

Seattle Housing Authority, Decision 11108 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

SEATTLE HOUSING AUTHORITY

and

OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,
LOCAL 8

For clarification of an existing bargaining
unit.

CASE 24000-C-11-1450

DECISION 11108 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Valarie Peaphon, Business Representative, for the union.

Dean Barnes, Human Resources Director, for the employer.

On May 23, 2011, Office and Professional Employees International Union, Local 8 (union) and the Seattle Housing Authority (employer) jointly filed a unit clarification petition under Chapter 391-35 WAC, seeking to clarify its existing bargaining unit of all full-time and regular part-time employees, certified as *Seattle Housing Authority*, Decision 5305-B (PECB, 1996). The parties are seeking to exclude the Payroll Accountant position as confidential. On June 14, 2011, Hearing Officer Kristi Aravena conducted a conference call with the parties where they stipulated to the exclusion of the petitioned-for position.

ISSUE

1. Should the Payroll Accountant position be excluded from the existing bargaining unit as confidential?

The Executive Director accepts the parties' stipulations and modifies the existing bargaining unit represented by the union to exclude the payroll accountant position.

APPLICABLE LEGAL PRINCIPLES

The Commission applies a labor relations nexus test to determine the confidential status of employees to be included in or excluded from a bargaining unit. A confidential employee is an employee whose duties imply a confidential relationship flowing from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. *International Association of Fire Fighters, Local 469 v. City of Yakima*, 491 Wn.2d 101 (1978).

A public employer seeking a confidential employee designation has a heavy burden of proof, because confidential status deprives an employee of all collective bargaining rights. *King County Fire District 13*, Decision 9845 (PECB, 2007); *Pierce County*, Decision 8892-A (PECB, 2006); *State – Natural Resources*, Decision 8711-B (PSRA, 2006); *Town of Ruston*, Decision 9976 (PECB, 2008).

WAC 391-35-320 codifies the confidential employee test, as follows:

Confidential employees excluded from all collective 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 consistent exercise of independent judgment; and

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

It is not sufficient to simply establish the existence of an intimate fiduciary relationship between the alleged confidential employee and a public official because the labor nexus between actual job duties and the formation of labor relations policy must be demonstrated as well. *King County Fire District 13*, Decision 9845. Confidential employees' work assignments do not have to be

exclusively or primarily confidential, but the employees must have “necessary, regular, and ongoing” confidential work assignments. *City of Redmond*, 7814-B (PECB, 2003), citing *City of Cheney*, Decision 3693 (PECB, 1991).

ANALYSIS

The Payroll Accountant position assists in a confidential capacity in preparing information for collective bargaining negotiations and administering the collective bargaining agreements.

The parties stipulate that the Payroll Accountant position is confidential and therefore excluded from the bargaining unit because the position assists and acts in a confidential capacity and those confidential duties are necessary, regular, and on-going.

CONCLUSION

The Executive Director finds that the stipulations filed by the parties are sufficient to constitute a basis for a ruling, and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the clarification requested by the parties. The Executive Director accepts the parties’ stipulations that the confidential position at issue assists and acts in a confidential capacity in preparing information for collective bargaining negotiations and administering the collective bargaining agreements, and therefore is appropriate for exclusion pursuant to WAC 391-35-320 from the existing bargaining unit represented by OPEIU, Local 11.

FINDINGS OF FACT

1. The Seattle Housing Authority is a public employer within the meaning of RCW 41.56.030(13).
2. Office and Professional Employees International Union, Local 8 is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union is the exclusive bargaining representative of a bargaining unit of all full-time and regular part-time employees of the Seattle Housing Authority.
4. The parties jointly petitioned for determination of the confidential status of the Payroll Accountant position.
5. The parties stipulate that the Payroll Accountant is confidential because she assists and acts in a confidential capacity in the preparation of collective bargaining negotiations and administers the collective bargaining agreements.

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 position of Payroll Accountant is a confidential position under WAC 391-35-320.

ORDER

The position of Payroll Accountant is excluded from the existing bargaining unit as a confidential position.

ISSUED at Olympia, Washington, this 6th day of July, 2011.

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.