

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CAPE FLATTERY SCHOOL DISTRICT, NO. 401)	CASE NO. 3323-C-81-155
For clarification of an existing bargaining unit of its employees represented by:)	DECISION NO. 1249-A - PECB
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON)	DECISION OF COMMISSION

James J. Dionne, Attorney at Law, appeared on behalf of
the employer.

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

The Cape Flattery School District is challenging the Executive Director's ruling that one of its clerical employees is not a confidential employee within the meaning of RCW 41.56.030(2)(c). The factual nature of this dispute is set out in considerable detail in the Executive Director's decision, which for the most part does not warrant repetition here. The School District challenges some of the Executive Director's statements of fact, findings and omissions. However, after reviewing the record, argument of parties and decision of the Executive Director, we find that even if we give positive consideration to School District's factual assertions, they will not affect the outcome. We agree with the Executive Director that the duties of the employee in question, Susan Baker, do not justify her position being classified as confidential.

Classification of a position as confidential results primarily from an examination of the duties that the person in that position performs, and only is incidentally affected by the physical environment in which the employee works. Ms. Baker's duties involved personnel matters to some extent. She has prepared a list of employees and hire dates, and administers such things as payroll and leaves of employees, including those covered by the collective bargaining agreement. But these routine administrative duties are not duties that require knowledge of or participation in the formulation of an employer's labor relations policies or position on any given issue. She has performed financial functions that enable the superintendent to evaluate the School District's financial and budgetary conditions, which in turn affect his decisions on labor related matters. This fact, however, does not support

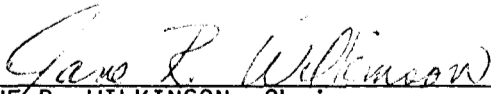
a confidential classification. Snoqualmie Valley School District, Decision No. 658 (PECB, 1979). The School District proposes that Ms. Baker perform backup work on confidential matters performed by other confidential employees. Ms. Baker does not perform such work now, and even if she were to be assigned such duties, the amount of time she probably would spend on backup functions is not significant in comparison to the total amount of time she performs her job. The union refers us to a decision on point, NLRB v. Allied Products Corp., 548 F.2d 644, 94 LRRM 2433 (6th Cir., 1977). The court pointed out that even if the employee whose position was in question performed the confidential employee's duties five weeks each year, that, itself, would not be sufficient to require the Board to exclude the backup employee from the bargaining unit.

The School District points to the physical job environment as strongly supportive of a confidential classification. In this case, the physical environment is a small office in which the employee in question might overhear the superintendent's conversations on confidential matters. Due to budget limitations, the office also lacks secure file storage, so that an employee such as Baker with access to the superintendent's office could surreptitiously view confidential files. While this type of working arrangement is not desirable, we cannot equate circumstances of a job with its duties, when these circumstances have little or no effect on the employee's duties. The burden to show exclusion is a heavy one. City of Seattle, Decision 689-A (PECB, 1979). We cannot condone a position being treated as confidential largely because the employer does not provide reasonable and customary means for safeguarding the confidentiality of information.

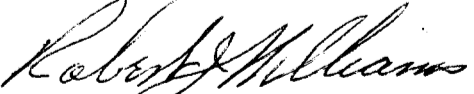
In conclusion, we agree with the Executive Director that sufficient evidence is lacking that shows that Ms. Baker performs duties that imply an official fiduciary relationship with the superintendent concerning the formulation of labor relations policy. Firefighters v. Yakima, 91 Wn.2d 101, 587 P.2d 165 (1978).

DATED this 11th day of June, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



R. J. WILLIAMS, Commissioner



MARK C. ENDRESEN, Commissioner