

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JEAN S. BLACK vs. RICHLAND SCHOOL DISTRICT NO. 400	}	CASE NO. 5057-U-84-881
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JEAN S. BLACK vs. PUBLIC SCHOOL EMPLOYEES OF WASHINGTON	}	CASE NO. 5058-U-84-882 DECISION NO. 2208 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Christopher J. Mertens, Attorney at Law, appeared on behalf of the complainant.

Robert D. Schwerdtfeger, Consultant, appeared on behalf of the Kennewick School District.

Gail Fujita, Attorney at Law, appeared on behalf of Public School Employees.

On January 23, 1984, Jean S. Black filed complaints against Richland School District No. 400 and Public School Employees-Richland Association of Educational Secretaries, alleging unfair labor practices in violation of RCW 41.56.140(1) and RCW 41.56.150(1) and (2). The complainant seeks an order to prevent the school district from reducing her wages and benefits, and to allow her to remain outside the bargaining unit. A hearing was held on August 15, 1984.

BACKGROUND

In April, 1978, Jean Black commenced her employment with Richland School District No. 400 as an accounts payable clerk. She declined to join Public School Employees (PSE), which was and is the exclusive bargaining representative of office-clerical employees of the district. On July 2, 1979, she was offered and accepted a position as secretary to the director of business services. That position was then deemed to be a "confidential" employee exempt from the bargaining unit. Black has continued in that position until the present time.

In the spring of 1979, prior to her appointment to the exempt position, Black wrote several anonymous anti-union letters to employees. Along with Janet Sparks and Alta Brown, she participated in the initial stages of an attempt

to decertify PSE as the exclusive bargaining representative. The docket records of the Public Employment Relations Commission disclose that a decertification petition was filed on June 29, 1979. (Case No. 2143-E-79-408). Black was not a signatory to the decertification petition and did not participate further in the decertification following her appointment to the exempt position. An election was held and PSE was certified in an order issued October 17, 1979. Prior to the filing of the charges in this case, neither the employer nor the union were aware of her activities and involvement with the decertification movement.

Subsequent to Black's appointment to the exempt position, the employer's personnel department took over the management of the personnel files of the classified employees and assumed responsibility for negotiating with classified employee unions. The director of business services was thereafter no longer involved in the labor relations activity. Consequently, the status of Black's position was discussed by the employer and the union. It was agreed that Black's position was no longer excludable as confidential, and that it would henceforth be within the PSE bargaining unit. The employer and the union agreed in negotiations that Black's exempt position would be grandfathered (extended) for a period of one year, until September 1, 1984. In a letter from the employer dated November 23, 1983, Black was informed of the reorganization and advised that her position would be placed within the represented bargaining unit, effective September 1, 1984. She had earlier been told of the impending change during a meeting with the director of personnel, Dr. Roger Lenhert, and her immediate supervisor, Tom Hedges.

After being informed of the anticipated change in her employment status, Black filed unfair labor practice charges against both the employer and the union.

POSITIONS OF THE PARTIES

The complainant alleges that the employer and PSE negotiated to change her position from exempt status to a bargaining unit status in retaliation for her earlier attempts at decertification. She contends her position clearly meets the definition of a confidential employee and should not be a part of the bargaining unit. She requests that her position be continued in an exempt status or, in the alternative, that her position be "grandfathered" until she leaves the position.

The employer contends there was no retaliatory action whatsoever, and further contends Black is no longer a confidential employee.

The union responds that negotiating Black's position back into the bargaining unit was not retaliatory and that it was not an unlawful

interference with her rights. The union further responds that such negotiation did not constitute inducing the school district to commit an unfair labor practice.

DISCUSSION

Contractual rights of the employer are set forth in the collective bargaining agreement between PSE and the district, as follows:

ARTICLE II

RIGHTS OF THE EMPLOYER

Section 2.1. It is agreed that the customary and usual rights, powers, functions, and authority of management are vested in management officials of the District and its delegated representatives. Included in these rights in accordance with and subject to applicable laws, regulations, and the provisions of this Agreement, is the right to hire, promote, retain, transfer, and assign employees in positions; the right to suspend, discharge, demote, or take other disciplinary action against employees; and the right to release employees from duties because of lack of work or for other legitimate reasons. The District shall retain the right to maintain efficiency of the District operation by determining the methods, the means, and the personnel by which operations undertaken by the employees in the unit are to be conducted.

The director of business services is a certificated employee of the district. Historically, he was an active participant in the negotiation process with classified employees. He acted as negotiator with a bargaining unit represented by the International Union of Operating Engineers.

RCW 41.59.020 which is applicable to school district certificated employees, defines confidential employees in the following manner:

- (4)(c) Confidential employees, which shall mean:
 - (i) 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
 - (ii) Any person who assists and acts in a confidential capacity to such person.

The director of business services was thus excluded from the coverage of Chapter 41.59 RCW.

Black is not certificated, and so would come within the purview of Chapter 41.56 RCW. RCW 41.56.030 excludes confidential employees; but it does not

define the term. In giving meaning to the term "confidential" as used in Chapter 41.56, our Supreme Court held:

We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. 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. General supervisory responsibility is insufficient to place an employee within the exclusion.

Firefighters v. City of Yakima, 91 Wn.2d 101 (1978).

Black may well have qualified for exclusion under this standard while her immediate supervisor was bargaining on behalf of the employer. PSE evidently agreed that she did. In a subsequent change of staff duties within the authority which the employer reserved to itself in Article II of the collective bargaining agreement, responsibility for labor relations and negotiation was moved to the director of personnel and a labor relations consultant/negotiator. The director of business services will no longer be at the bargaining table, but will assume a limited role as a resource person for financial matters. The superintendent will meet with district administrators after a union proposal is received and each administrator will be asked to contribute whatever input is required or deemed appropriate, but labor policy and negotiation responsibilities will remain within the purview of the personnel department and the negotiator.

Removal of the labor relations responsibilities from the director of business operations affects the status of the person or persons working for the director. Under the definition set forth, the director no longer fulfills the duties necessary to retain confidential status, although he may still be excluded from the coverage of Chapter 41.59 RCW by the categorical exclusion of school district business managers from that statute. Since the confidential status of the subject secretarial position is necessarily contingent upon the identified status of the director's position, further exclusion of the secretarial position is likewise eliminated. Firefighters v. Yakima, supra. It is well established that the definition of confidential does not relate to so-called "privileged" information other than labor relations materials. City of Anacortes, Decision 452 (PECB, 1978).

The record does not sustain the burden of proof necessary to substantiate a charge that the union and the employer acted in collusion to discriminate against the claimant because of her stated previous anti-union activities. See: City of Tacoma, Decision 1342 (PECB, 1982). Testimony indicates neither the employer nor the union were aware of her role in the decertification attempt. Willingness of the respondents to grandfather the

position in its exempt status until September 1, 1984 can be viewed as evidence of a lack of any malevolent feelings toward the claimant. The reorganization which took place was clearly an administrative prerogative, executed without any apparent ulterior motivations. The complainant was impacted only because of the reorganization. She was not the cause or motivation for the reorganization process. The subsequent negotiation which took place concerned the status of the secretarial position, not the complainant as an individual. It appears that the same action would have occurred regardless of who occupied the position.

FINDINGS OF FACT

1. Richland School District No. 400 is a school district organized under Title 28A RCW and is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative of office-clerical employees of the Richland School District.
3. The complainant in this proceeding, Jean S. Black, is the secretary for the business services director, a position she has held since July 2, 1979.
4. As a result of an employer initiated reorganization of its administrative staff over the period of 1980-1983, a personnel office was created and assumed full responsibility for all district labor relations functions. Responsibility for classified employee personnel files and negotiation was deleted from the duties of the business services director. The complainant and her supervisor thereupon ceased having responsibility for labor relations policy and materials, such that complainant is no longer a confidential employee under RCW 41.56.030(2).
5. In subsequent negotiations, the employer and the union negotiated in good faith and determined the previously exempt position occupied by the complainant Black should be moved to the classified unit represented by the union, effective September 1, 1984.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. By negotiating a change in the position of secretary to the business services director from exempt to classified, the employer and the union did not discriminate against the claimant and did not violate RCW 41.56.140(1) or (4).

ORDER

The complaint in the above-entitled matter is DISMISSED.

DATED at Olympia, Washington, this 30th day of April, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Examiner

This Order may be appealed
by filing a petition for
review with the Commission
pursuant to WAC 391-45-350.