

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON FEDERATION OF STATE
EMPLOYEES

For clarification of an existing bargaining unit
of employees of:

WASHINGTON OFFICE OF THE
SECRETARY OF STATE

CASE 137757-C-23

DECISION 13778 - PSRA

ORDER CLARIFYING BARGAINING
UNIT

Herb Harris, Manager of PERC Activities, for the Washington Federation of State
Employees.

Scott Lyders, Labor Negotiator, for the Washington Office of the Secretary of State.

On October 3, 2023, the Washington Federation of State Employees filed a unit clarification petition concerning the Administrative Assistant 4 position that reports to the State Archivist at the Washington Office of the Secretary of State (employer). The union represents a bargaining unit that includes all nonsupervisory civil service employees working in the employer's Archives and Records Division. *State – Secretary of State*, Decision 8195 (PSRA, 2003). The at-issue Administrative Assistant 4 position is currently held by Nita Brown. Brown was previously a Confidential Secretary who reported to Assistant Secretary of State Steve Excell. Brown's position was not included in the union's bargaining unit. Excell subsequently became the State Archivist at the agency and Brown followed him to serve as the Administrative Assistant 4 for Excell's new position. Brown's position was reclassified to the Administrative Assistant 4 job class and assigned to the Archive and Records Division. The union asserts, and the employer does not contest, that Brown's Administrative Assistant 4 position is now a civil service position that must be included in the union's Archives and Records Division bargaining unit.

The request for clarification is granted. The union's bargaining unit includes all nonsupervisory civil service employees in the employer's Archive and Records Division. The Administrative Assistant 4 position held by Brown is a nonsupervisory civil service position and the position only shares a community of interest with the union's bargaining unit. To exclude this position would unnecessarily fragment the employer's workforce. Brown's Administrative Assistant 4 position shall be added to the union's bargaining unit without the need of an election.

BACKGROUND

The union represents a bargaining unit that is currently described as "All non-supervisory civil service employees of the Archives and Records Division of the Office of the Secretary of State, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors." *State – Secretary of State*, Decision 8195 (PSRA, 2003). The union's bargaining unit has historically included all classified positions in the division excluding confidential employees.¹

Brown previously held a Confidential Secretary position that reported to Assistant Secretary of State Steve Excell. The confidential secretary position was both exempt from the state civil service law, chapter 41.06 RCW, and outside of the Archive and Records Division and the position was not included in the union's bargaining unit. Excell subsequently transferred to the agency's State Archivist position and Brown followed him to his new position. Following this move, the employer reclassified Brown's position to the Administrative Assistant 4 job class. As a civil service Administrative Assistant 4, Brown's position became eligible to exercise collective bargaining rights under chapter 41.80 RCW. *See* RCW 41.80.005(6).

¹ *See* Washington Personnel Resources Board case RU-515 (1998) (clarifying the exclusion of confidential employees) and State Personnel Board case RU-202 (1983) (clarifying the bargaining unit includes all employees of the Archives and Records Management union of the Office of the Secretary of State).

Brown's Administrative Assistant 4 duties currently include serving as the principal assistant on administrative and confidential matters to the archives. The position notifies the State Archivist on matters judged urgent, confidential, and sensitive, and exercises independent discretion and confidentiality in all matters including personnel and other sensitive issues. The position also greets visitors, answers incoming telephone calls, and relays messages to the appropriate staff. The parties agree none of Brown's duties require her to assist Excell in confidential matters associated with labor relations and collective bargaining.

ANALYSIS

Applicable Legal Standard

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.80.070; *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *rev. denied*, 96 Wn.2d 1004 (1981). The goal in making unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarifications are governed by the provisions of chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency, as well as the parties to a collective bargaining relationship, with a mechanism to make changes to an existing bargaining unit based upon a change in circumstances to ensure its continued appropriateness. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

A unit clarification petition that seeks to add employees to an existing bargaining unit requires a recent meaningful change in circumstances that alters the community of interest such that

clarification is necessary. WAC 391-35-020; *University of Washington*, Decision 10496-A (PSRA, 2011) (citing *City of Richland*, Decision 279-A). Among the types of changes that can alter the existing community of interest and necessitate clarification are meaningful changes to job duties, reorganization of the workforce, or other significant changes to the workplace environment. *See Lewis County (Teamsters Local 252)*, Decision 6750 (PECB, 1999). A mere change in job titles is not necessarily a material change in working conditions that would qualify under chapter 391-35 WAC to alter the composition of a bargaining unit through the unit clarification process. *See University of Washington*, Decision 10496-A.

Determining if recent changes are meaningful rests upon whether the bargaining unit is appropriate absent the clarification. In determining if any existing bargaining unit remains appropriate in a unit clarification proceeding, the agency applies the same statutory unit determination criteria as RCW 41.56.060(1), which is used to establish the unit's initial appropriateness.

When a unit clarification petition proposes to add or accrete positions into the bargaining unit, it seeks to do so without a vote of the employees in the at-issue positions. An accretion may be ordered when changed circumstances lead to the existence of positions that logically belong in only one existing bargaining unit. *City of Auburn*, Decision 4880-A (PECB, 1995). An accretion is not appropriate if the positions could stand on their own in a separate bargaining unit or could appropriately be placed in any other bargaining unit. *Id.* For an accretion to be directed, the resulting unit must be appropriate. *Pierce County*, Decision 6051-A (PECB, 1998). An accretion cannot be ordered where the number of employees to be added to the bargaining unit is so large as to call into question the union's majority status in the enlarged unit. *Port of Seattle*, Decision 11131 (PORT, 2011).

Confidential Status

Only those personnel who qualify as "employee[s]" may exercise collective bargaining rights under the statute. RCW 41.80.005(6). Excluded from this definition 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 41.80.005(4). 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 conduct 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 including title, position on 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 at 107. The exclusion prevents potential conflicts of interest between the employee's duty to their employer and status as a union member. *Walla Walla School District*, Decision 5860-A (PECB, 1997). An employee's official duties may provide them 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 the 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 Standard

The Administrative Assistant 4 position that assists the State Archivist only shares a community of interest with the union's Archive and Records Division bargaining unit based upon the extent of organization in the employer's workforce and the avoidance of fragmentation. The union also has historically represented the employees in the Archive and Records Division including the Administrative Assistant 4 in the union's nonsupervisory bargaining unit.

The extent of organization among employees also strongly supports the conclusion that the Administrative Assistant 4 only shares a community of interest with the union's Archive and Records Division bargaining unit. When crafting bargaining units, this agency ensures that an employee or group of employees are not stranded in a unit too small to effectively exercise its right to collectively bargain. *Washington State University*, Decision 10115 (PSRA, 2008). The extent of organization the employer's workforce demonstrates is a preference for a vertical bargaining unit configuration that includes all of the employees in a division or section. The union already represents all of the nonsupervisory civil service employees within the employer's Archive and Records Division and to exclude the Administrative Assistant 4 would unduly fragment the employer's workforce.

Finally, the Administrative Assistant 4 is not a confidential employee within the meaning of RCW 41.80.005(6)(b). None of the Administrative Assistant 4's duties imply that the position participates directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements. Additionally, the State Archivist does not participate directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements. It cannot be said that the Administrative Assistant 4 is the principal assistant to the principal individual responsible for the formation and administration of the employer's labor relations policy. The Administrative Assistant 4 shall be added to the union's bargaining unit without the need of an election.

FINDINGS OF FACT

1. The Washington Office of the Secretary of State is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents a bargaining unit that is currently described as “All non-supervisory civil service employees of the Archives and Records Division of the Office of the Secretary of State, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.” The union’s bargaining unit has historically included all classified positions in the division excluding confidential employees.
4. Nita Brown is an Administrative Assistant 4 who works for the State Archivist in the employer’s Archives and Records Division. As a civil service Administrative Assistant 4, Brown’s position is eligible to exercise collective bargaining rights under chapter 41.80 RCW. *See* RCW 41.80.005(6).
5. Brown’s duties currently include serving as the principal assistant on administrative and confidential matters to the archives. The position notifies the State Archivist on matters judged urgent, confidential, and sensitive, and exercises independent discretion and confidentiality in all matters including personnel and other sensitive issues. The position also greets visitors, answers incoming telephone calls, and relays messages to the appropriate staff.
6. None of Brown’s duties require her to assist Excell in confidential matters associated with labor relations and collective bargaining.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-35 WAC.
2. Based upon findings of fact 4 and 5 the Administrative Assistant 4 position held by Nita Brown only shares a community of interest with the bargaining unit described in finding of fact 3.
3. Based upon findings of fact 5 and 6, the Administrative Assistant 4 position held by Nita Brown is not a confidential employee within the meaning of RCW 41.80.005(4) and WAC 391-35-320.

ORDER

The Administrative Assistant 4 position held by Nita Brown shall be added to the bargaining unit described in finding of fact 3 without the need of an election.

ISSUED at Olympia, Washington, this 25th day of January, 2024.

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.



RECORD OF SERVICE

ISSUED ON 01/25/2024

DECISION 13778 - PSRA 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 137757-C-23

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