

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

EVERETT COMMUNITY COLLEGE

For clarification of an existing bargaining
unit represented by:

WASHINGTON FEDERATION OF
STATE EMPLOYEES

CASE 26693-C-14-1602

DECISION 12322 - PSRA

ORDER CLARIFYING
BARGAINING UNIT

Younglove and Coker, P.L.L.C., by *Edward Earl Younglove III*, Attorney at Law,
for the Washington Federation of State Employees.

Robert W. Ferguson, Attorney General, by *Gina Comeau*, Assistant Attorney
General, and *E. Earl Key*, Assistant Attorney General, for the Everett Community
College.

The Washington Federation of State Employees (union) represents a mixed-class bargaining unit of non-supervisory employees at the Everett Community College (employer). That bargaining unit currently includes employees in the Human Resources Consultant 4 job class.

On August 19, 2014, the employer filed a unit clarification petition seeking to remove three employees in the Human Resources Consultant 4 job class from the bargaining unit on the basis that the positions are confidential in nature. The positions are currently occupied by Sharon Lewis, Linda Nichols, and Elise Mayes.

The union initially opposed the employer's petition and a hearing was scheduled to take evidence and testimony. During the hearing the parties met and agreed that the three disputed positions should be excluded from the bargaining unit as confidential employees. The parties subsequently filed joint stipulations demonstrating that the employees whose positions are at issue are utilized by the employer to discuss strategy for labor relations and participate in the employer's caucuses during collective bargaining. The parties also stipulated that those employees represent the

employer during contract administration and perform other duties requiring the formulation of labor relations policy.

The issue to be decided is whether the parties' stipulations that the three Human Resources Consultant 4 positions are confidential in nature should be accepted and whether those positions should be removed from the bargaining unit. The parties' stipulations are accepted and the bargaining unit is clarified to exclude the Human Resources Consultant 4 positions occupied by Sharon Lewis, Linda Nichols, and Elise Mayes.

DISCUSSION

Applicable Legal Standard

RCW 41.56.030(11) defines the kinds of employees who are eligible to exercise collective bargaining rights under Chapter 41.56 RCW. Excluded from this definition are employees whose duties imply a confidential relationship to the bargaining unit or to the executive management of the employer. RCW 41.56.030(11)(c)(i) through (iii). Accordingly, anyone who meets the confidential employee definition is precluded from exercising collective bargaining rights under the statute. *Id.* Because confidential employees are precluded from exercising collective bargaining rights, a heavy burden is placed on the party seeking that confidential determination. *City of Seattle*, Decision 689-A (PECB, 1979).

A confidential employee is further defined as any employee who participates directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conducting of collective bargaining, or the administration of collective bargaining agreements. WAC 391-35-320(1). The nature of the work that creates the confidential status should be more than routine or clerical in nature. Rather, the work must call for the consistent exercise of independent judgment. *Id.*; *see also City of Lynden*, Decision 7527-B (PECB, 2002).

In determining whether the work performed by an employee is confidential in nature, a labor relations nexus test is used to examine the employee's current duties. *City of Yakima*, Decision

9983-A (PECB, 2008). The labor nexus test examines whether the employee's current duties imply a confidential relationship that flows 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*, 91 Wn.2d 101 (1978).

The confidential exclusion depends on the particular association of the persons involved, rather than on any arbitrary test based on title, position on an organization chart, job description, or role. *See Shelton School District*, Decision 1609-B (PECB, 1984). "The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including *formulation of labor relations policy*." *City of Yakima*, 91 Wn.2d 106-107 (1978) (emphasis added). The exclusion prevents potential conflicts of interest between the employee's duty to his or her employer and status as a union member. *Walla Walla School District*, Decision 5860-A (PECB, 1997). An employee's official duties may provide him or her with access to sensitive information regarding the employer's collective bargaining position. In that case, the employee's loyalties should not be placed in a position where they could be questioned by either the employer or bargaining unit. *State - Natural Resources*, Decision 8458-B (PSRA, 2005). Any relied-upon labor relations responsibilities must be necessary, regular, and ongoing. *Yakima School District*, Decision 7124-A (PECB, 2001), *citing Oak Harbor School District*, Decision 3581 (PECB, 1990).

Application of Standards

In this case the employer and union stipulate that Lewis, Nichols, and Mayes assist Vice President of Administrative Services Jennifer Howard in formulating and developing the employer's labor relations policies. All three employees have authorized access, on a regular and ongoing basis, to sensitive employer negotiation strategies, labor relations material, and confidential information concerning the collective bargaining policies of faculty and classified employees.

Additionally, Howard informs all three employees of the employer's position, counter proposals made by the union, and the employer's range of settlement offers. The employees then use the information provided by Howard to assist in developing the employer's collective bargaining

positions and supply Howard with data for use during contract negotiations and confidential labor relations activity. Two of the three positions also participate as bargaining representatives for the employer at faculty contract negotiations with bargaining units represented by the American Federation of Teachers.

Based upon the parties' stipulation, the regular duties of the positions now bring them into conflict with the bargaining unit and warrant their exclusion from collective bargaining rights as confidential employees. The parties' stipulations are accepted and the positions are excluded from the bargaining unit as confidential employees.

FINDINGS OF FACT

1. The Everett Community College is a public employer within the meaning of RCW 41.80.005(8) and (10).
2. The Washington Federation of State Employees is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).
3. The Washington Federation of State Employees is the exclusive bargaining representative for a bargaining unit of mixed classes of employees at the Everett Community College.
4. The parties stipulated that the labor relations duties of three employees in the Human Resources Consultant 4 job class now bring those positions into conflict with the bargaining unit.

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.

2. The stipulated facts establish that the three employees in the Human Resources Consultant 4 job class are confidential employees as defined by RCW 41.80.005(4).

ORDER

The Human Resources Consultant 4 positions occupied by Sharon Lewis, Linda Nichols, and Elise Mayes are confidential in nature and are removed from the bargaining unit represented by the Washington Federation of State Employees.

ISSUED at Olympia, Washington, this 27th day of April, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MICHAEL P. SELLARS, 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

A handwritten signature in blue ink, appearing to read "Vanessa Smith".

BY:/S/ VANESSA SMITH

CASE NUMBER: 26693-C-14-01602 FILED: 08/19/2014 FILED BY: EMPLOYER
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BAR UNIT: PROFESSIONAL
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