

The City of Canyonville (City) filed timely objections to the petition.

The issues are:

1. Are the positions of bookkeeper and deputy city recorder confidential employees under ORS 243.650(6) and therefore excluded from the bargaining unit?
2. Are temporary employees included in the bargaining unit under the express terms of the certification description as provided in OAR 115-025-0005(3)?

RULINGS

1. The rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

1. On June 1, 2010, this Board certified IBEW, a labor organization, as the exclusive representative of a bargaining unit of employees employed by the City, a public employer. The bargaining unit includes:

“All regular employees of the City of Canyonville, excluding police officers, supervisors and confidential employees.”¹

2. The City is governed by a council and a mayor. Frank Braudt is the council president and Robert Deaton is the mayor.

3. In April 2010, the City hired Janelle Evans as City administrator/recorder (City administrator). Evans is responsible for implementing City policies and the overall operation of the City. Because of her planning background, Evans also prepares planning reports, which allows the City to stop paying for an outside planning consultant. The prior City administrator job description included finance director responsibility, but this responsibility is not included in Evans' position.

4. IBEW petitioned to represent seven City employees, a deputy city recorder, a bookkeeper, an administrative assistant, and four water/wastewater treatment operators. The parties agree that five of those employees, an administrative assistant,

¹We take official notice of this Board's Certification of Representative in *IBEW, Local Union No. 659 v. City of Canyonville*, Case No. CC-02-10.

and four water/wastewater treatment plant operators are included in the unit. The City alleges that two of the seven employees, the deputy city recorder and the bookkeeper, are confidential employees and should be excluded from the bargaining unit. IBEW alleges that an eighth employee, a temporary utility employee, should also be included in the bargaining unit.

Confidential Employees

5. After IBEW's certification, the council discussed the upcoming bargaining process and decided that its bargaining team would include Council President Braudt, another council member, Mayor Deaton, and City Administrator Evans. The council also decided that Evans needed the assistance of the deputy city recorder and the bookkeeper during the bargaining process. The council believes the deputy city recorder is needed to help draft language proposals and the bookkeeper is needed to compile and analyze financial information in preparing and responding to proposals.

6. The deputy city recorder's job duties include typing letters, memoranda, and other materials from drafts, dictation, and other sources; preparing notices, agendas, and meeting packets for City council, budget committee, and planning commission meetings; typing minutes of City council, budget committee, and planning committee meetings; preparing confidential meeting packets for executive council sessions; attending and typing minutes of council executive sessions; typing ordinances, resolutions, and budget reports; maintaining office files; and managing utility accounts and payments.

7. The deputy city recorder's job description also specifies that the position "assists in the preparation of confidential materials affecting collective bargaining and general management activities relating to employee relations matters."

8. Joan Beckman is the deputy city recorder. She previously worked for the City as the administrative assistant and bookkeeper. In her current position, Beckman acts as the secretary to the city council and the planning and budget committees. She routinely prepares confidential packets for council meetings, attends and takes minutes of council executive sessions, and assists Evans with preparation of the materials for the council. Beckman also assists with any follow-up to these meetings, including transcribing the minutes and any letters or memoranda related to actions taken during the meeting. Beckman has not attended all executive sessions. For example, Beckman was not invited to attend prior 2008-2009 executive sessions during which employee investigations were discussed.

9. Beckman primarily types and proofreads documents prepared by Evans, but may also assist Evans in drafting these materials by conducting research or making editing suggestions. Since the City employees were not previously represented by a labor organization, Beckman has never assisted in preparing collective bargaining materials. The council has excused Beckman from executive sessions until the status of her position is resolved.

10. Beckman was responsible for organizing the interviews and meetings with the candidates for Evans' position. Beckman has not been involved in the hiring of any employees since Evans was hired. Beckman does not handle confidential personnel files. Evans has not asked Beckman for input on employee evaluations, but occasionally has discussed personnel matters with her.

11. The deputy city recorder also backs up the City administrator and the administrative assistant when they are absent. During the period the City was seeking a new city administrator, Beckman drafted materials, ordinances, and resolutions for the council, which she then forwarded to the City's attorney for review. Beckman has never made decisions regarding issues related to Evans' duties in Evans' absence, although she may need to do so in the future.

12. Evans would like the deputy city recorder to attend the negotiation sessions, take minutes, keep track of proposals and other bargaining process matters, and assist in preparation of the City's proposals and other documents during bargaining. The deputy city recorder would also attend and take minutes of council executive sessions concerning negotiations. Evans believes it will be difficult for her to keep track of the bargaining process without the deputy city recorder because Evans will be the primary person speaking for the City. Evans also believes she needs Beckman's assistance during bargaining because Evans already has a full work schedule with her current duties.

Evans also wants Beckman to be available to back her up on bargaining issues when Evans is absent. Evans recently ran into difficulties because she was absent when the City's attorney needed assistance in preparing for this hearing. Evans normally would have asked Beckman to assist the attorney in gathering materials and preparing for the hearing, but did not because of the lack of clarity regarding Beckman's position.

13. The bookkeeper is primarily responsible for paying the City's bills and entering the cash receipts into the computer; monitoring checking accounts and other financial balances throughout the year; preparing the payroll and other payments; making journal entries; and performing other bookkeeping matters. The bookkeeper also assists the City administrator in preparing the City budget, and handles confidential employee personnel files and medical information.

14. Dawn Beebe is the bookkeeper. Although Evans is responsible for developing the City's budget, she relies on Beebe to develop the necessary spreadsheets and other financial information for the budget preparation. Evans does not have the computer skills to develop spreadsheets and does not perform any of Beebe's duties.

15. Beebe recently assisted Evans regarding the City's decision to change health insurance benefits. Evans and Beebe discussed the possible changes and decided which changes to consider. After their discussion, Beebe developed spreadsheets costing out the agreed-upon changes.

16. Evans believes the assistance of the bookkeeper is essential during bargaining to assess and make recommendations on the financial impacts of bargaining proposals. Beebe would need to develop spreadsheets to show the costs of City bargaining proposals, the costs of IBEW's proposals, and the impact of the proposals on the City's budget. The City would need to keep the proposals it is considering confidential prior to providing its response to IBEW. Evans does not believe the City could determine the costs of proposals and the budget impact without Beebe's assistance.

Temporary Employee Issue

17. The City generally hires a temporary employee during the spring and summer as a utility worker to help maintain the City's parks and streets. The temporary employee's duties include mowing, trimming, and edging lawns; cleaning ditches, roadways, and culverts; and repairing and maintaining streets and right-of-ways. The City does not require any certifications for employees hired into this position. The temporary position is paid minimum wage.

18. All other City employees are paid more than minimum wage. No current City employee has previously worked for the City as a temporary employee. Only one temporary employee has worked for two consecutive summers.

19. Due to budget constraints, the City does not currently employ a year-round employee in the position of utility worker. Mark Wilson, one of the current water/wastewater treatment operators, works approximately 20 percent of his time as an operator and 80 percent of his time performing utility worker duties. A wastewater treatment plant operator "[o]perates, monitors and maintains the process, equipment and facilities of an activated sludge wastewater plant and associated collection system." This position requires certifications in waste water collection and treatment. Wilson's

utility worker duties include maintaining the City's park and right-of-ways; eradicating weeds; making gravel and asphalt repairs; and repairing roads. For the past two years, Wilson has been involved in the discussions about whether the City would hire one six-month or two three-month temporary utility workers. The current temporary employee assists Wilson with street projects.

20. The City's current "Employee Handbook," which was adopted May 17, 2010, and became effective July 1, 2010, identifies and defines several employee classifications, including:

"Introductory/probationary Status: Newly hired or promoted employees within the Introductory/probationary period. Newly hired employees normally earn, but cannot use benefits.

"Regular Full-time: An employee who has successfully passed the introductory/probationary period and is regularly scheduled to work 40 hours or more per week. Classification normally is eligible for benefits.

"Temporary: An employee who is hired for a specified period of time, usually no more than six months. This classification is not eligible for benefits."

21. The City's prior "Employee Handbook," which was in effect when this unit was certified, identified and defined employee categories for those employees who were not exempt from overtime pay. The categories are probationary employee, regular full-time employee, regular part-time employee, probationary promotion employee, and temporary employee. The prior handbook defined regular full-time and part-time employees as those who completed their probationary periods, held positions of indefinite duration, and were designated as regular full-time or part-time employees in the City's budget. The handbook defined temporary employees as those "who hold positions which occur, terminate, and re-occur periodically and regularly, regardless of duration, are so designated in the annual budget by the governing body of the City and who are hired for a definite period of time."

CONCLUSIONS OF LAW

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

2. The deputy city recorder is a confidential employee. The bookkeeper is not a confidential employee.

3. Temporary employees are not included in the bargaining unit.

DISCUSSION

Confidential Employees

A confidential employee is “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.” ORS 243.650(6). Confidential employees are not public employees under the Public Employee Collective Bargaining Act (PECBA) and are excluded from collective bargaining units. ORS 243.650(19).

To determine whether an employee is confidential, we apply a three-part test: “(1) Does the allegedly confidential employee provide assistance to an individual who actually formulates, determines, and effectuates management policies in the area of collective bargaining? (2) Does the assistance relate to collective bargaining negotiations and administration of a collective bargaining agreement? (3) Is it reasonably necessary for the employee to be designated as confidential to provide protection against the possibility of premature disclosure of management collective bargaining policies, proposals and strategies?” *AFSCME, Council 75 v. Illinois Valley Fire District*, Case No. RC-38-97, 17 PECBR 493, 498 (1998).

In most cases, a position must currently perform confidential duties to be excluded from the bargaining unit. See *American Federation of State County and Municipal Employees v. Wallowa County*, Case No. UC-10-91, 13 PECBR 265 (1991), *AFSCME Local Union No. 2746 v. Clatsop County*, Case No. UC-4-93, 14 PECBR 434 (1993). Here, however, these City employees have not been represented, so there is no track record of the bookkeeper’s or the deputy city recorder’s involvement in, or assistance with, the collective bargaining process. Where an employer has never dealt with union-represented employees, it is appropriate to consider anticipated duties related to collective bargaining. We consider the employee’s current work assignments and how that work will be modified to provide necessary confidentiality in labor relations matters. *Laborer’s International Union of North America, Local Union No. 320 v. City of Amity*, Case No. RC-13-99, 18 PECBR 350, 359 (1999).

Deputy city recorder Beckman currently assists the City council and the City administrator, the parties who will formulate, determine, and effectuate management policies in the area of collective bargaining. Beckman currently compiles and prepares confidential information for Evans and the council, attends council meetings, including executive sessions, and takes the minutes of these sessions. Once bargaining begins, Beckman's assistance would necessarily make her privy to management's collective bargaining policies and strategies. The deputy city recorder's assistance will necessarily relate to labor relations matters, including negotiations and contract administration. It is therefore reasonably necessary that the deputy city recorder be considered a confidential employee to prevent premature disclosure of the City's labor relations proposals and strategies. *Illinois Valley Fire*, 17 PECBR 493; *City of Amity*, 18 PECBR at 360. Accordingly we conclude that the deputy city recorder is a confidential employee and is excluded from the bargaining unit.

The bookkeeper currently assists the city administrator in all financial matters. She compiles the data the City administrator needs to prepare the budget. Since the City administrator does not have a financial background, she depends on the bookkeeper for assistance in these matters. The City alleges that it will need the bookkeeper's assistance to cost out economic proposals during bargaining. To prevent premature disclosure of its economic proposals and bargaining strategies, the City argues it needs the bookkeeper to be designated a confidential employee.

We note that this is a small bargaining unit. As such, we must determine whether it is reasonably necessary to exclude two potential bargaining unit employees as confidential. Since its inception, the policy of the PECBA has been to ensure that it is reasonably necessary for management to deny an employee the right to be included and participate in the activities of the labor organization of the employee's choosing. *Salem Public School District 24-J v. Oregon School Employees Association*, Case No. C-467, 1 PECBR 370, 373 (1975). To protect the employee's right of participation, to prevent potential abuse, and to preclude unnecessary diffusion of confidential employee status, we established and have long upheld the reasonable necessity standard. *Rogue Community College v. Oregon School Employees Association*, Case No. C-46-80, 5 PECBR 4127, 4130 (1980); *Oregon Public Employees Union v. Department of Justice*, UC-120-87, 10 PECBR 942, 947 (1988). Here, the bookkeeper currently performs certain financial duties because the City administrator lacks the expertise. However, the deputy city recorder has the requisite financial skills; she was the City's bookkeeper prior to becoming deputy city recorder. Certainly it would be more convenient for the City if the bookkeeper were designated confidential. However, we have repeatedly rejected undue proliferation of confidential employee status based on the convenience of the employer. *AFSCME, Council 75 v. North Bend/Coos Curry Housing Authority*, Case No. C-140-84,

8 PECBR 7926, 7030 (1985). Also see *Oregon Public Employees Union, Local 503, SEIU, AFL-CIO, CLC v. City of Beaverton*, Case No. UC-54-86, 10 PECBR 25, 33 (1987) (not necessary to designate employee confidential when there is another confidential employee who can perform the same work). Under these circumstances, it is not reasonably necessary for two employees of this small unit to be designated as confidential. Accordingly, we conclude the bookkeeper is not a confidential employee and is included in the bargaining unit.

Temporary Employee

OAR 115-025-0005(3) provides:

“When the issue raised by the clarification petition is whether certain positions are or are not included in a bargaining unit under the express terms of a certification description or collective bargaining agreement, a petition may be filed at any time; except that the petitioning party shall be required to exhaust any grievance in process that may resolve the issue before such a petition shall be deemed timely by the Board.”

The purpose of an OAR 115-025-0005(3) petition is to determine whether an employee or a group of employees is currently included in an existing bargaining unit. To make such a determination, this Board generally looks only at the express language of the current bargaining unit description. Accordingly, the focus in such cases is very narrow. Where the parties have an honest disagreement about the scope of the bargaining unit based on the interpretation of the certification description or contract recognition language, a subsection (3) petition gives the parties a vehicle to resolve this dispute. *Oregon AFSCME Council No. 75 v. Housing Authority of Portland*, Case No. UC-19-92, 13 PECBR 730 (1992).

A subsection (3) petition, however, does not *add* positions to a bargaining unit. The positions are already in or out based on the certification description and/or collective bargaining agreement. This Board merely interprets the certification or recognition language to determine the *status* of the positions. If the facts indicate the petition is an attempt to expand the unit, the petition is not appropriate under subsection (3) and will be dismissed. *Housing Authority of Portland* 13 PECBR at 735.

The parties did not contemplate temporary employees as part of the bargaining unit when the parties agreed to the list of seven potential bargaining unit employees covered by the certification petition. IBEW did not raise the issue of temporary employees until *after* the City objected to the inclusion of the deputy city recorder and

the bookkeeper as confidential employees. As stated previously, a subsection (3) petition cannot be used to "add" employees to a bargaining unit. Accordingly, we conclude that temporary employees are excluded from the bargaining unit under the terms of the certification description.

ORDER

The petition is dismissed.

DATED this 19 day of October, 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.