DECISION OF COMMISSION

Olson, Pietig, and Althausen, by Charles Althausen, Attorney at Law, appeared on behalf of the employer.

G. P. Sessions, Attorney at Law, appeared on behalf of the union.

On September 10, 1979, Pe Ell School District No. 301 (hereinafter "employer") filed a petition requesting the Public Employment Relations Commission to clarify an existing bargaining unit of employees represented by Public School Employees of Washington (hereinafter "union") with respect to a secretarial position in the superintendent's office. A formal hearing was conducted on September 16, 1980, before Kenneth J. Latsch, Hearing Officer. The employer argued that the disputed position should be excluded from the existing bargaining unit because the position is confidential within the meaning of RCW 41.56.030(2)(c). The union argued that the employee holding the disputed position does not perform confidential duties as a necessary part of her work, and she spends a majority of time in non-confidential bookkeeping and secretarial assignments. The Executive Director, issued an Order Clarifying Bargaining Unit on January 7, 1981, which excluded the disputed position from the bargaining unit. The union has petitioned for review.

POSITIONS OF PARTIES ON REVIEW:

The bases for review given in the union's Brief on Review may be summarized as follows: 1) that Sandra Gudyka spends the majority of her time on work activities that are agreed by all parties to not be considered confidential, and 2) the evidence shows few, if any, examples where Ms. Gudyka performs duties recognized as confidential.

The employer supports the decision of the Executive Director.

DISCUSSION:

The facts are set forth fully in the Executive Director's decision and are adopted by reference. While the Commission takes note of the persistence with which the union has pursued recognition of its position, the facts of this case speak quite clearly. Ms. Gudyka is physically located in an office where confidential information is located, discussed and transmitted both orally and in written form. The union states that: "testimony regarding these (telephone) messages is both speculative and equivocal." (Review Brief p. 4, Lines 4-5); and "the record does not indicate that Ms. Gudyka has in fact overheard confidential discussions of labor relations policy." (Review Brief p. 5, Lines 12-14). Nevertheless, the Commission believes that Ms. Gudyka is privy to confidential information on labor relations policy. For her to not come in contact with such information would take the conscious efforts of those around her to keep such information from her.

The application of the provisions of RCW 41.56.030(2) as stated and as further defined by the courts and the Commission determine this case. RCW 41.56.030(2) defines public employee as:

"...any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (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 or resolution for a specified term of office by the executive head or body of the public employer." (emphasis added)

Metro Seattle v. Labor & Industries, 88 Wn.2d 925, (1977) emphasized that employees are excepted from being public employees when their duties "necessarily imply a confidential relationship".

In IAFF v. City of Yakima, 91 Wn.2d 101 (1978), the Supreme Court stated:

"...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 officer or executive head of the bargaining unit, including formulation of labor relations policy."

The Commission finds that Ms. Gudyka is a secretary to the executive head of the school district, whose duties include access to files concerning bargaining issues, participating in discussions of labor relations

policy as it concerns the lunch program, and transmitting confidential messages from the board of directors to the superintendent. In short, she meets the definition under the statute of a confidential secretary.

As an aside, although the reasoning behind excluding confidential secretaries from a bargaining unit is not determinative here, such reasoning reinforces the Commission's decision. Because collective bargaining is a process that is largely defined by strategy and position rather than an impartial review of factual information, each party in the bargaining process should be assured that the information and strategy each develops will remain as confidential as each party desires. In this case, the school district should be allowed to develop and carry out its preparations for collective bargaining without concern that Ms. Gudyka would both be privy to this information and be directly affected by the outcome of the negotiations.

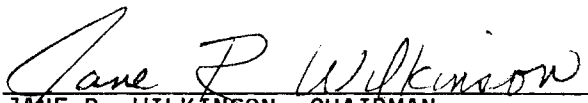
NOW, THEREFORE, it is

ORDERED

The order clarifying bargaining unit issued by the Executive Director is affirmed.

DATED this 21st day of May, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, CHAIRMAN



R. J. WILLIAMS, COMMISSIONER



MARK C. ENDRESEN, COMMISSIONER