

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

STEVENSON CARSON SCHOOL
DISTRICT

and

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON

For clarification of an existing
bargaining unit.

CASE 24197-C-11-1461

DECISION 11166 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Tim Latimer, Local President, for the union.

Teena McDonald, Superintendent, for the employer.

On August 22, 2011, Public School Employees of Washington (union) and the Stevenson Carson School District (employer) jointly filed a unit clarification petition under Chapter 391-35 WAC, to clarify whether the District Secretary position should be excluded from the existing bargaining unit as a confidential employee. This position has historically been excluded from the bargaining unit. The union is the exclusive bargaining representative of a bargaining unit of all full-time and regular part-time classified employees in the following general job classifications: Food Service, Secretarial, Paraeducators, Transportation, Custodial-Maintenance, and Technical. On September 14, 2011, Hearing Officer Kristi Aravena conducted a conference call with the parties where they stipulated that the petitioned-for position is confidential.

ISSUE

Should the District Secretary position remain excluded from the existing bargaining unit as a confidential employee?

The Executive Director accepts the parties' stipulation that the District Secretary duties are confidential and that position shall remain excluded from the existing bargaining unit represented by Public School Employees of Washington.

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 the 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 Richland*, 7814-B (PECB, 2003), *citing City of Cheney*, Decision 3693 (PECB, 1991).

ANALYSIS

The District Secretary position assists in a confidential capacity by participating directly on behalf of the employer in the formulation of labor relations policy by assisting the Superintendent in scheduling confidential meetings and preparing documentation and administration of collective bargaining agreements. This position has historically been excluded from the existing bargaining unit as confidential and the duties for this position have not changed for about 23 years.

The parties stipulate that the District Secretary position is confidential and should remain excluded from the existing bargaining unit because the position assists and acts in a confidential capacity and those confidential duties are necessary, regular, and ongoing.

CONCLUSION

The Executive Director finds that the stipulation filed by the parties is 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’ stipulation that the confidential position at issue assists and acts in a confidential capacity in the formulation of labor relations policy and assists in administering the collective bargaining agreements, and therefore is appropriate for exclusion pursuant to WAC 391-35-320 from the existing bargaining unit represented by Public School Employees of Washington.

FINDINGS OF FACT

1. Stevenson Carson School District is a public employer within the meaning of RCW 41.56.030(13).
2. Public School Employees of Washington 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 classified employees of the Stevenson Carson School District in the following general job classifications: Food Service, Secretarial, Paraeducators, Transportation, Custodial-Maintenance, and Technical.
4. The parties jointly petitioned for determination of the confidential status of the District Secretary position.
5. The parties stipulate that the District Secretary is confidential because she assists and acts in a confidential capacity in the formulation of labor relations policy and administration of 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 District Secretary is confidential under WAC 391-35-320.

ORDER

The position of District Secretary is confidential and shall remain excluded from the existing bargaining unit.

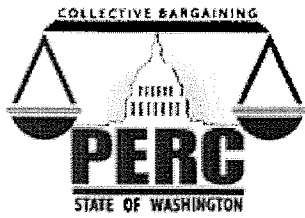
ISSUED at Olympia, Washington, this 29th day of September, 2011.

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION


BY/S/ ROBBIE DUFFIELD

CASE NUMBER: 24197-C-11-01461 FILED: 08/22/2011 FILED BY: JOINT
DISPUTE: COMMUNITY INT
BAR UNIT: CLERICAL
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