

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

EASTON SUPPORT PERSONNEL  
ASSOCIATION

For clarification of an existing bargaining  
unit of employees of:

EASTON SCHOOL DISTRICT

CASE 127490-C-15

DECISION 12592 - PECB

ORDER CLARIFYING  
BARGAINING UNIT

*Kevan Montoya*, Attorney at Law, Montoya Hinckley PLLC, for the Easton Support Personnel Association.

*Valerie L. Hughes*, Attorney at Law, Perkins Coie LLP, for the Easton School District.

On July 14, 2015, the Easton Support Personnel Association (union) filed a unit clarification petition seeking to include the Administrative Assistant/Accounts Payable & Personnel Specialist (Administrative Assistant) and the Associated Student Body (ASB) Advisor/Activities Director/Custodian (ASB Advisor) positions at the Easton School District (employer or district) in its bargaining unit of classified paraeducators and office-clerical employees. The employer opposes the union's petition and asserts that the duties performed by the Administrative Assistant are confidential in nature. The employer also asserts that the ASB Advisor position has been historically excluded from the bargaining unit and that the position lacks a community of interest with the existing bargaining unit. Finally, the employer asserts that the District Secretary position, which is currently included in the bargaining unit, should be excluded from the bargaining unit as a confidential employee. Hearing Officer Dario de la Rosa conducted a hearing on February 16, 2016, and the parties filed post-hearing briefs.

The Administrative Assistant is not a confidential position that should be excluded from the bargaining unit. Although the position serves as the primary assistant to the district's superintendent, the position does not perform the level of labor relations duties that would warrant

the position's exclusion from the bargaining unit. The bargaining unit is clarified to include the Administrative Assistant position. Additionally, the District Secretary position does not directly work on the employer's labor relations strategy and is not responsible for formulating labor policy. While the position has access to the employer's labor relations materials, access alone does not render the position confidential and the position shall remain in the bargaining unit. The ASB Advisor position shall remain excluded from the bargaining unit. The position has been historically excluded from the bargaining unit and there has been no change of circumstances that altered the community of interest of the position as to warrant its inclusion in the bargaining unit.

### BACKGROUND

The employer is a small rural school district that serves approximately 110 students in kindergarten through grade 12. All grades are taught at the Easton School. Lisa Henderson is the principal at the Easton School. Patrick Dehuff is the district's superintendent. The district contracts with the Educational Service District 105 (ESD 105) for financial and budgetary support. Wandah Messinger is employed by ESD 105 and serves as the district's business manager. The employer contracts an independent negotiator, Warren Hopkins, for assistance with collective bargaining negotiations. Dehuff, Henderson, Messinger, and Hopkins are the primary negotiators for the district.

The district employs 11 certificated teachers and nine classified staff. The certificated teachers are represented by the Easton Education Association. Four of the classified employees performing office-clerical and paraeducator duties are represented by the union. *Easton School District, Decision 11798 (PECB, 2013).*

Three positions are at issue in this matter: the Administrative Assistant position occupied by Marilyn Fudge, the District Secretary position occupied by Julie Miller, and the ASB Advisor position occupied by Jennifer Jensen.

*Administrative Assistant/Accounts Payable & Personnel Specialist*

The Administrative Assistant position is a dual-role position that provides administrative support to the superintendent and the School Board of Directors as well as to the district's business manager on payroll and personnel matters. The position reports directly to the superintendent.

When supporting the superintendent and board of directors, the Administrative Assistant coordinates the activities of the superintendent and board of directors to ensure that facilities and equipment are available for meetings. The position also attends board meetings, workshops, and seminars and prepares minutes of those meetings. The Administrative Assistant serves as the district's liaison by serving on committees to gather information required for the district's operations. The position does not attend executive or closed sessions of the board of directors.

The Administrative Assistant does not sit at the table as part of the employer's negotiating team. Additionally, the position does not have any input on the employer's collective bargaining strategy. The superintendent or business manager will ask the Administrative Assistant to compile historical payroll information and she will use the employer's Skyward program to gather that information and data. The superintendent often asks the Administrative Assistant to edit employer collective bargaining proposals for grammatical correctness. When editing a proposal, the Administrative Assistant does not offer any suggested changes to the document. The position is also responsible for maintaining office files and records, including confidential employment and labor relations records.

When supporting the district's business manager, the Administrative Assistant reviews requisitions and purchase orders for accuracy and completeness and answers questions from outside vendors about accounts payable and related matters. She also answers inquiries from employees about payroll deductions and processes employee travel reimbursement requests. Finally, the position processes the district's workers' compensation claims.

*District Secretary*

The District Secretary provides clerical support for the district, including preparing letters, memoranda, reports, and bulletins; sorting and distributing mail; and greeting and directing the public. The position reports to the Easton School Principal.

During collective bargaining negotiations, the superintendent often asks the District Secretary to edit employer proposals for grammatical correctness if the Administrative Assistant is not present. Similar to the Administrative Assistant, the District Secretary does not offer any suggested changes to the documents. The position does not sit at the negotiating table. The District Secretary has access to the same information as the Administrative Assistant.

*ASB Advisor/Activities Director/Custodian*

The ASB Advisor position performs three different roles at the district. The position serves as the ASB Advisor, the Activities Director, and the custodian for the Easton School.

The role of ASB Advisor involves overseeing and helping students learn about leadership and responsibility through student activities. The position also helps students conduct ASB meetings and activities, such as social events and fundraisers. The ASB Advisor assists students in electing ASB officers and preparing budgets for ASB activities. The position receives a stipend for performing these duties.

The position's Activities Director duties include coordinating activities and events that provide opportunities for interaction between students, parents, and the community. The position works with the superintendent to plan and coordinate events and develops materials that promote the activities. The position also receives a stipend for performing these duties.<sup>1</sup>

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<sup>1</sup> The ASB Advisor/Activities Director/Custodian also serves as the Athletic Director for the Easton and Thorp School Districts. The Athletic Director contract is carried by the Thorp School District. Because the position cannot be included in the bargaining unit of paraeducators and office-clerical employees through this proceeding, it is unnecessary to determine whether the Athletic Director duties can be included in a bargaining unit that includes employees only at the Easton School District.

*The Paraeducator and Office-Clerical Bargaining Unit*

When the paraeducator and office-clerical bargaining unit was certified, the parties agreed that the Administrative Assistant position would be excluded from the bargaining unit as a confidential employee.<sup>2</sup> The parties also agreed that the ASB Advisor position would be excluded from the bargaining unit. Finally, the parties agreed that the District Secretary position would be included in the bargaining unit.

DISCUSSIONApplicable Legal Standards

The creation and maintenance of appropriate bargaining units is a function of this agency. RCW 41.56.060. The purpose of this function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993). Only those personnel who qualify as “public employees” may exercise collective bargaining rights under the statute. RCW 41.56.030(11).

Excluded from the definition of “public employee” are employees whose duties imply a confidential relationship to the bargaining unit or to the executive management of the employer, such as an appointee to a board, commission, or committee for a particular term of an elected official. RCW 41.56.030(11)(c)(i)-(iii). 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 a determination that the employees at issue are confidential. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

A labor nexus test is used to determine whether an employee is confidential under the statute. The employee’s duties are examined for a labor nexus and whether the employee’s actual duties imply

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<sup>2</sup> Administrative notice is taken of Case 25663-E-13-3792.

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 nature of the close association between the employee and the executive head of the bargaining unit or public official must concern the official and policy responsibilities of the executive head or public official, including formulation of labor relations policy. *Id.* at 106-107. If the employee's official duties require ongoing and regular interaction with the executive head or public official regarding the employee's collective bargaining position, that employee should not be placed in a position where that employee's loyalties are tested. The confidential employee 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 (PECB, 1997).

#### Application of Standards

Neither the Administrative Assistant nor the District Secretary are confidential employees as defined by RCW 41.56.030(11)(c)(i)-(iii) because their duties do not intimate a confidential relationship between those positions and the district superintendent. Neither position sits at the bargaining table on behalf of the employer. Additionally, neither position is responsible for the formulation of the district's labor relations policy. Rather, the evidence and testimony demonstrate that the positions are responsible only for providing clerical support, such as editing documents, making copies, and filing.

The employer asserts that the Administrative Assistant should remain excluded from the bargaining unit because that position is the administrative assistant to the superintendent. No *per se* rule exists that automatically excludes an administrative assistant to a school district's superintendent from a bargaining unit as a confidential employee. While there is no requirement that a position sit at the bargaining table or even formulate collective bargaining proposals to meet the confidential exclusion, the evidence must still demonstrate that the duties of the administrative assistant or secretary and the executive head imply a confidential relationship. *See, e.g., Tahoma School District*, Decision 1125 (PECB, 1981) (employer's recording secretary is a secretary whose



duties imply a confidential relationship to the executive head of the applicable bargaining unit or to persons elected by popular vote).

For example, in *Pateros School District*, Decision 3911 (PECB, 1991), the superintendent's secretary prepared labor relations letters on behalf of the superintendent and prepared extensive materials regarding grievances and litigation filed by a certificated employee. The position also prepared a salary matrix for use in collective bargaining negotiations. As recording secretary to the school board, the secretary attended all school board meetings where the public may have been present. The position was not allowed to sit in on the executive sessions of the school board but was privy to the board's policy decisions and had access to the school district's personnel records and financial data. Based upon these duties and the position's relationship to the superintendent, the position was found to be confidential and was excluded from the bargaining unit.

Similarly, in *Pe Ell School District*, Decision 1068-A (PECB, 1981), the superintendent's secretary was found to be a confidential position based upon the employee's duties. In that case, the secretary typed correspondence from the superintendent to school board members concerning collective bargaining negotiations. The position also received telephone calls from school board members concerning negotiations, transmitted related messages directly to the superintendent, and prepared the salary schedules used by the district during negotiations.

Here, the Administrative Assistant's and District Secretary's editing, copying, and filing duties do not rise to a level of participation demonstrated in either *Pateros School District* or *Pe Ell School District*. The labor relations functions of both positions are limited to minor clerical duties. Neither position assists the superintendent in the grievance process or communicates labor relations information between the superintendent and board of directors. Dehuff testified that the Administrative Assistant and District Secretary's role is "simply to help [the negotiating team] edit documents and make copies and file." He also testified that the positions' role is "not to strategize with the [the negotiating team]." Thus, the superintendent believes that the role that these positions have in the employer's labor relations functions is limited to a routine clerical role.

Furthermore, the flow of information between the Administrative Assistant and District Secretary and the employer's negotiating team demonstrates that the positions are not confidential in nature. Messinger testified that if she needs financial information, she can ask the Administrative Assistant to retrieve the information out of the Skyward program and to prepare that information for presentation. Dehuff and Messinger also testified that the Administrative Assistant does not provide any input about the reports she prepares. Thus, the information being transmitted by the Administrative Assistant to the superintendent and business manager is flowing in only one direction. *See, e.g., Pierce County, Decision 8892-A (PECB, 2005)* (it is important to determine whether confidential information had flowed down to the employee, not whether useful information or recommendations flowed up to the bargaining team).

The fact that the positions have access to the employer's confidential labor relations files does not render those positions confidential because the positions do not use those files as a part of their regular duties. *See, e.g., West Valley School District, Decision 798 (PECB, 1979)* (mere access to personnel files and payroll data is not sufficient to exclude an employee on the basis of confidentiality).

#### *The ASB Advisor Position*

The union's request to include the ASB Advisor position in its bargaining unit must be rejected. Unit clarification proceedings can be used to determine the bargaining unit placement of newly created positions. WAC 391-35-020(1)(a). If a position existed at the time a bargaining unit was created and it cannot be established that the parties intended to include that position in the unit, the unit clarification process can only be used to add that position to the existing unit if there is a recent change of circumstances. WAC 391-35-020(4)(a); *see also City of Dayton, Decision 1432 (PECB, 1982)*.

When the bargaining unit was created, the parties specifically agreed to exclude the ASB Advisor position from the bargaining unit. No evidence was presented demonstrating a change of circumstances occurred that would warrant review of the position's community of interest.



Because no change in circumstances exists, the only way for the union to add the ASB Advisor position to the bargaining unit is through the representation process. WAC 391-35-020(5).<sup>3</sup>

### CONCLUSION

The Administrative Assistant is not a confidential position that should be excluded from the bargaining unit. The bargaining unit is clarified to include the Administrative Assistant position. The District Secretary is also not a confidential position and remains included in the bargaining unit. The ASB Advisor position remains excluded from the bargaining unit based upon the parties' prior agreement to exclude that position. No change of circumstances exists warranting review of the community of interest for that position.

### FINDINGS OF FACT

1. The Easton School District (employer or district) is a public employer within the meaning of RCW 41.56.030(12).
2. The Easton Support Personnel Association (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of classified paraeducators and office-clerical employees employed by the district.
4. The Administrative Assistant position is a dual-role position that provides administrative support to the superintendent and the School Board of Directors as well as to the district's business manager on payroll and personnel matters. The position reports directly to the superintendent.

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<sup>3</sup> The ASB Advisor position could be added to the bargaining unit through a self-determination election. WAC 391-25-440.

5. The Administrative Assistant coordinates the activities of the superintendent and board of directors to ensure that facilities and equipment are available for meetings. The position also attends board meetings, workshops, and seminars and prepares minutes of those meetings. The Administrative Assistant serves as the district's liaison by serving on committees to gather information required for the district's operations.
6. The Administrative Assistant does not sit at the table as part of the employer's negotiating team. Additionally, the position does not have any input on the employer's collective bargaining strategy.
7. The superintendent or business manager will ask the Administrative Assistant to compile historical payroll information and she will use the employer's Skyward program to gather that information and data. The superintendent often asks the Administrative Assistant to edit employer collective bargaining proposals for grammatical correctness. When editing a proposal, the Administrative Assistant does not offer any suggested changes to the document. The position is also responsible for maintaining office files and records, including confidential employment and labor relations records.
8. When the bargaining unit described in Finding of Fact 3 was certified, the parties agreed that the Administrative Assistant position described in Findings of Fact 4 through 7 would be excluded from the bargaining unit as a confidential employee.
9. The District Secretary provides clerical support for the district, including preparing letters, memoranda, reports, and bulletins; sorting and distributing mail; and greeting and directing the public.
10. During collective bargaining negotiations, the superintendent often asks the District Secretary to edit employer proposals for grammatical correctness if the Administrative Assistant is not present. Similar to the Administrative Assistant, the District Secretary does not offer any suggested changes to the documents. The position does not sit at the

negotiating table. The District Secretary has access to the same information as the Administrative Assistant.

11. When the bargaining unit described in Finding of Fact 3 was certified, the parties agreed that the District Secretary position described in Findings of Fact 9 and 10 would be included in the bargaining unit.
12. The ASB Advisor position performs three different roles at the district. The position serves as the custodian for the Easton School. The position is also the advisor for the Associated Student Body of the Easton School District. The position's Activities Director duties include coordinating activities and events that provide opportunities for interaction between students, parents, and the community.
13. When the bargaining unit described in Finding of Fact 3 was certified, the parties agreed that the ASB Advisor position described in Finding of Fact 12 would be excluded from the bargaining unit. There is no evidence that the duties of the ASB Advisor have changed since the bargaining unit was created.

#### 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. Based upon Findings of Fact 4 through 7, the Administrative Assistant position is not a confidential employee within the meaning of RCW 41.56.030(11)(c)(i)-(iii).
3. Based upon Findings of Fact 9 and 10, the District Secretary is not a confidential employee within the meaning of RCW 41.56.030(11)(c)(i)-(iii).

4. Based upon Finding of Fact 13, the union's petition to include the ASB Advisor position is not timely because there has been no change in circumstances as required by WAC 391-35-020(4)(a).

ORDER

The bargaining unit represented by the Easton Support Personnel Association is clarified to include the Administrative Assistant/Accounts Payable & Personnel Specialist position.

ISSUED at Olympia, Washington, this 24th day of June, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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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**RECORD OF SERVICE - ISSUED 06/24/2016**

DECISION 12592 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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