

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-9-04

(UNIT CLARIFICATION)

TEAMSTERS LOCAL UNION #223,)

Petitioner,)

v.)

LAKE COUNTY,)

Respondent.)

RULINGS,
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Upon no objections to a proposed order issued by Administrative Law Judge (ALJ) Vickie Cowan on August 10, 2004, following a hearing on June 3, 2004, in Bend, Oregon. The hearing closed on June 3, 2004, at the conclusion of the parties' closing arguments.

Michael J. Tedesco, Attorney at Law, 15050 S.W. 150th Court, Beaverton, Oregon 97007, represented Petitioner.

James E. Bailey III, Attorney at Law, C. E. Wright Building, 388 S.W. Bluff Drive, Bend, Oregon 97702, represented Respondent.

On February 27, 2004, Teamsters Local Union #223 (Union) filed an OAR 115-25-005(2) unit clarification petition, seeking a determination of the public employee status of Lake County's (County) newly created associate finance director position. On March 8, 2004, the County filed timely objections alleging that the position was confidential and thus excluded from the bargaining unit.

The issue presented for hearing is: Is the associate finance director a confidential employee?

The ALJ proposed that the associate finance director is not a confidential employee and clarified the position into the bargaining unit. We affirm.

RULINGS

1. On May 28, 2004, ALJ Cowan conducted a prehearing telephone conference with the parties. The Union moved to include certain historical evidence of prior finance office positions. The County objected based on relevance. The ALJ sustained the County's objections, but allowed the Union to make an offer of proof at hearing.¹

This is a newly-created position and is significantly different from prior finance department positions. Therefore, the history of previous positions is not relevant to the dispute before us. The evidence is not received.

2. The ALJ's remaining rulings were reviewed and are correct.

FINDINGS OF FACT

1. The Union is the exclusive representative of a bargaining unit of employees employed by the County, a public employer.

2. The County and the Union are parties to a collective bargaining agreement effective July 1, 2003, to June 30, 2004.

3. The County has a population of approximately 7,500 people with 1,800 of them living in the town of Lakeview. The County is governed by an elected, three-member board of commissioners.

4. In January 2004, the parties began negotiations for a successor agreement. As of the date of hearing, the parties had met three times; twice before March 22, 2004, and once after March 22. Commissioner J. R. Stewart and County Attorney James Bailey III serve as the County's negotiating team.

¹The Union's offer of proof consists of Union Exhibits U-2 through U-4, U-7 through U-9, and U-12 through U-22.

5. For several years prior to August 2003, one person, the finance director, was in charge of the County's finance department. The County had difficulty getting accurate information from the finance director, and there was no one qualified to back her up. When the finance director quit, the County had to use the treasurer and a road department employee to process the payroll and perform accounts payable and receivable functions.

6. In August 2003, the County hired Robin Drinkwater as its finance director. Drinkwater has worked as an accountant for a CPA firm and as a payroll manager. She has 15 years of financial experience in both the public and private sectors. As finance director, Drinkwater is a full-time salaried employee and is paid \$1,100 bi-monthly. Drinkwater is responsible for all financial accounting tasks relating to the budget, accounts payable, and payroll for all County departments. She also maintains the data processing system. She works under the general direction of the County commissioners.

7. In early November 2003, the County posted a job announcement for an accounting specialist to assist the finance director.

8. After interviewing the applicants, Drinkwater recommended that the board hire one of the applicants. During the interim, the County commissioners reconsidered their needs and decided to create a new associate finance director position. There had been serious problems when the former finance director quit, and the commissioners wanted to have someone who could step in and take over in the event the finance director either left or was unavailable.

9. On February 9, 2004, the commissioners met and discussed restructuring of the finance department. Drinkwater provided the commissioners with a draft job description of the new associate finance director position, as well as her ideas on how the restructuring should work.

10. On February 20, 2004, in a special session, the commissioners approved the associate finance director position description and authorized Drinkwater to begin the recruitment process.

11. The job description provides that the associate finance director's general duties consist of performing varied and complex accounting and finance functions, including development and analysis of labor proposals. The associate director is required to act in the absence of the finance director and to perform all functions of the finance director.

12. On or about March 22, 2004, the County hired Nicky Alves as the associate finance director. Alves has approximately five years of private sector financial experience. Alves is paid on an hourly basis and works approximately 37½ hours per week. She is paid approximately \$700 every two weeks. This amount varies, however, based upon the actual hours Alves works.

13. Alves is still in training to provide full backup to Drinkwater. Currently, Alves is responsible for accounts payable, preparing quarterly tax reports, payroll, and other duties as assigned.

14. While Drinkwater was on vacation, and at the board's request, Alves obtained comparable pay rate information from other counties. A list of counties was identified by Union representative Wayne Botta. Alves checked budget size and fund balances of all the counties and determined those which she felt most closely compared to the County. She prepared a recommendation which consisted of a review and summarization of the data from other counties and Lake County and gave her opinion on how certain percentage changes would affect the general fund. She gave this information to John Bailey, the County's attorney and chief spokesperson. The board also received a copy of her analysis.² At the board's request, Alves also reviewed the County's health and welfare plans. Historically, this type of information was provided by the finance director.

15. Alves and Drinkwater have not participated in the negotiation sessions. However, Drinkwater has been called in to answer questions on occasion.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The associate finance director is not a confidential employee.

ORS 243.650(6) defines a confidential employee as "one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining." Confidential employees are

²There was no evidence presented indicating whether Alves' information was accurate or whether the board considered her recommendation.

not public employees under the terms of the Public Employee Collective Bargaining Act (PECBA) and are excluded from collective bargaining units. ORS 243.650(19).

This Board applies a three-part test to determine whether an employee is confidential under the PECBA. *OSEA v. Phoenix-Talent School District*, Case No. UC-10-93, 14 PECBR 776, 781 (1993). A position may be determined confidential if it meets all three criteria. First, we look at the person or persons being assisted: does that person(s) actually formulate, determine, and effectuate management collective bargaining policies? If so, does the assistance being rendered involve collective bargaining matters? If it does, is this assistance necessary, thus requiring that the position be excluded from the bargaining unit in order to protect the employer from disclosure of its strategies? *Laborers' International Union of North America, Local No. 121 v. Crook County Park and Recreation Department*, Case No. RC-3-98, 17 PECBR 929 (1999).

Alves currently provides assistance to the board of commissioners, who formulate, determine, and effectuate management policies in the area of collective bargaining. In Drinkwater's absence, and at the board's request, Alves compiled data and gave her opinion on how certain changes would affect the County's budget. We do not know what Alves recommended, nor do we know whether the board even considered, much less adopted, her recommendation. Alves meets the first two criteria. The final question is whether it is necessary that Alves provide this assistance.

We have previously determined that an employee who occasionally compiles collective bargaining data was not a confidential employee, especially when there is another confidential employee who can perform that same work. *OPEU v. City of Beaverton*, Case No. UC-54-86, 10 PECBR 25 (1987). We have also decided that being a backup to a confidential employee is not a basis for exclusion from the bargaining unit. *OSEA v. Clatsop Education Service District*, Case No. UC-93-85, 9 PECBR 8742 (1986). Nor will we deem as confidential an employee who assists in costing bargaining proposals when the work could be performed by a confidential employee. *AFSCME, Council 75 v. Gilliam County*, Case No. UC-39-86, 9 PECBR 8971 (1986).

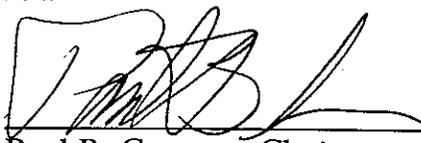
Historically, the finance director has provided financial assistance to the County commissioners and bargaining team. Because of problems experienced with the previous finance director, the commissioners wanted an additional person as backup to the finance director. Although we understand the County's reason for wanting two financial specialists, either of whom can perform all of the required financial duties,

we do not find it necessary that Alves provide this assistance. Nor is it necessary to exclude *both* employees as confidential. Therefore, we conclude, that the associate finance director is not a confidential position and is not excluded from the bargaining unit.

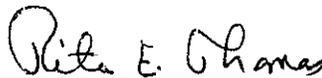
ORDER

The bargaining unit is clarified to include the position of associate finance director.

DATED this 10th day of September 2004.



Paul B. Gamson, Chair



Rita E. Thomas, Board Member

This Order may be appealed pursuant to ORS 183.482.