

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JEAN S. BLACK,)	
)	
Complainant,)	CASE NO. 5057-U-84-881
)	
vs.)	
)	
RICHLAND SCHOOL DISTRICT NO. 400)	
)	
Respondent.)	
)	
_____)	
JEAN S. BLACK,)	CASE NO. 5058-U-84-882
)	
Complainant,)	DECISION NO. 2208-A - PECB
)	
vs.)	
)	
PUBLIC SCHOOL EMPLOYEES OF)	DECISION OF COMMISSION
WASHINGTON,)	
)	
Respondent.)	
)	
_____)	

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

Robert D. Schwerdtfeger, Consultant, appeared on behalf of the Richland 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. Examiner Jack Cowan issued an Order dated April 30, 1985,

dismissing the complaint. Complainant subsequently filed a timely Petition for Review.

Complainant bases the Petition for Review on 1) her belief that her position was still confidential in nature at the time it was negotiated by the respondents out of "confidential" status and back into the bargaining unit; 2) her belief that her position was improperly returned to the bargaining unit immediately (as opposed to the claimed "grandfather" exclusion of another position from the bargaining unit until the incumbent individual leaves the position); and 3) her belief that the union sought her re-inclusion into the bargaining unit as retribution for her having been involved in a decertification effort a few years earlier.

Respondents maintain that the complainant's duties are no longer of a confidential nature and that complainant has been properly placed back into the bargaining unit by agreement of the employer and union.

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 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.

That definition was cited by our Supreme Court in IAFF v. City of Yakima, 91 Wn.2d 101 (1978), in construing RCW 41.56.030(2)(c). The Commission is persuaded by the record that the examiner applied the standard set out in the definition, and decided this case correctly. The shift of complainant's position out of confidential status was occasioned by the responsibility for labor relations moving from her superior, the director of business opera-

tions, to the director of personnel and a negotiator/labor consultant. There is no evidence in the record of complainant currently performing duties of a "confidential" nature. In any event, the exemption of confidential employees from bargaining units is not a privilege which such employees may claim for themselves, but a privilege conferred on employers to enable them to protect the confidentiality of their formulation of bargaining positions and administration of collective bargaining agreements. If an employer declines to claim a position as confidential, it is not exempt.

As to the question of an immediate, versus delayed, inclusion of the complainant's position in the bargaining unit, the complainant relies on the situation of a "coordinator of maintenance and operation" position. Upon close examination, however, the transcript (pp. 140-141) shows that the person in that position was properly excluded from the bargaining unit as a supervisor, rather than as a confidential employee, because she had the power to hire and fire. This testimony was not challenged. The complainant neither has nor claims such authority.

Finally, as to the allegation of retribution, the record does not support such a finding.

The Commission affirms and adopts the findings of fact, conclusions of law and order of the examiner.

ISSUED at Olympia, Washington, this 9th day of September, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



MARK C. ENDRESEN, Commissioner



MARY ELLEN KRUG, Commissioner