

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PROTEC17

Involving certain employees of:

CITY OF TACOMA

CASE 132998-E-20

DECISION 13342-C - PECB

ORDER ON REMAND

Paul Marvy, Counsel, for PROTEC17.

Cheryl Comer, Deputy City Attorney, for the City of Tacoma.

On August 28, 2020, PROTEC17 (union) filed a petition to represent the Forensics Manager, the Financial Manager, and the Office Manager in the City of Tacoma Police Department (employer). The employer asserted that the positions were confidential.

After a hearing, all three positions were determined to not have a sufficient labor nexus to be deemed confidential under RCW 41.56.030(12)(c). *City of Tacoma*, Decision 13342 (PECB, 2021). The employer appealed that decision to the Commission with respect to only the Office Manager position.

On appeal the Commission remanded the matter back to the Executive Director to consider and analyze whether the Office Manager position is a confidential employee under WAC 391-35-320(2). *City of Tacoma*, Decision 13342-B (PECB, 2021). On remand, the Office Manager is not a confidential employee under WAC 391-35-320(2) because, similar to the analysis under WAC 391-35-320(1), the position does not have a sufficient labor nexus.

BACKGROUND

In the original decision, Decision 13342, the following findings of fact were made that are relevant to the Office Manager position and the analysis on remand.

4. The Chief holds command staff meetings every other month, which consist of all Lieutenants, Captains, and Assistant Police Chiefs; the Financial Manager; the Forensics Manager; and the Office Manager. The Financial Manager, Forensics Manager, and Office Manager positions attend biennial budget and command staff meetings. The purpose of the command staff meetings is to discuss updates and emerging issues. While the status of ongoing bargaining may be mentioned, the Chief testified that no labor strategy or bargaining proposals are discussed at these meetings. Rather, the Chief or the Chief's designee, or both, will work with a Labor Relations Specialist employed by the employer to develop bargaining strategy and engage in collective bargaining.
5. The employer operates on a biennial budget. When the City Manager provides budget instructions to the departments, the Chief convenes separate budget meetings with the Assistant Police Chiefs, Captains, Financial Manager, and Office Manager to develop the budget that the Police Department will propose to the City Manager. Those discussions also discuss ways to implement the budget instructions, such as reductions, directed by the City Manager. While there may be discussions about the impact of cuts on bargaining units or the costs of current provisions in collective bargaining agreements, no labor strategy or bargaining proposals are discussed at the budget meetings. All attendees at the meeting give input and suggestions at the meetings, including the disputed positions.
6. The Office Manager manages the daily operations of the Chief's office. Jeanette Blackwell has held this position since 1997. Blackwell assists the Chief and the department in various administrative duties and spends a majority of time as a liaison between the Chief and the other bureaus. Blackwell is also responsible for budget and personnel tracking and organizing meetings between the Chief and senior command staff and executives.
7. Blackwell has a close working relationship with the Chief. The Chief gains feedback from Blackwell before making personnel decisions such as promotion, moving personnel, budget, and training. Blackwell, who has been with the department since 1991, provides the Chief with a historical perspective for the department and knowledge of current events throughout

the agency. Blackwell has access to the Chief's email but only for scheduling or public request purposes.

8. The Office Manager neither participates in the development of bargaining strategy nor in contract negotiations. Blackwell does not edit or give feedback on proposals and does not have access to any collective bargaining agreements before they are made available to the public. The Office Manager only participates in the grievance process in an administrative capacity.

City of Tacoma, Decision 13342.

While the Office Manager job description states that the position “[m]ay provide labor negotiation support and involvement,” Blackwell testified that the position has not provided any labor negotiation or support for over ten years. Blackwell’s only role with the employer’s labor negotiations is to obtain the final contract from Human Resources, send copies to the departmental members, send a copy to Finance for their interpretation, and maintain the original. Blackwell does not assist at the bargaining table, does not prepare any documents for bargaining or for Chief Ramsdell prior to bargaining, and does not edit proposals or contract language. Blackwell is also not aware of bargaining strategy.

Blackwell has only a ministerial role with respect to grievances. Blackwell stamps the grievance in as received, prepares a letter acknowledging receipt, and assigns and sends the grievance to the appropriate Assistant Chief. Blackwell has no role in preparing or finalizing the grievance response. The assigned Assistant Chief prepares the grievance response and sends it out.

Blackwell testified that her main role is to be a liaison for Chief Ramsdell’s office and the bureaus. Blackwell specifically testified that this role as a liaison does not involve labor strategy or bargaining proposals.

Both Blackwell and Chief Ramsdell testified that the Chief uses Blackwell as a sounding board. Blackwell testified that the Chief might mention thinking of promoting a specific person, but that the Chief does not ask Blackwell for input on promotions.

ANALYSISApplicable Legal Standards

The definition of public employee in chapter 41.56 RCW excludes 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(12)(c)(i–iii). Accordingly, anyone who meets the confidential employee definition is precluded from exercising collective bargaining rights under the statute. *Id.* The exclusion of confidential employees from exercising collective bargaining rights prevents potential conflicts of interest between the employee’s duty to the employer and status as a union member. *Walla Walla School District*, Decision 5860-A (PECB, 1997).

The Washington State Supreme Court narrowly construed that exclusion in *International Association of Firefighters, Local 469 v. City of Yakima (City of Yakima)*, 91 Wn.2d 101 (1978). The court established a labor nexus test to determine whether an employee is confidential under the statute. The employee’s duties are examined for a labor nexus and for whether the employee’s actual duties imply a confidential relationship that flows from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. 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 106–07.

In 2001, the Commission adopted a rule to codify the labor nexus precedent from *City of Yakima* WAC 391-35-320 provides that the exclusion of confidential employees from collective bargaining 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.

WAC 391-35-320 is copied verbatim from the definition of confidential employee in RCW 41.59.020(4)(c), which applies to K–12 certificated employees. RCW 41.59.020(4)(c) was cited with approval when construing cases decided under chapter 41.56 RCW by the Washington State Supreme Court in *City of Yakima*, 91 Wn.2d at 105–06.

Decisions addressing whether a position is confidential under WAC 391-35-320(2) analyze whether the duties of assisting and supporting a confidential employee also involve a labor nexus. *See, e.g., Yakima School District*, Decision 9020-A (PECB, 2007); *Eatonville School District*, Decision 10065 (PECB, 2008); *Easton School District*, Decision 12592 (PECB, 2016). “Thus, the focus continues to be on whether there is a sufficient ‘labor nexus’ in the employee’s duties.” *Marysville School District*, Decision 7973 (PECB, 2003). An employee’s duties must not exclusively involve a labor nexus in order to be confidential, but they must be necessary, regular, and ongoing. *Yakima School District*, Decision 7124-A (PECB, 2001) (citing *Oak Harbor School District*, Decision 3581 (PECB, 1990)).

Among the types of assistance and support of a confidential employee that involve a labor nexus are the following:

- Handling confidential labor materials and attending meeting involving collective bargaining issues. *Yakima School District*, Decision 9020-A.
- Access to files containing collective bargaining strategy, proposals, and documents relating to the decision-making process in negotiations; having a role in preparing materials for the employer to use at the bargaining table; and taking notes of meeting of the employer’s bargaining team. *Highline School District*, Decision 8176 (PECB, 2003).
- Preparing models and reports to be used by the employer’s bargaining team, costing proposals for the employer before making offers to the union, and having access to grievance information. *Marysville School District*, Decision 7973.

- Being given summaries of bargaining positions and drafts of collective bargaining for forwarding to city council members; participating in conversations about bargaining positions and being privy to proposals before they are presented at the bargaining table; and editing the employer's grievance responses at the employer-wide level. *City of Lynnwood*, Decision 8080-A (PECB, 2005).

Application of Standards

The Office Manager is not a confidential employee under WAC 391-35-320(2). On appeal to the Commission, the employer largely restated its arguments but asserted that the findings of fact and conclusions of law in Decision 13342 did not take certain evidence and assertions into account. The Office Manager is not a confidential employee because the assistance and support Blackwell provides to Chief Ramsdell do not create a sufficient labor nexus.

Blackwell's role and potential access to information do not necessarily involve a labor nexus. It is true that Blackwell's position and working relationship with Chief Ramsdell require trust, and Blackwell is expected to neither disclose discussions nor information discussed. However, that expectation of confidentiality does not render the position confidential under RCW 41.56.030 and WAC 391-35-320. "Importantly, occupying a position of general responsibility and trust is clearly insufficient to warrant exclusion as a confidential employee, absent evidence that the individual is privy to labor relations material, strategies, or planning sessions." *City of Lynnwood*, Decision 8080-A.

While Chief Ramsdell testified generally about the Office Manager's role, Blackwell was direct on these same issues. Chief Ramsdell testified that the conversations with Blackwell "could" include personnel or labor issues, but Blackwell specifically testified to the contrary. Blackwell stated that while Chief Ramsdell, on occasion, might comment to Blackwell that he was considering promoting an individual, the Chief did not ask for Blackwell's input on promotions.

Blackwell testified that her role as liaison with other bureaus did not involve labor matters or bargaining proposals. Blackwell does not assist at the bargaining table, does not prepare any documents for bargaining (or for Chief Ramsdell prior to bargaining), and does not edit proposals

or contract language. Blackwell stated that she is not aware of bargaining strategy. No evidence was offered that Blackwell's access to Chief Ramsdell's emails actually gave Blackwell access to items involving labor relations or collective bargaining. Blackwell obtains the final contract from Human Resources, sends copies to departmental members, sends a copy to Finance for their interpretation, and maintains the original. Blackwell has no role in preparing or finalizing grievance responses. The assigned Assistant Chief prepares the grievance responses and sends them out.

The command staff meetings do not involve discussions of labor strategy. The employer cites to testimony involving a discussion at a command staff meeting about a 5 percent increase for represented staff in the homicide unit. There was discussion about whether the increase applied to just homicide detectives or other employees performing the work and the source of the dollars. This undated evidence was originally offered to support the employer's assertion that the Finance Manager was confidential. Both Blackwell and Chief Ramsdell—the person who runs the command staff meetings—testified that no labor strategy was discussed at these meetings. The Finance Manager did not regard that discussion as one where she was providing feedback or opinions on strategies that had not already been decided. Since that discussion was insufficient to create a labor nexus for the Finance Manager, when she was having the discussion, it cannot be said to create one for the Office Manager, who merely was a witness to it. Moreover, even if one were to construe that conversation as touching upon a labor nexus, the evidence presented shows it to be sporadic at best.

The biennial budget meetings do not involve labor strategy. These budget meetings occur after the City Manager provides budget instruction to the departments. Chief Ramsdell convenes these meetings with the Assistant Police Chiefs, the Captains, the Finance Manager, and the Office Manager. The purpose of these meetings is to develop the budget that the police department will propose to the City Manager. Discussions at these meetings may include ways to implement the budget instructions, such as reductions, directed by the City Manager. While there may be discussions about the impact of cuts on the department and the cost of current collective bargaining

agreements, Blackwell, Chief Ramsdell, and the Finance Manager testified that neither labor strategy nor bargaining proposals are discussed.¹

The employer points to *Washington State – Labor and Industries*, Decision 8437-A (PSRA, 2004), asserting that the Office Manager is similar to two assistants found to be confidential. However, the two assistants relied upon by the employer as comparable are distinguishable.

In *Washington State – Labor & Industries*, the Human Resources director’s assistant had access to information directly related to the formulation, determination, and effectuation of the state’s policies regarding collective bargaining and labor relations. That position also gathered materials for bargaining, attended the executive management meetings, and assisted the Human Resources director in presentations about the ongoing status of negotiations. The assistant to the deputy directors was determined to be confidential mainly due to the assistant’s access to collective bargaining information. Specifically, the Executive Director stated,

From the evidence presented, it is clear that Soper performs these duties with regular access to confidential labor relations information . . . under the PSRA. If she were to be included in the bargaining unit, Soper would face an ongoing potential for the types of conflict of interest that the “confidential” exclusion is intended to prevent.

Id. Here, in contrast, no evidence was presented showing actual access to confidential labor relations information, much less regular access.

On remand, the employer also compares the Office Manager to the superintendent’s assistant in *Sequim School District*, Decision 13337 (PECB, 2021). In that case, the superintendent’s assistant attends executive cabinet meetings where the district’s top managers formulate bargaining strategy and discuss proposals. These discussions span labor issues for all bargaining units. The assistant is also present occasionally when the school board goes into executive session to discuss, among

¹ As all attendees of the command staff and budget meetings are represented, with the exception of the Chief Ramsdell and Blackwell, it makes sense that no labor strategy or bargaining proposals are discussed.

other things, personnel matters and bargaining strategy. The assistant also attends pre-bargaining meetings.

The Office Manager position is more akin to positions that have been found to not have a labor nexus. *See, e.g., Easton School District*, Decision 12592. In that case, the assistant to the superintendent and the school board and the district secretary were determined not to be confidential. The types of assistance and support that the positions provided surrounding labor relations were described as routine clerical support. The positions would edit, file, and copy—even edit proposals for grammar—but that was deemed insufficient to establishing a labor nexus.

Blackwell has even less of a role with respect to labor strategy and collective bargaining. The evidence in this case does not show that Blackwell assisted and supported Chief Ramsdell in a manner involving a labor nexus. The evidence does not warrant excluding Blackwell from exercising collective bargaining rights in order to prevent potential conflicts of interest.

CONCLUSION

On remand, the Office Manager is not exempt from collective bargaining under WAC 391-35-320(2) because there is not a sufficient labor relations nexus to exclude the position from collective bargaining.

FINDINGS OF FACT

The following findings of fact from Decision 13342 (PECB, 2021) are incorporated herein:

4. The Chief holds command staff meetings every other month, which consist of all Lieutenants, Captains, and Assistant Police Chiefs; the Financial Manager; the Forensics Manager; and the Office Manager. The Financial Manager, Forensics Manager, and Office Manager positions attend biennial budget and command staff meetings. The purpose of the command staff meetings is to discuss updates and emerging issues. While the status of ongoing bargaining may be mentioned, the Chief testified that no labor strategy or

- bargaining proposals are discussed at these meetings. Rather, the Chief or the Chief's designee, or both, will work with a Labor Relations Specialist employed by the employer to develop bargaining strategy and engage in collective bargaining.
5. The employer operates on a biennial budget. When the City Manager provides budget instructions to the departments, the Chief convenes separate budget meetings with the Assistant Police Chiefs, Captains, Financial Manager, and Office Manager to develop the budget that the police department will propose to the City Manager. Those discussions also discuss ways to implement the budget instructions, such as reductions, as directed by the City Manager. While there may be discussions about the impact of cuts on bargaining units or the costs of current provisions in collective bargaining agreements, no labor strategy or bargaining proposals are discussed at the budget meetings. All attendees at the meeting give input and suggestions at the meetings, including the disputed positions.
 6. The Office Manager manages the daily operations of the Chief's office. Jeanette Blackwell has held this position since 1997. Blackwell assists the Chief and the department in various administrative duties and spends a majority of time as a liaison between the Chief and the other bureaus. Blackwell is also responsible for the budget, personnel tracking, and organizing meetings between the Chief and senior command staff and executives.
 7. Blackwell has a close working relationship with the Chief. The Chief gains feedback from Blackwell before making personnel decisions such as promotions, moving personnel, budget, and training. Blackwell, who has been with the department since 1991, provides the Chief with a historical perspective for the department and knowledge of current events throughout the agency. Blackwell has access to the Chief's email but only for scheduling or public request purposes.
 8. The Office Manager neither participates in the development of bargaining strategy nor in contract negotiations. Blackwell does not edit or give feedback on proposals and does not have access to any collective bargaining agreements before they are made available to the public. The Office Manager only participates in the grievance process in an administrative capacity.

The additional findings of fact are made:

14. While the Office Manager job description states that the position “[m]ay provide labor negotiation support and involvement,” Blackwell testified that the position has not provided any labor negotiation or support for over ten years. Blackwell’s only role with the employer’s labor negotiations is to obtain the final contract from Human Resources, send copies to the departmental members, send a copy to Finance for their interpretation, and maintain the original. Blackwell does not assist at the bargaining table, does not prepare any documents for bargaining or for Chief Ramsdell prior to bargaining, and does not edit proposals or contract language. Blackwell is also not aware of bargaining strategy.
15. Blackwell has only a ministerial role with respect to grievances. Blackwell stamps the grievance in as received, prepares a letter acknowledging receipt, and assigns and sends the grievance to the appropriate Assistant Chief. Blackwell has no role in preparing or finalizing the grievance response. The assigned Assistant Chief prepares the grievance response and sends it out.
16. Blackwell testified that her main role is to be a liaison for Chief Ramsdell’s office and the bureaus. Blackwell specifically testified that this role as a liaison does not involve labor strategy or bargaining proposals.
17. Both Blackwell and Chief Ramsdell testified that the Chief uses Blackwell as a sounding board. Blackwell testified that the Chief might mention thinking of promoting a specific person, but that the Chief does not ask Blackwell for input on promotions.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 4 through 8 and 14 through 17, the Office Manager position is not a confidential employee within the meaning of WAC 391-35-320(2).

ORDER

The Office Manager shall be included in the petitioned-for bargaining unit, and a final certification amending the bargaining unit description shall be issued accordingly.

ISSUED at Olympia, Washington, this 21st day of October, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", is written over the printed name of the Executive Director.

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 391-25-660.



RECORD OF SERVICE

ISSUED ON 10/21/2021

DECISION 13342-C - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 132998-E-20

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