

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
OLYMPIA EDUCATIONAL OFFICE)	
PERSONNEL ASSOCIATION)	CASE 9481-C-91-551
)	
For clarification of an existing)	DECISION 4736 - PECB
bargaining unit of employees of:)	
)	
OLYMPIA SCHOOL DISTRICT 111)	ORDER CLARIFYING
)	BARGAINING UNIT
)	
)	

Hanson & Dionne, by Craig W. Hanson, Attorney at Law, appeared on behalf of the employer.

Faith Hanna, Attorney at Law, and Dana Grandey, Legal Assistant, appeared on behalf of the union.

On November 13, 1991, the Olympia Educational Office Personnel Association filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, involving certain employees of Olympia School District 111. The petitioner sought to add positions to an existing bargaining unit which it represents. A hearing was conducted on January 20 and March 5, 1993, before Hearing Officer Katrina I. Boedecker. The parties filed post-hearing briefs to complete the record.

BACKGROUND

Olympia School District (employer) provides educational services to about 8300 students in Thurston County, Washington. Superintendent Albert Cohen is responsible for day-to-day management. More than 1000 employees staff 15 schools and related support functions.

The Olympia Educational Office Personnel Association (union) is the exclusive bargaining representative of the employer's office-

clerical employees. The record does not contain any direct evidence concerning the origins of this bargaining relationship, but a search of the Commission's docket records provides basis for an inference that the employer voluntarily recognized the union as an independent organization at some unspecified time prior to 1976.¹ There is indication that the union was affiliated with Public School Employees of Washington for a time in the 1980's.² At an unknown time, apparently after 1986, the union became affiliated with Classified Public Employees Association / Washington Education Association (CPEA/WEA).

As described in the parties' 1988-1991 collective bargaining agreement, the bargaining unit represented by the union comprised:

[A]ll regularly employed classified office personnel including secretaries, clerks, bookkeepers, accountants, purchasing personnel, clerk typists, data entry operators, program assistants and accounting assistants except those employees designated as exempt by virtue of their status as supervisory or confidential employees. ... The parties recognize that as of the effective date of this Agreement the following positions are to

¹ No reference to this bargaining unit is found in records transferred to the Commission by the Department of Labor and Industries pursuant to RCW 41.58.802. The Olympia Educational Secretaries Association appears to have been an independent organization when it filed a mediation request with the Commission in 1976 (Case 569-M-76-194). The same name and status appear to have remained in effect when the union requested mediation again in 1978 (Case 1875-M-78-778). The name Olympia Association of Educational Office Personnel was used in a mediation request in 1981 (Case 3870-M-81-1671).

² A unit clarification petition filed on May 2, 1984 identified the organization as: "Olympia Educational Office Personnel Assn., an affiliate of Public School Employees of Washington" (Case 5228-C-84-265). A mediation request filed on September 4, 1984, also indicated that the union was affiliated with Public School Employees of Washington.

be considered exempt and not covered by the terms and condition [sic] of this Agreement: Secretary to the Superintendent, Secretary to the Deputy Superintendent, Accounting Office Supervisor, and Secretary to the administrator responsible for preparation of collective bargaining proposals, negotiation, information, etc. ...

Again, the record does not contain any direct evidence concerning the history of that unit description, but a search of the Commission's docket records provides a basis to infer that there has been little change over time.³

An unspecified number of the employer's other classified employees are within at least three other bargaining units: (1) Custodial, maintenance, and transportation employees are represented by the Teamsters Union;⁴ (2) Educational assistants (aides) are represented by another local organization affiliated with the CPEA/WEA;⁵ and

³ Notice is taken of the Commission's file for Case 5228-C-84-265. That petition described the bargaining unit as:

Inclusions: secretaries, clerks, bookkeepers, accountants, payroll, purchasing personnel, program assistants and accounting assistants. Exclusions: Secretary to the Superintendent, Secretary to Deputy Superintendent, Accounting Office Supervisor and Secretary to the Administrator.

That petition claimed that certain employees then in an "aides" unit represented by the CPEA/WEA were properly allocated to the office-clerical bargaining unit. A pre-hearing conference was held and issues were framed for a hearing. The parties resolved their differences, however, and the petition was withdrawn on August 14, 1984.

Notice is also taken of the Commission's file for Case 5439-M-84-2263, where the unit was described in terms almost identical to those used in the 1988-1991 collective bargaining agreement.

⁴ The Commission's docket records contain references to a "custodial/maintenance" bargaining unit dating back to at least 1977.

⁵ The Commission's docket records contain references to an "aides" bargaining unit dating back to at least 1978.

(3) Food services employees are represented by the Teamsters Union.⁶ The employer's non-supervisory certificated employees are represented under Chapter 41.59 RCW by a local affiliate of the Washington Education Association.

Management Reorganization

After its former deputy superintendent left in 1991, the responsibilities of that position were distributed between Patrick Gill, Stillman Wood, and the superintendent. Since November of 1991, the employer has used the "assistant superintendent" title for Gill and Wood. At least Gill's office was physically moved into the suite of offices occupied by the superintendent. The record indicates the employer no longer uses the "deputy superintendent" title.

The Employer's Labor Relations

The employer is represented in collective bargaining negotiations by Assistant Superintendent Eldon Lonborg and Director of Personnel Joan Deyoe. Input on collective bargaining matters is provided by the superintendent and the other two assistant superintendents, Gill and Wood. Personnel Office Assistant Peggy Locke types the employer's bargaining proposals, handles correspondence about negotiations, attends employer strategy sessions, and prepares information on the salary and benefit costs of various bargaining proposals.⁷ Cost information on proposals is also prepared by Accounting Supervisor Patti Clark and Budget Analyst Jack Baird, who both have historically been excluded from the office-clerical bargaining unit.

⁶ The Commission's docket records contain references to a "food service" bargaining unit represented by the Teamsters dating back to at least 1981.

⁷ Locke also types most of Lonborg's correspondence not related to labor-management relations.

Onset of This Dispute

During negotiations for a successor contract in 1991, the employer proposed conforming the historical list of bargaining unit exemptions to the results of its recent reorganization. The union disagreed, and filed the petition to initiate this proceeding.

The union initially sought to have positions titled: "secretary to deputy/assistant superintendents", "payroll officer", "payroll assistant", "personnel office manager", "personnel secretary", and "volunteer coordinator" included in the existing office-clerical bargaining unit. During the hearing, the dispute was narrowed to the three positions discussed below.⁸

The Disputed PositionsPayroll Officer -

Jeanette Jacob has been the employer's payroll officer since 1973. Her position has been excluded from the office-clerical bargaining unit, by agreement of the parties, since 1986. Jacob requested exemption from the unit at that time, because questions from unit members about the employer's bargaining stance made her feel torn between loyalties to the employer and loyalties to the union.

Lonborg is Jacob's immediate supervisor, and she works in a room located within the employer's business office, just outside the door to Lonborg's office.⁹ Jacob is responsible for processing the

⁸ The parties stipulated to:

- (1) Withdrawal of the petition as to the "personnel secretary" position, because there was no incumbent;
- (2) Continued exclusion of the "volunteer coordinator" from the bargaining unit; and
- (3) Continued exclusion of the "personnel office manager" (now re-titled "personnel office assistant").

⁹ The location of the business office was not specified; it appears to be separate from the superintendent's suite.

payroll for all the employer's employees, making regular reports to the state Superintendent of Public Instruction, processing and assuring the accuracy of employee time slips, withholding and forwarding appropriate amounts from paychecks, tracking pay rates, and answering questions about deductions for retirement, taxes, worker's compensation, or similar matters. Jacob does her own keypunching, filing, typing, and manipulation of data on employees' salaries, benefits, and codes designating fund sources.

Jacob has little contact with Lonborg in the performance of her daily duties, and has neither typed bargaining proposals for the employer nor attended strategy sessions of the employer's bargaining team. She has, however, prepared cost information for use in negotiations,¹⁰ and has told Locke where to find the data to prepare such information. Jacob believed Lonborg makes such requests of her or Locke, according to which of them he sees first.

Payroll Assistant -

Sharon Langford was hired on September 25, 1990, to fill a newly created position. From the beginning of her employment, the employer has treated her position as exempt from the office-clerical bargaining unit.

The same job description governs Langford and Jacob, and they work together daily. Langford is responsible for a minor share of most of the duties, and is completely responsible for controlling sick leave accounts, processing Head Start accounts payable, keypunching journal vouchers, controlling teacher tuition accounts, and balancing cafeteria and revolving fund bank accounts. Langford opens the payroll department mail, and does her own typing and keypunching.

¹⁰ The office-clerical bargaining unit was among three units for which she prepared cost information during the three years previous to the hearing.

Langford has not typed bargaining proposals for the employer, and has not attended the employer's strategy sessions. There is no evidence that she has been asked to prepare cost estimates for bargaining.

Secretary to the Assistant Superintendents -

Darlene Fuller has held various office-clerical positions with the employer for more than 15 years. Before November of 1991, Fuller had been a bargaining unit member as secretary to Patrick Gill.¹¹ While she was in that role, she was uncomfortable with questions asked by fellow bargaining unit members about her knowledge as an administrative office insider, and she deflected the inquiries.

In connection with Gill's elevation to the "assistant superintendent" title and the move of his office, Fuller's work station was also moved to the superintendent's suite. Secretarial responsibilities for Wood and Communication Coordinator Patricia Kennedy were added to Fuller's continuing duties for Gill. Fuller was told by Cohen and Gill that her relocation would exclude her position from the bargaining unit.

Fuller's work time is distributed fairly evenly among assignments for Gill, Wood and Kennedy, plus occasional typing for Lonborg. Fuller maintains files on employees placed on probation, and may prepare letters sent by principals to such employees. Fuller testified she never prepared bargaining proposals, had no involvement in grievances, and never attended negotiations or the employer's bargaining strategy sessions; Lonborg testified that Fuller had typed bargaining proposals, although he could not recall the subject matter covered.

¹¹ The record contains minimal facts concerning Gill's title, Gill's responsibilities, or Fuller's duties prior to November of 1991.

By reason of her work location in close proximity to the superintendent's secretary, Recille Crosby,¹² Fuller is in a position to overhear discussions on a variety of sensitive topics. She opens mail received in the superintendent's suite, although she does not open envelopes marked "confidential" or "personal". She fills in when Crosby is absent.¹³ Fuller also responds to any requests from board members when she is replacing Crosby, but no record was made on the frequency or content of such requests.

POSITIONS OF THE PARTIES

The union contends that only the bargaining cost reports prepared by Jacob for Lonborg qualify as "confidential" work. Even then, it contends those reports are comprised of information available to the public, and that Jacob is not told how the reports she prepares will be used. The union argues that the employer has three other "confidential" employees who are its key resources in preparing for collective bargaining. The union contends that none of Langford's usual duties make her a "confidential" employee, and that the possibility that she might be asked to prepare bargaining cost estimates in Jacob's absence is not a sufficient basis for excluding Langford's position from bargaining unit. The union contends that Fuller should be included in the office-clerical unit, because there is neither evidence she has ever participated

¹² A comment in the union's post-hearing brief,

"Confidential secretary Recille Crosby had worked for the superintendent and deputy superintendent prior to the reorganization",

suggests the union believes there was a period when there was no incumbent in the "secretary to the deputy superintendent" position. The contractual list of exclusions remained unchanged, however.

¹³ During a period of 14 months prior to the hearing in this matter, Fuller attended one school board meeting and twice prepared the board's agenda and minutes.

in the employer's labor relations process, nor a need for her to do so. The union asserts that members of the office-clerical unit also type correspondence dealing with employee probationary status, that Fuller's backup work for the superintendent's secretary is sporadic, and that the ability to overhear conversations at her work station is not sufficient to deprive Fuller of bargaining rights. Responding to the employer's arguments, the union asserts that all three of the disputed employees share a community of interest with other members of the existing office-clerical bargaining unit.

The employer argues that the petition is untimely, because the record does not demonstrate changed circumstances that would warrant disturbing the bargaining unit status of the three positions. Even if the petition were to be considered timely, the employer argues that all three positions should continue to be excluded from the bargaining unit as "confidential employees" within the meaning of RCW 41.56.030(2)(c). The employer contends that Fuller's work for the school board, the superintendent and Lonborg, as well as her work with files on probationary employees, make her a "confidential" employee. The employer asserts that inclusion of Fuller's position in the bargaining unit would compromise its ability to properly represent its interests in negotiations. The employer argues that Jacob and Langford are also "confidential employees", because of their close working relationship with, and their back-up functions for, the exempt personnel office assistant. The employer asserts that Jacob's preparation of cost estimates for Lonborg qualifies her for a "confidential" exclusion. The employer contends that Langford was hired to assist and substitute for Jacob, and should also be excluded as "confidential". Finally, the employer argues that, even if the three positions are found not to be "confidential", they do not share a community of interest with its other office-clerical employees and should not be included in the existing bargaining unit represented by the union.

DISCUSSIONNature of the "Confidential" Exclusion

By statute and interpreting precedent, some employees are excluded from bargaining rights to perform the functions of the employer in preparing for and fulfilling its duty to bargain collectively with the exclusive bargaining representatives of its employees. The statutory definition of "public employee" in RCW 41.56.030(2)(c) excludes employees:

[W]hose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit.

Interpreting that exclusion in IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978), the Supreme Court of the State of Washington held:

When the phrase confidential relationship is used in the collective bargaining act, we believe it is clear that the legislature was **concerned with an employee's 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 official 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 approved Commission precedent recognizing that the confidential relationship with the head of the bargaining unit or elected official could be achieved through an intermediary, giving rise to the concept of "derivative" confidential status.¹⁴

In making "confidentiality" determinations, the Commission seeks to balance a broad implementation of the rights granted by the statute with the employer's need for exempt employees and its right to determine its own workflow. The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is remedial legislation,¹⁵ however, and exclusions from its coverage are narrowly construed.¹⁶ In compliance with that policy, the Commission generally imposes a heavy burden on the party seeking to exclude employees from a bargaining unit on the grounds they are "confidential". City of Seattle, Decision 689-A (PECB, 1979); Cape Flattery School District, Decision 1249-A (PECB, 1982). While the Commission cannot dictate the number of "confidential" exemptions an employer receives, the employer bears an obligation of reasonableness in assigning its confidential work.¹⁷

¹⁴ The Yakima court cited, with approval, the decision of the Executive Director in Edmonds School District, Decision 231 (PECB, 1977), where secretaries who assisted and acted in a confidential capacity to top managers in a school district were found to have a confidential relationship, through their managers, with the executive head of the school district.

¹⁵ Roza Irrigation District v. State, 80 Wn.2d 633 (1972).

¹⁶ See, Zylstra v. Piva, 85 Wn.2d 743 (1975) and Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

¹⁷ An attempt to enlarge a large list of "confidential" clericals was turned away in Clover Park School District, Decision 2243-B (PECB, 1987), with suggestion that assignment of the limited labor relations work handled by the contested employees to the agreed-upon confidential secretaries was a reasonable accommodation that would preserve the contested employees' representation rights.

Employer's Timeliness Argument

Because status as a "confidential employee" is a jurisdictional matter, the general rule is that such disputes can be raised at any time. Camas School District, Decision 790 (PECB, 1979); WAC 391-35-020(1). The employer nevertheless argues here that the union must show a recent change of circumstances affecting the disputed positions, in order to request a modification of their bargaining unit status. It cites City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), where the Commission held:

Absent a change of circumstance warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed. However, both accretions and exclusions can be accomplished through unit clarification in appropriate circumstances.

In this case, the employer's argument is inapposite to the newly created "payroll assistant" position, but a change of circumstances analysis is apt with regard to the "payroll officer" and "secretary to assistant superintendents" positions.

A balance is sought between logical perfection and the orderly conduct of labor-management relationships. The Commission has the ultimate responsibility for determining appropriate bargaining units under RCW 41.56.060, but RCW 41.56.050 implies that an employer can extend "voluntary recognition" to a union where there is no dispute about the representation of its employees in an appropriate bargaining unit. Where the jurisdiction of the Commission is invoked to resolve a question concerning representation, the stipulations made by parties during the processing of a representation case will be binding upon them except for good cause

shown,¹⁸ just as the voluntary agreements made by parties on the bargaining unit status of particular positions will be binding as between them.¹⁹ The Commission will disregard agreements made by employers and unions on unit determination matters if they are abhorrent to Commission policies,²⁰ but an employer or union must demonstrate a change of circumstances to avoid the res judicata effect of either a Commission ruling or its stipulation on the unit status of a position.²¹

In this case, the union enjoys its status as exclusive bargaining representative by means of history and successorship. A union that is the "successor" to another union may enjoy some benefit in avoiding the costs, risks and delays of a representation proceeding,²² but may suffer some burden in having to live with its predecessor's actions, inactions, stipulations or agreements on unit determination matters.²³ In this case, the union is bound by

¹⁸ Community College District 5, Decision 448 (CCOL, 1978).

¹⁹ City of Wapato, Decision 2619 (PECB, 1987).

²⁰ South Kitsap School District, Decision 1541 (PECB, 1983). Petitions to correct **inappropriate** units may be filed at any time. Skagit County, Decision 3828 (PECB, 1991).

²¹ For example, a union proved in Spokane County, Decision 3011 (PECB, 1988), that a change in management structure had ended a secretary's derivative confidentiality. The Commission disregarded a contractual exclusion of reserve officers in City of Wapato, supra, because the employer had changed the system to schedule a particular reserve officer as if he were a regular part-time employee.

²² Properly conducted affiliation proceedings do not disturb the status of the organization as exclusive bargaining representative. Skagit Valley Hospital, Decision 2509-A (PECB, 1987).

²³ Representation proceedings under Chapter 391-25 WAC inherently provide an "open season" for parties to obtain Commission rulings on any unit determination or eligibility issues that may exist between them.

its own history, and its relatively recent change of affiliation is not a basis for avoiding that history.

The Richland decision made it clear that the Commission's processes are not available to disturb bargaining relationships merely because one of the parties has a change of heart about the agreements it made. Unlike the situation in Richland, neither the statute nor the Yakima precedent has changed during the period that these parties have perpetuated an agreed exclusion of certain positions. It follows that the union had to establish changed circumstances to justify disturbing those agreed exclusions, as a condition precedent to reaching the customary tests for a "confidential" exclusion.

Application of Precedent

Payroll Assistant -

Sharon Langford performs routine payroll functions which would not justify her exclusion as a "confidential employee":

[M]ere access to personnel files and current payroll data does not establish confidentiality within the meaning of the Act.

Snohomish County, Decision 346 (PECB, 1981). See, also, City of Lacey, Decision 369 (PECB, 1978).

A significant fact which distinguishes the two payroll positions at issue in this proceeding is that Langford does not participate in the preparation of the employer's materials for collective bargaining.

The employer's contention that Langford would be called upon to perform Jacob's work in Jacob's absence is not persuasive. As noted above, Lonborg uses Jacob and Locke somewhat interchangeably for the preparation of labor relations cost estimates, and other excluded personnel can be called upon to respond to such requests

if both Jacob and Locke happen to be unavailable at the same time. The employer has not justified the exclusion of what would amount to a "conditional backup derivative confidential" from statutory bargaining rights. Cape Flattery School District, Decision 1249-A (PECB, 1982).

There is no evidentiary basis for the employer's "separate community of interest" argument with respect to the position held by Langford. In the absence of exclusion as a "confidential employee", the payroll assistant position is clearly within the scope of a bargaining unit which already includes all of the employer's "bookkeepers, accountants, ... data entry operators, and accounting assistants".

Payroll Officer -

The union has produced nothing to justify its reversal from its agreed exclusion of Jacob's position less than 10 years ago. If there has been some change of circumstances affecting this position, it is not demonstrated in this record.

While the routine payroll duties performed by Jacob would not justify her exclusion as a "confidential employee", her ongoing direct and indirect responsibilities for preparing bargaining data clearly provide a basis for her exclusion under City of Yakima, supra.²⁴ It is concluded that the "payroll officer" position should continue to be excluded from the bargaining unit.

²⁴ The legitimacy of Jacob's exclusion is called into question, if at all, only by the infrequency of her "confidential" tasks and/or the availability of other excluded personnel. If Jacob were the only employee performing cost computations for the employer, or one of a very few, there would be no question that the employer would be entitled to have her position excluded. It is troublesome that Lonborg routinely obtains this type of data from Locke, Baird, and Clark, all of whom are already exempt, but the union has not shown that to have changed significantly since it agreed to exclude this position in 1986.

Secretary to Assistant Superintendents -

The first question which arises is whether there is some history affecting this position. The employer and union had agreed to exclude a "secretary to the deputy superintendent" position, by title, in addition to the "secretary to the superintendent".²⁵ It is clear that the "deputy superintendent" is gone, and that the employer now has Patrick Gill and Stillman Wood performing some of the same responsibilities under titles of "assistant superintendent".²⁶ Thus, there is evidence to support a conclusion that Darlene Fuller is the successor in function to the "secretary to the deputy superintendent" historically excluded from the unit by agreement of the parties.

Fuller's preparation of documents dealing with employees placed on probation would not be a basis for a "confidential" exclusion. That duty is shared with principals' secretaries, who are in the clerical bargaining unit. Moreover, the underlying activity is more in the nature of "supervisory" work that would be insufficient to warrant "confidential" status for the principals.²⁷

The physical location of Fuller's work station in the superintendent's suite might not be sufficient, in and of itself, to compel an exclusion as a "confidential employee". As noted in cases cited above, an employer can be expected to take some

²⁵ The reasons for that exclusion are not well-developed in this record, nor is there sufficient evidence to form an opinion as to why, or for how long, the superintendent's secretary may have performed both roles.

²⁶ For purposes of administering the collective bargaining statutes applicable to school districts, any difference between a "deputy superintendent" and an "assistant superintendent" is more form than substance. Both titles are categorically excluded, as "chief administrative officers", from the coverage of the Educational Employment Relations Act. RCW 41.59.020(4)(b).

²⁷ Clover Park School District, supra.

reasonable steps to preserve its confidential information.²⁸ That might be accomplished by closing a door on sensitive conversations between the superintendent and his secretary.

Standing alone, Fuller's occasional contacts with school board members, and her occasional work as backup for the superintendent's secretary at school board meetings, are also not compelling. The record shows that, during the 14 months Fuller had been in her current position, she attended one board meeting and twice prepared agendas and minutes of meetings. No witness testified as to whether those meetings were open or executive sessions, let alone as to the content of what was discussed in an executive session.

The fact remains, however, that Fuller's main duty is to provide clerical support for the functional successors to the former "deputy superintendent". Both Gill and Wood are considered to be members of the employer's bargaining team, even if they are not at the bargaining table on a regular basis. The record indicates that Gill was involved in the employer's labor relations even before the reorganization. There is indication that Gill and Wood do some of their own word processing, but it would be difficult to put the employer in a situation where being computer literate in word processing became a minimum qualification for positions excluded as "chief administrative officers" under the parallel collective bargaining statute. While Lonborg and Fuller gave somewhat differing testimony on the subject of Fuller's recent involvement with labor relations materials, it is also clear that Fuller does some work for Lonborg, including correspondence. Having once agreed to the exclusion of the position and role which are the historical antecedents to the position now occupied by Fuller, it was incumbent on the union to bring forth evidence of changed

²⁸ University Place School District, Decision 2584 (PECB, 1986).

circumstances eliminating the basis for that exclusion. It has not met that burden in this case.

Fuller's testimony about her past contacts with the union provide ample reason to sustain her exclusion from the bargaining unit in her current role. Referring to the period before the reorganization, Fuller testified that union members "constantly" asked her questions about what she was doing, and what was going on at the district level. She was even asked to take a leadership position in the union, because of her "access to and knowledge of the system". That is exactly the type of painful circumstance that the Supreme Court stated an intention to avoid when it adopted its interpretation of the "confidential" exclusion in Yakima, supra. Fuller's perception of a conflict of interest could only be exacerbated by the move of her work station into the superintendent's suite and the broadening of her duties to include clerical support for two additional assistant superintendents, Wood and Lonborg.

The "secretary to assistant superintendents" position occupied by Darlene Fuller is properly excluded from the bargaining unit as the successor to the "secretary to the deputy superintendent" position historically excluded by agreement of the parties.

FINDINGS OF FACT

1. Olympia School District 111 is a public employer within the meaning of RCW 41.56.030(1).
2. Olympia Educational Office Personnel Association, affiliated with the Classified Public Employees Association / WEA, a bargaining representative within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of office-clerical employees of the Olympia School District.

3. The parties have historically agreed to exclude a position titled "secretary to deputy superintendent" from the bargaining unit represented by the union.
4. During or about 1986, the parties agreed to exclude a position titled "payroll officer" from the bargaining unit represented by the union.
5. During or about 1991, the employer reorganized its management structure to eliminate the position and title of "deputy superintendent" and to distribute the duties of that position among the superintendent and two administrators working under the title of "assistant superintendent". Patrick Gill and Stillman Wood were designated to fill the "assistant superintendent" positions. Eldon Lonborg is an additional "assistant superintendent" in the employer's organization.
6. The union filed the petition for clarification of an existing bargaining unit in this matter after the employer proposed to amend the parties' collective bargaining agreement to reflect the titles used subsequent to its reorganization. The union initially sought to add several positions to the bargaining unit which it represents.
7. During the hearing in this proceeding, the employer and union stipulated to withdrawal of positions titled "personnel secretary", "volunteer coordinator", and "personnel office assistant" from the proceedings.
8. Lonborg is the employer's principal representative in labor relations and collective bargaining matters. Gill and Wood provide suggestions and proposals, and participate in confidential activities concerning the formulation of the employer's labor relations policies.

9. Darlene Fuller was secretary to Gill prior to the management reorganization described above. Although Gill was involved at that time with the employer's labor relations and collective bargaining activities, Fuller was included in the bargaining unit. During that time, Fuller felt that union requests for information obtained in the course of her duties and for her to take an active role in the organization, placed her in a position of conflict of interest.
10. Fuller was given the title "secretary to assistant superintendents" in connection with the management reorganization described above. Her work station was moved to the suite of offices occupied by the superintendent and his secretary. Fuller now provides secretarial support to Gill and Wood, as well as typing some correspondence and other materials for Lonborg. The position now occupied by Fuller is the functional successor to the "secretary to deputy superintendent" position historically excluded from the bargaining unit by agreement of the parties.
11. The record does not establish the existence of any substantial change of circumstances since the "secretary" position now occupied by Darlene Fuller was excluded from the bargaining unit by agreement of the parties.
12. The record does not establish the existence of any substantial change of circumstances since the "payroll officer" position was excluded from the bargaining unit by agreement of the parties. In addition to daily duties involving administration of the employer's payroll system, Jeanette Jacob is called upon from time to time to prepare confidential information concerning employee salaries and benefits, for use by the employer in collective bargaining with its employees. On other occasions, Jacob has instructed another confidential employee on how to obtain such information.

13. The employee holding the newly-created "payroll assistant" position has been excluded from the bargaining unit up to this time only by unilateral action of the employer. Sharon Langford performs routine payroll administration duties similar to those performed by Jeanette Jacob, but is not involved in the preparation of confidential materials for use in collective bargaining.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC, and no question concerning representation presently exists in the bargaining unit described in the foregoing findings of fact.
2. Based on both historical exclusion of a functionally similar position by agreement of the parties and evidence of duties that necessarily imply a confidential relationship to an official responsible for formulating or implementing the employer's labor relations policies so as to be deemed a "confidential employee" under RCW 41.56.030(2)(c), the "secretary to the assistant superintendents" is properly excluded from the bargaining unit described in the foregoing findings of fact.
3. Based on both historical exclusion of the position by agreement of the parties and evidence of duties that necessarily imply a confidential relationship to an official responsible for formulating or implementing the employer's labor relations policies so as to be deemed a "confidential employee" under RCW 41.56.030(2)(c), the "payroll officer" is properly excluded from the bargaining unit described in the foregoing findings of fact.

4. The employee holding the position of "payroll assistant" is a "public employee" within the meaning of RCW 41.56.030(2), and is not a "confidential employee" within the meaning of RCW 41.56.030(2)(c).
5. The employee holding the position of "payroll assistant" is properly included, under RCW 41.56.060, in the office-clerical bargaining unit described in the foregoing findings of fact.

ORDER CLARIFYING BARGAINING UNIT

1. The position of "payroll assistant" shall be included in the bargaining unit involved in this proceeding.
2. The positions of "secretary to assistant superintendents" and "payroll officer" shall continue to be excluded from the bargaining unit involved in this proceeding.

Issued at Olympia, Washington, the 3rd day of June, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.