

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CITY OF EAST WENATCHEE

For clarification of an existing bargaining  
unit represented by:

WASHINGTON STATE COUNCIL OF  
COUNTY AND CITY EMPLOYEES

CASE 23005-C-10-1426

DECISION 10856 - PECB

ORDER CLARIFYING  
BARGAINING UNIT

Audrey Eide, General Counsel, for the union.

Devin Poulson, City Attorney, for the employer.

On January 27, 2010, the City of East Wenatchee (employer) filed a unit clarification petition seeking to remove two job positions from the nonsupervisory bargaining unit represented by the Washington State Council of County and City Employees (union). Specifically, the employer's petition seeks to exclude the executive secretary/accounting assistant position as a confidential employee, and the events coordinator position as a supervisor. The union believes both positions should remain in the nonsupervisory bargaining unit.

On May 19, 2010, Hearing Officer Jessica Bradley conducted a hearing in this matter. The parties filed post-hearing briefs which were considered.

ISSUES

1. Should the executive secretary/accounting assistant position, currently held by Teresa Allen, be excluded from the bargaining unit as a confidential position?

Allen's duties meet the test for exclusion of confidential employees outlined in WAC 391-35-320(1). Therefore, the executive secretary/accounting assistant position is excluded from the bargaining unit as a confidential position.

2. Should the events coordinator position, currently held by Dawn Collings, be excluded from the bargaining unit based on supervisory status?

Collings does not perform a preponderance of the supervisory duties or spend a preponderance of her work time performing supervisory duties. Therefore, the events coordinator position is not a supervisory position and is properly included in the existing nonsupervisory bargaining unit.

#### ISSUE 1: Confidential Employee Status

##### Applicable Legal Principles

Under RCW 41.56.030(2)(c), confidential employees are excluded from bargaining units. The Commission places a heavy burden of proof on a party seeking to categorize an employee as "confidential" because such status deprives the individual of all collective bargaining rights. *City of Chewelah*, Decision 3103-B (PECB, 1989), citing *City of Seattle*, Decision 689-A (PECB, 1979); *State - Natural Resources*, Decision 8711-B (PSRA, 2006).

When determining whether a position should be excluded from a bargaining unit as a confidential employee, the Commission utilizes a labor nexus test.

#### WAC 391-35-320 EXCLUSION OF CONFIDENTIAL EMPLOYEES.

Confidential employees excluded from all bargaining rights shall be limited to:

- (1) 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
- (2) Any person who assists and acts in a confidential capacity to such person.

An employee does not have to work exclusively, or even primarily, on labor nexus work in order to be excluded as a confidential employee, so long as the assignments can be described as necessary, regular, and ongoing. *Oak Harbor School District*, Decision 3581 (PECB, 1990); *City of Redmond*, Decision 7814-B (PECB, 2003). Sporadic contacts and limited back-up work are not sufficient to meet the test for exclusion. *Clover Park School District*, Decision 2243-A (PECB, 1987), *aff'd, in relevant part*, Decision 2243-B (PECB, 1987); *Yakima School District*, Decision 7124-A (PECB, 2001).

“[T]he confidential exclusion extends beyond those who are directly responsible for formulating labor relations policy and includes those support personnel who process sensitive labor relations material at the direction of those responsible for such matters.” *Community College 14 (Clark)*, Decision 10044-A (PSRA, 2008); citing *City of Mountlake Terrace*, Decision 3832-A (PECB, 1992).

The confidential exclusion is used to prevent potential conflicts of interest that may arise between an employee's duty to the employer and the employee's status and obligations as a union member. “When employees' duties provide access to sensitive labor relations information, it would be unfair to place the employees in a position where they question whether their loyalties lie with the employer or the union.” *Community College 14 (Clark)*, Decision 10044-A; citing *Pierce County*, Decision 8892-A (PECB, 2005).

#### Application of Standard

- Background

The City of East Wenatchee employs an elected, part-time mayor. Steven Lacy has served as the city's mayor since 1998. Lacy acts as the employer's labor negotiator and bargains with all three of the city's bargaining units.

Up until 2009, the city had two bargaining units: uniformed police officers and non-uniformed police employees referred to as the police clerical unit.

In *City of East Wenatchee*, Decision 10367 (PECB, 2009), the Commission certified the union as the exclusive bargaining representative of a unit described as:

All full-time and regular part-time employees of the City of East Wenatchee, excluding supervisors, confidential employees and police department employees.

During the processing of the representation petition, the employer furnished a list of eligible voters that included Teresa Allen, executive secretary/accounting assistant, and Dawn Collings, events coordinator. Allen and Collings were eligible to vote in the representation election and were presumptively included in the nonsupervisory bargaining unit.<sup>1</sup>

Since 1998, Mayor Lacy has negotiated the collective bargaining agreements covering the uniformed police and police clerical unit. Lacy was also the employer's primary representative in bargaining with the recently certified nonsupervisory city-wide bargaining unit. These negotiations resulted in a collective bargaining agreement between the parties that is effective from January 1, 2010 through December 31, 2010.

- Executive Secretary/Accounting Assistant's Involvement in Labor Relations

In 2000, the employer created a new position called executive secretary/accounting assistant to support the mayor. Lacy testified that this new position was particularly important because the mayor's position is part-time. Lacy hired Teresa Allen who has held the executive secretary/accounting assistant position since its inception in 2000. Allen reports directly to Lacy.

In the fall and winter of 2009, Lacy used Allen as a sounding board in formulating contract proposals for the new city-wide bargaining unit. When Lacy received proposals from the union, he shared them with Allen and asked her to provide him with input about how proposals would affect the employer's operations. For example, Allen reviewed the union's proposal on vacation time and recommended to Lacy the employer propose vacation accrual rates that were consistent

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<sup>1</sup> There is no allegation that the petition is untimely and it is noted that the parties discussed Allen and Collings' placement in the bargaining unit during contract negotiations, thus meeting the conditions set forth in WAC 391-345-020(2)(a).

with the police bargaining unit. Lacy proposed the police accrual rate and the union accepted the proposal. Allen also advised Lacy on proposals relating to clothing reimbursement and tuition reimbursement. Lacy used Allen's input in developing proposals and/or deciding whether to accept proposals made by the union. Lacy describes Allen as having significant input in the formation of the new city-wide collective bargaining agreement.

Lacy relies on Allen to help him make decisions about which health insurance providers and plans the employer will offer its employees. Lacy has asked Allen on several occasions to work with the employer's chief financial officer (CFO) to give the mayor input on what the employer can afford in terms of wages and hours.

Allen worked with Lacy to develop bargaining proposals to address issues the employer was facing concerning employees' use of vacation time and comp time. Lacy uses Allen as his resource person for leave related issues. Allen is the first person employees go to when they have a leave problem or question. Allen helped Lacy develop the employer's leave proposals, some of which became part of the new agreement in the city-wide unit. Lacy and Allen discussed the employer's strategy in responding to leave related grievances and ultimately worked to adopt new language that would prevent future grievances and problems.

The employer does not have a designated human resources department. Rather, Lacy describes himself and Allen as the employer's human resources department. Any questions, concerns, or grievances relating to employee wages, benefits or issues are handled by either Allen or Lacy. Employees know that they can go to Allen with grievances or issues when Lacy is out of the office. Allen is often the first line employer representative to receive and, in some cases, respond to formal and informal grievances from employees in all three of the bargaining units.

- Analysis of Confidential Status

The employer bears the burden of proof in this matter because it asserts that the executive secretary/accounting assistant position currently held by Allen should be excluded from the bargaining unit as a confidential position.

The Commission recognizes that employers have a legitimate need “to have a reasonable number of employees who are exempt from collective bargaining rights so that they can participate in the formulation of the employer’s labor policies.” *Community College 14 (Clark)*, Decision 10044-A; citing *City of Redmond*, Decision 7814-B. The secretary/accounting assistant position would be the first and only position excluded from collective bargaining rights based on involvement in confidential labor relations work.

When determining whether a job position is confidential, the Commission considers labor relations work involving all of the employer’s bargaining units. *Community College 14 (Clark)*, citing *City of Clarkston*, Decision 4524 (PECB, 1993); *City of Sunnyside*, Decision 2058 (PECB, 1985). The record established that Allen plays a necessary, regular, and ongoing role in collective bargaining on behalf of the employer. Specifically, Allen uses independent judgment to review and develop collective bargaining proposals for the employer relating to bargaining unit employees’ terms and conditions of employment. Allen also uses independent judgment to interpret contracts on behalf of the employer and helps the employer develop responses to grievances.

### Conclusion

The executive secretary/accounting assistant’s duties meet the test for exclusion of confidential employees outlined in WAC 391-35-320(1). Allen participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for collective bargaining, and the administration of collective bargaining agreements. The executive secretary/accounting assistant position is excluded from the bargaining unit as a confidential position.

### ISSUE 2 - Supervisory Status

#### Applicable Legal Principles

In 2001, the Commission adopted WAC 391-35-340, codifying the principle that supervisors are excluded from bargaining units that contain their rank-and-file subordinates. Supervisors are separated from nonsupervisory employees to limit or prevent conflicts of interest. *City of*

Because Chapter 41.56 RCW does not contain a definition of supervisor, the Commission looks to the definition of supervisor set forth in RCW 41.59.020(4)(d):<sup>2</sup>

[S]upervisor . . . means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment. . . . The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

The "preponderance" term is an important modifier. In this context, preponderance means "that the disputed employee either spends a preponderance of his/her work time engaged in supervisory indicia or engages in a preponderance of the types of supervisory indicia." *City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006), citing *Granite Falls School District*, Decision 7719 (PECB, 2002), *aff'd*, Decision 7719-A (PECB, 2003). "The determination of whether an individual possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a 'supervisor' is made on the basis of the actual duties and authority exercised by that individual, not on the basis of his or her title or job description." *Morton General Hospital*, Decision 3521-B (PECB, 1991).

The Commission distinguishes between supervisors and employees who are "lead workers." As the Commission explained in *City of Toppenish*, Decision 1973-A (PECB, 1985): "In a hierarchical organization, certain employees may be given some supervisory responsibilities, but not a full complement, or they may be allowed to share supervisory responsibilities with their own supervisors." These employees, who are often referred to as lead employees or working foremen, lack the true authority and independent judgment that is the hallmark of supervisory status.

When looking at the "types" of supervisory indicia, it is important to determine whether a disputed position has independent authority to act in the interest of the employer.

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<sup>2</sup> *City of Lynnwood*, Decision 8080-B (PECB, 2006).

Application of Standard

- Background

Prior to 2007, a nonprofit agency called the East Wenatchee Events Board coordinated events sponsored by the City of East Wenatchee. Dawn Collings was the executive director of the East Wenatchee Events Board. As a result of legislative changes on how certain funding for city events was distributed, the East Wenatchee Events Board gave up its independent legal status and merged with the employer's tourism board.

In 2007, the employer created the events coordinator position. The events coordinator is a full-time position responsible for managing and coordinating the City of East Wenatchee's public events, including the Wings and Wheels Festival, car show, parade, Easter egg hunt, and Christmas tree lighting.

In July 2007, the employer hired Dawn Collings to fill the events coordinator position. This was a natural transition since Collings managed the same events while directing the East Wenatchee Events Board. As events coordinator, Collings was the only employee in the employer's events department and was under the direction of the employer's community development department.

As the size and number of city events increased, Collings felt there was an important need to have an additional employee who could help run and coordinate events in her absence. Collings also needed additional help during certain times near and during events. Collings asked the mayor and community development director to consider authorizing a seasonal position to assist her. In February 2009, the mayor gave Collings approval to hire a seasonal events coordinator assistant.

Unlike full and regular part-time positions, this seasonal position was not advertized by the employer. After Collings received approval to hire a seasonal employee, Collings contacted Brooks Black, who had previously worked as an intern for the East Wenatchee Events Board. Collings was familiar with Black's work and offered Black the seasonal events coordinator assistant position. Black accepted the position and began working for the employer in February 2009.



After Black accepted the position, Collings notified the accounting department of Black's new position, start date, and pay rate. After talking with the employer's finance department about the work performed by the position and the compensation for other similar positions, Collings determined that the seasonal events coordinator assistant would be paid thirteen dollars and fifty cents an hour. Black was not interviewed before being offered the seasonal events coordinator assistant position. A formal hiring process was not used due to the seasonal nature of the position.

In July 2009, the city council voted to make the events department an independent department under the direction of the mayor's office. Collings is now supervised directly by the mayor. The seasonal events coordinator assistant is not included in any bargaining unit and is the only position Collings oversees.

#### Supervisory Factors

*Authority to Hire* – After the mayor approved the hiring of a seasonal events coordinator assistant, Collings was solely responsible for recruiting, interviewing and making the decision to hire Black. Collings has not been involved with hiring a full or regular part-time employee.

*Assignment of Work* – Collings is responsible for assigning and directing the work of the seasonal events coordinator assistant. Collings gives Black specific assignments and tasks to complete. Collings and Black work closely together on coordinating volunteers, sending out correspondence, and completing other aspects of event planning.

*Promote and Transfer* – Collings has never promoted or transferred an employee or recommended a promotion or transfer. Nothing in the record indicates that Collings has the authority to promote or transfer employees.

*Layoff and Recall* – Collings has not been involved in making layoff or recall decisions. Collings could make a recommendation, but decisions to layoff or recall an employee would have to be approved by the mayor and/or city council.

*Discipline, Suspension or Discharge* – Collings has never disciplined an employee. Collings believes she could issue a verbal or written warning to Black should it be necessary. Collings has never recommended a suspension. The record is not clear on whether Collings would need the mayor's approval to suspend Black. Collings does not have the authority to terminate an employee. A decision to terminate the seasonal events coordinator would have to be approved by the mayor.

*Adjustment of Grievances* – Collings has never been presented with a grievance. Black is not in any bargaining unit and is not covered by a collective bargaining agreement. The employer's conflict review procedure in its policy manual calls for unrepresented employees to bring problems or grievances to their direct supervisors unless the problem involves that particular supervisor. Collings believes she would be the first line of employer response if Black had a problem or issue with an employee other than Collings. There is no evidence that Collings has the ability to settle a grievance filed under a collective bargaining agreement.

*Percentage of Time Spent on Supervisory Duties* – Collings was not able to give a clear estimate on the percent of time she spends performing supervisory duties. From the testimony on the record, it is clear that Collings spends the majority of her work time planning and managing events, not supervising Black and giving her work assignments.

- Analysis of Supervisory Status

Collings does not have the authority to promote, transfer, layoff, recall, suspend, or discharge employees. The fact that Collings has never hired a full or regular part-time employee using the employer's regular hiring process also calls into question whether the events coordinator position has true hiring authority. The record also failed to establish that Collings has the authority to adjust employees' grievances.

Collings oversees and directs Black's daily work and also performs bargaining unit work. The fact Collings has the ability to direct another employee's work does not, standing alone, make that employee a supervisor for the purpose of unit placement. As the Commission explained in *Ronald Wastewater District*, Decision 9874-C (PECB, 2009): "Discretionary authority in

administrative matters or having the ability to direct employees in daily job assignments may not rise to the level of possessing independent authority to act or effectively recommend personnel actions.” citing *Granite Falls School District*, Decision 7719-A (PECB, 2003); *City of Gig Harbor*, Decision 4020-A (PECB, 1992). The main supervisory duties Collings performs are directing and overseeing Black’s daily work. Collings’ supervisory type duties are similar to the duties performed by the accounting supervisor position in *Ronald Wastewater District*. In that case the accounting supervisor position was determined to be a lead employee rather than a supervisor, and was included in the bargaining unit.

Collings does not perform a preponderance of supervisory duties nor does she spend a preponderance of her work time performing such duties. From March 2009, Black’s first full month of employment, through February of 2010, Black’s hours varied from month to month but always averaged less than half-time in a month. Even if Collings supervised Black the entire time Black was working, Collings would still spend less than half of her work time supervising Black.

#### Conclusion

Collings does not perform a preponderance of the supervisory duties described in RCW 41.59.020(4)(d) or spend a preponderance of her work time performing supervisory duties. The events coordinator position, currently occupied by Dawn Collings, is not a supervisory position and is properly included in the existing city-wide bargaining unit.

#### FINDINGS OF FACT

1. The City of East Wenatchee is a public employer within the meaning of RCW 41.56.030(13).
2. Washington State Council of County and City Employees, is a bargaining representative within the meaning of RCW 41.56.030(2).
3. In *City of East Wenatchee*, Decision 10367 (PECB, 2009), the Commission certified the union as the exclusive bargaining representative of a unit described as:

All full-time and regular part-time employees of the City of East Wenatchee, excluding supervisors, confidential employees and police department employees.

4. In the 2009 representation case cited in Finding of Fact 3, the employer furnished a list of eligible voters that included Teresa Allen, executive secretary/accounting assistant, and Dawn Collings, events coordinator. Allen and Collings were eligible to vote in the representation election and have been presumptively included in the bargaining unit.
5. The employer put the union on notice that it contested the bargaining unit placement of Allen and Collings during contract negotiations, prior to reaching an agreement.
6. The employer and union are parties to a collective bargaining agreement effective January 1, 2010 through December 31, 2010.
7. On January 27, 2010, the employer filed a unit clarification petition seeking to exclude the executive secretary/accounting assistant position as a confidential employee, and the events coordinator position as a supervisor.
8. Allen has held the executive secretary/accounting assistant position since 2000 and reports directly to Mayor Lacy.
9. The executive secretary/accounting assistant plays a necessary, regular, and ongoing role in collective bargaining on behalf of the employer. Allen uses independent judgment to develop and review collective bargaining proposals for the employer relating to leave and benefit issues. Allen also uses independent judgment to interpret contracts on behalf of the employer and helps the employer develop responses to grievances.
10. In 2007, the employer created the events coordinator position and hired Dawn Collings to fill the position.

11. In February 2009, the mayor gave Collings approval to hire a seasonal events coordinator assistant. Collings contacted Brooks Black and hired her as the seasonal events coordinator assistant. The seasonal events coordinator assistant is not included in any bargaining unit and is the only position Collings oversees.
12. From March 2009 through February 2010, Black's work hours always averaged less than half-time in a month.
13. The events coordinator does not have the authority to promote, transfer, layoff, recall, suspend or discharge employees, or adjust employees' grievances. Collings has never hired a full or regular part-time employee using the employer's regular hiring process. Collings does not perform a preponderance of the supervisory duties nor does she spend a preponderance of her work time performing supervisory duties.

#### 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. The petition was timely filed pursuant to WAC 391-35-020(2)(a).
3. As described in Findings of Fact 7 and 8, the executive secretary/accounting assistant is a confidential employee under RCW 41.56.030(12)(c) and WAC 391-35-320. The executive secretary/accounting assistant position does not have collective bargaining rights and should be excluded from the nonsupervisory bargaining unit.
4. As described in Findings of Fact 9 through 12, the events coordinator is a public employee within the meaning of RCW 41.56.030(12) and is not a supervisor under RCW 41.59.020(4)(d) and WAC 391-35-340, and is appropriately included in the nonsupervisory bargaining unit represented by the union.

ORDER

1. The executive secretary/accounting assistant position, currently held by Teresa Allen, is excluded from the bargaining unit as a confidential position.
2. The events coordinator position, currently held by Dawn Collings, is properly included in the nonsupervisory bargaining unit.

ISSUED at Olympia, Washington, this 23rd of September, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.