

services; Employee Benefits Clerk, accounting; and two Payroll Technicians, accounting (classified and certificated) positions were not confidential.

We have reviewed the entire record, including the proposed decision and the exceptions, thereto, and we affirm the proposed decision of the hearing officer.

FACTUAL AND PROCEDURAL SUMMARY

On November 10, 1987, Redlands Classified Employees Association (Association), the exclusive representative of classified employees, filed a unit modification petition with PERB pursuant to regulation 32781(a)(1).² The Association sought to add nine classifications to the bargaining unit which the District had historically designated as being confidential employer's employer-employee relations.

²PERB's regulations are codified at California Administrative Code, title 8 beginning at section 31001. Regulation 32781(a)(1) states that:

Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for unit modification:

(1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit; . . .

Although the above-stated regulation was amended on January 12, 1989, the amended language does not affect the disposition of this case.

positions: Payroll Technician, accounting; Accountant, special projects; Employee Benefits Clerk, accounting; Duplicating Technician, personnel services; Typing Clerk III, personnel services; Typing Clerk II, personnel services; Administrative Secretary, business services; Administrative Secretary, educational-administrative services; and Secretary III, business services.

An informal settlement conference was held on January 12, 1988, at which the parties agreed that (1) the Administrative Secretary, business services; Administrative Secretary, educational-administrative services; and Secretary III, business services would remain confidential; and (2) the two duplicating technician positions and the Accountant, special projects would be added to the unit.

The District excepted to the hearing officer's findings that the employee benefits clerk and the payroll technicians are not confidential employees. Therefore, the only issue before the Board is classification of the above-described positions.

Employee Benefits Clerk. Accounting

Employee Benefits Clerk Margaret Hickok works in the accounting department under Ron Palmer, Fiscal Services Manager. Palmer reports to the business manager who in turn reports to the superintendent. Palmer testified that he is responsible for the District's budget and is the prime source of information for all fiscal matters in relation to negotiations and factfinding. Specifically, the District negotiating team may request Palmer to

research or compile certain data, and Palmer is on-call to attend negotiating sessions for clarification purposes.

Working under Palmer's direction, the employee benefits clerk has costed out possible changes in benefit coverage for represented employees and has performed back-up research. Hickok testified that, in some instances, she knew the information was related to negotiations, but she did not know the specific purpose of the requested information. Hickok also testified that she acted as Palmer's secretary.

Payroll Technicians. Accounting

Payroll technicians Shirley Jones and Pat Barker also work in the accounting department under Palmer. Jones compiles and prepares payroll for certificated employees while Barker compiles and prepares payroll for the classified employees. The payroll technicians have worked with Palmer in costing out proposals concerning percentage salary increases for the certificated and classified bargaining units, and performed research regarding the salary schedule.

The personnel technicians and employee benefits clerk have been cross-trained to back each other up, when necessary.

DISCUSSION

The hearing officer found that the employee benefits clerk and two payroll technician positions were not confidential based primarily upon his finding that Ron Palmer was not involved in the development of District bargaining proposals or the grievance process.

The District filed exceptions to the hearing officer's finding that the employee benefits clerk and two payroll technicians were not confidential.³ The District asserts that the testimony showed that Palmer is involved in the collective bargaining process in developing proposals and counterproposals and that he regularly uses the employee benefits clerk and payroll technicians to assist him in the bargaining process.

A review of Palmer's testimony shows that he is the prime source of fiscal information relating to negotiations and serves as "back-up" to the District's bargaining team. However, Palmer is not a member of the bargaining team. Palmer, along with the assistance of the employee benefits clerk and payroll technicians, compiles existing data for the District negotiation team. Palmer was not involved in the actual development of proposals for negotiations.

The Board has held that regular contact with personnel information relating to salaries, fringe benefits and budget information does not necessarily relate to the employer's employer-employee relations. (San Diego Community College District (1977) EERB Decision No. 28.)⁴ Furthermore, the Board has found that the compilation of existing data (salary schedules, fringe benefits, payroll records) is a mechanical cost

³No exceptions were filed regarding the hearing officer's finding that the Typist III, personnel services is a confidential position and the Typist II, personnel services is not a confidential position.

⁴Prior to January 1, 1978, the Public Employment Relations Board was known as the Educational Employment Relations Board.

calculation which does not provide confidential knowledge pertaining to the employer's bargaining position. (Franklin-McKinley School District (1979) PERB Decision No. 108, citing, Sierra Sands Unified School District (1976) EERB Decision No. 2.)

For the above-stated reasons, we agree with the hearing officer's finding that Palmer was not involved in the development of District bargaining proposals, and find that the regular duties performed by the employee benefits clerk and payroll technicians do not relate to the employer's employer-employee relations. Accordingly, we affirm the hearing officer's finding that the employee benefits clerk, accounting and two payroll technicians, accounting, were not confidential positions and, therefore, were properly added to the bargaining unit.

ORDER

Having found that the Typist Clerk III, personnel services is confidential, that position is hereby DISMISSED from the Association's unit modification petition and remains confidential. The Association's unit modification petition to add the Typist Clerk II, personnel services, Employee Benefits Clerk, accounting and the two Payroll Technicians, accounting (classified and certificated) is hereby GRANTED.

Chairperson Hesse joined in this Decision.

Member Porter's dissent begins on page 7.

Porter, Member, dissenting: The issue presented is whether three, heretofore "confidential," employees of the Redlands Unified School District (District) should be designated as nonconfidential and placed in the classified bargaining unit.

The evidentiary record in this case gives us the following uncontroverted facts.

Ron Palmer (Palmer) is the District's fiscal services manager and is the supervisor of the District's accounting department. Palmer has the responsibility of preparing the District's budget and is the chief support or source person for the District's bargaining team on fiscal matters pertaining to negotiations. Palmer is involved with the development of the District's initial financial proposals and meets with the District negotiators and the District superintendent. Palmer is in the "stream of communication" with other District managers in connection with the development of the District's initial bargaining position.

Part of what Palmer is regularly called upon by the District's bargaining team to do is to "cost out" possible management proposals and/or counterproposals prior to any one or more, if any, of such proposals or counterproposals—or variations thereof—being selected by the District and presented at the bargaining table.

To provide the "cost out" information to the District's bargaining team on possible management proposals or possible counterproposals, Palmer uses the three "confidential" employees

in his accounting department: an employee benefits clerk-accounting (Hickok), a payroll technician who deals with certificated employee salaries (Jones), and a payroll technician who deals with classified employee salaries (Barker). Such cost outs may involve a singular percentage factor and/or a specific group of employees, or may involve several specific percentage factors designated by the District's bargaining team.

Hickok testified that, in connection with the District formulating its bargaining position, she regularly costs out District proposals prior to them being presented at the bargaining table. Hickok can tell when a requested cost out represents a proposal or counterproposal that the District is considering making. Hickok discusses with Palmer the District's possible salary schedule changes before any such changes are presented at the bargaining table.

Jones testified that she works regularly with Palmer in costing out matters for the District bargaining team, and that she would discuss salary schedule cost outs with Palmer to reach or formulate a proposal that would meet the dollar amount or percentage amount the District bargaining team was considering prior to going to the bargaining table. Jones has discussed District proposals with Palmer, and has even suggested possible management proposals which could achieve certain results for the District.

Barker testified that she costs out various possible District counterproposals before they go to the bargaining

table, and that she would know from the cost out request that the District was considering a counterproposal and what the possible counters might be.

Hickok, Jones and Barker countercheck each other's cost-out calculations before giving them to the District's bargaining team. They also know ahead of time (prior to the District making a proposal or counterproposal at the bargaining table) which, if any particular proposal of a group of proposals the District has decided upon, in that the particular cost out for the proposal would be returned to them for a final recheck of the proposal's cost, before the proposal was presented at the bargaining table.

From the foregoing, it is evident that, in connection with the costing out of possible District proposals and/or counterproposals which are still in the formative, unexecuted stage and which have not yet been adopted by the District and presented at the bargaining table, the three employees (Hickok, Jones and Barker) obtain confidential knowledge of what type of proposals or counterproposals the District bargaining team is considering proposing, including the possible range or scope of such proposals. For example, the three employees become aware not only of the nature or subject matter of possible District proposals or counterproposals, but also of the set percentage, or of minimum and maximum percentages involved and being considered by the District's bargaining team.

This knowledge of what possible proposals and/or counterproposals the District is considering, prior to actually

making any such proposals at the bargaining table, is to be distinguished from that gained through the mechanical costing out of already known proposals or counterproposals after they have been presented at the bargaining table by the District and/or in connection with fact-finding, etc.

Citing San Diego Community College District (1977) EERB¹ Decision No. 28 and Franklin-McKinley School District (1979) PERB Decision No. 108 for the propositions that regular contact with personnel information relating to salaries, fringe benefits and budget information does not necessarily relate to the employer's employer-employee relations, and that "the compilation of existing data (salary schedules, fringe benefits, payroll records) is a mechanical cost calculation which does not provide confidential knowledge pertaining to the employer's bargaining position," the hearing officer and the majority conclude that the three employees (Hickok, Jones and Barker) should not be deemed confidential employees and should be added to the classified bargaining unit.

I would agree with the aforesaid general propositions insofar as the facts of a case meet the narrow factual situations posited by said propositions and decisions. However, I respectfully disagree that said propositions and decisions are applicable or controlling as to the factual situation before us in this case.

¹**Prior** to January 1, 1978, PERB was known as the Educational Employment Relations Board.

San Diego Community College District, supra, EERB Decision No. 28 involved an election and a challenge to certain ballots based on whether various employees were eligible to vote if they were supervisory or confidential employees. The dispute was between rival employee organizations, and the District employer took no position. In holding that various accounting employees were not confidential, the decision sets forth:

In the broad sense all accountants do have access to information regarding wages, fringe benefits, cost of District programs and other financial data which could be described as information relating to employer-employee relations. It is clear, however, that the accountants do not make projections as to future costs which relate to employer or employee negotiations proposals. Such work is performed by budget analysts who are designated confidential employees. It has also not been shown that accountants as a regular part of their duties provide information other than documentation of current computations all of which would be public records under the State Public Records Act.

(San Diego Community College District, supra, EERB Decision No. 28, pp. 17-18; emphasis added.)

Likewise, the Franklin-McKinley School District case did not involve a factual situation such as in the instant case where the employees regularly costed out, and knew they were costing out, possible proposals or counterproposals that were being considered by the District prior to the proposals being selected and/or adopted by the District and presented at the bargaining table.

As expressed by the Public Employment Relations Board in its very first decision dealing with confidential employees:

The assumption is that the employer should be allowed a small nucleus of individuals who would assist the employer in the development of the employer's positions for the purposes of employer-employee relations. It is further assumed that this nucleus of individuals would be required to keep confidential those matters that if made public prematurely might jeopardized the employer's ability to negotiate with employees from an equal posture. (Sierra Sands Unified School District (1976) EERB Decision No. 2, p. 2.)

In the instant case before us, I submit that it would jeopardize the District's ability to negotiate from an equal posture if the employee bargaining team obtains access not only to what possible proposals and/or counterproposals the District is considering prior to their adoption and presentment at the bargaining table by the District's bargaining team, but also obtains knowledge of the minimum-maximum ranges or dollar amounts of proposals under consideration by the District's bargaining team. (Sierra Sands Unified School District, supra. EERB Decision No. 2, p. 2.) Accordingly, I conclude that the three positions in question should remain confidential.

I would deny the Redlands Classified Employees Association's petition insofar as it seeks to add the employee benefits clerk-accounting and the two payroll technicians, accounting (classified and certificated) to the classified bargaining unit. (Gov. Code, sec. 3540.1, subds. (c) and (j).)



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

REDLANDS CLASSIFIED EMPLOYEES)	
ASSOCIATION,)	
)	Representation
Exclusive Representative,)	Case No. LA-UM-433
)	(R-105)
and)	
)	PROPOSED DECISION
REDLANDS UNIFIED SCHOOL DISTRICT,)	(9/21/88)
)	
Employer.)	

Appearances: William B. Bianchi, Executive Director, for Redlands Classified Employees Association; Lozano, Smith, Smith and Woliver, by Sandra Woliver, for Redlands Unified School District.

Before Robert R. Bergeson, Hearing Officer.

This case presents the issue of whether certain classified employees in the Redlands Unified School District (RUSD or District) are "confidential" within the meaning of that term under the Educational Employment Relations Act (EERA or Act).¹

PROCEDURAL HISTORY

Redlands Classified Employees Association (RCEA or Association) was certified by the Public Employment Relations

¹EERA is codified at section 3540 et seq. of the Government Code. All statutory references are to the Government Code unless otherwise specified.

Section 3540.1(c) defines confidential employee as:

"Confidential employee" means any employee who, in the regular course of his or her duties, has access to or possesses information relating to, his or her employer's employer-employee relations.

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

Board (PERB or Board) as the exclusive representative of the District's classified employees on October 28, 1982.²

On November 10, 1987, RCEA filed a unit modification petition with PERB pursuant to regulation 32781(a)(1)³ seeking to add to the unit employees in the following nine classifications which the District had historically designated as being confidential, apparently without dispute from CSEA: payroll technician, accounting; accountant, special projects; employee benefits clerk, accounting; duplicating technician, personnel services; typist clerk III, personnel services; typist clerk II,

²The unit had been represented since May 4, 1976 by a local chapter of the California School Employees Association (CSEA) [I take official notice of PERB case file LA-R-105].

³PERB' ³PERB's regulations are codified at California Administrative Code, title 8 beginning at section 31001. Regulation 32781(1) states that:

32781. Petition.

Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for unit modification:

(1) To add to the unit unrepresented classifications or positions which existed prior to the recognition or certification of the current exclusive representative of the unit;

personnel services; administrative secretary, business services; administrative secretary, educational-administrative services; and secretary III, business services.

Subsequent to RUSD's expressed opposition to the inclusion of any of the positions in the unit, an informal settlement conference was conducted on January 12, 1988, by a Board agent. At that conference the parties agreed that the administrative secretary, business services; administrative secretary, educational-administrative services and the secretary III, business services would remain confidential and that the duplicating technicians⁴ and the accountant, special projects would be added to the unit.

The confidential status of the remaining five positions was left to be litigated through the instant process, which commenced with the conduct of a hearing on March 10 and 11, 1988. After the granting of a request for extension of time in which to file post-hearing briefs, the case was submitted June 6, 1988.

FINDINGS OF FACT

The District is a public school employer and RCEA an employee organization as those terms are defined in sections 3540.1(k) and 3540.1(d), respectively.

Exclusive of hourly personnel, at the beginning of the 1987-88 school year, the District had 1,157 employees, 510 of whom filled positions in RCEA's negotiating unit. It is stipulated

⁴The District has two positions classified as duplicating technician. There are also two payroll technicians.

that eight of the 1,157 positions are properly designated confidential.

Typist Clerk III, Personnel Services

As the typist clerk III, personnel services (TC III), Cheryl Martin reports to Personnel Director Monroe Pederson.⁵

Pederson, who has been RUSD personnel director for about two years, participates in negotiations on behalf of the District with both RCEA and Redlands Teachers Association (RTA), the exclusive representative of the District's certificated employees. He also prepares responses to grievances at level two of the grievance procedure contained in District contracts with RCEA and RTA. The TC III has primary responsibility for answering the telephone and for taking messages and opening and distributing all office mail, including that which transmits confidential negotiating and grievance-processing information on to Pederson from other managers on the negotiating team and from RUSD's legal counsel. Martin obtains as much information as necessary from messages and correspondence in order to direct it to Dr. Pederson or other intended recipients. On one occasion,

⁵Pederson's secretary, Administrative Secretary Connie Krogman, answered affirmatively to a question on direct examination that she is "like the first line supervisor of . . . the typist clerks." Joint exhibit no. 5, an organization chart of the personnel office, revised March 8, 1988, appears to indicate that the typist clerk II and typist clerk III report directly to Pederson. Resolution of this apparent discrepancy is unnecessary for a decision in this matter. In any event, it does appear that much of the typist clerks' work is given them by Pederson through Krogman.

for example, Martin became very uneasy when, in Pederson's absence, a District supervisor insisted upon communicating to her the merits, or lack thereof, of a pending grievance.

Another of Martin's principal duties concerns the selection process to fill vacant positions. In this regard she prepares and distributes flyers for in-house vacancy posting, schedules interviews, types interview questions (from a book prepared by a testing service or from notes given her) and has, at times, sat on interview panels for classified positions, including participating in rank-ordering applicants.

In the course of performing the above functions, Martin has periodically been privy to information which the District would prefer she not share with employee organizations. For example, she estimates that she is involved in some manner with assisting Dr. Pederson with processing grievances about once every 10 days (or in the course of each grievance filed in the District), including typing and duplicating responses.⁶ Also, Martin's involvement in the testing procedure for job applicants has given her access to test scores and interview panel comments and she has spoken with Pederson concerning pending grievances in this area.

⁶Martin testified that during her six months as TC III she had been involved with "more than one" of the six to eight grievances processed by Pederson's office during the past year. Martin had been TC III for half of the year and TC II in Pederson's office the prior six months. Neither she nor Pederson could specify how many of the six to eight grievances were processed during her six-month tenure as TC III.

Typist Clerk II, Personnel Services

Anita Massaro has held the position of typist clerk II, personnel services (TC II) under Dr. Pederson since September 23, 1987.

The TC II keeps a tally of the absences of certificated employees, including the reason given for the absence. Massaro has, consequently, been asked to prepare information for Dr. Pederson through Administrative Secretary Connie Krogman concerning the use of contractual released time by the president of RTA. Similarly, she has duplicated and collated material for factfinding regarding released time for all RTA negotiating team members. The TC II is also responsible for obtaining a substitute to fill in for absent teachers. In addition, Massaro acts as a backup to the TC III in the TC III's absence in performing office telephone answering and mail distribution and assists the administrative secretary, personnel services with duplication and distribution of grievance materials, as necessary - principally during time crunches caused by negotiations. Massaro estimated that in the nearly six months during which she had functioned as TC II, she had duplicated and collated grievance or negotiations documents for a cumulative total of approximately eight hours. She could not specifically remember what type of documents she so handled, nor the particulars of any of the approximately three grievance or bargaining-related messages she may have taken.

Employee Benefits Clerk, Accounting

Employee Benefits Clerk Margaret Hickok works in the accounting department under Fiscal Services Manager Ron Palmer. Responsibilities of the accounting department during contract negotiations with exclusive representatives include costing out topics under consideration by the District to possibly be proposed and union proposals which are on the table.⁷ In that regard, although not a member of RUSD's negotiating committee, Palmer has been brought to the bargaining table on occasion in order to explain the specifics of the District's revenues coming from the state.

The employee benefits clerk has costed out possible changes in benefit coverage for represented employees. She calculated the amount it would have cost the District to add orthodontia to its dental plan pursuant to a union proposal, for example. According to Palmer these figures were considered by the District's negotiating team before a proposal was made but employee organizations could also have obtained such information from RUSD's insurance carriers. Hickok knew these figures were related to negotiations but did not know the specific purpose of such information.⁸ She provided her calculations to Palmer, or

⁷Palmer's primary area of authority is development of the District's budget. Palmer reports to the RUSD business manager,

⁸The following transcript references exemplify her limited knowledge:

Q: Do you know whether, in some cases where you provided information to the District bargaining team, no proposal was made?

his predecessor, who turned them over to Pederson's office. Hickok also ostensibly acts as Palmer's secretary in answering his telephone and doing most of the typing.

Payroll Technician, Accounting

The two payroll technicians (PT's) in the accounting department are Shirley Jones and Pat Barker. Jones handles payroll for certificated employees, Barker for classified. The PTs have costed out union proposals concerning the amount of money associated with percentage salary increases for the certificated and classified bargaining units, respectively. They have made such computations with respect to the pertinent salary schedule and pension fund. As with the employee benefits clerk,

A: I provide the information, whether it gets to the negotiation table, that, I don't know. [Transcript, Volume II, page 4.]

Q: Now, did you know when you did this, when you put together this material to give to [former Business Manager Masters], did you know that there was a connection between the reduced cost of Delta Dental and the District's ability to buy orthodontia?

A: I don't know that there was a relationship between those two. [Transcript, volume II, page 19.]

Q: Do you know whether any negotiations at all took place on insurance this year?

A: No sir. [Transcript, volume II, page 21.]

computations performed by the PT's are provided to the personnel department through their supervisor, the fiscal services manager, and his superior, the business manager.

The PT's and employee benefits clerk have been cross trained to back each other up, as necessary.

DISCUSSION

Public school employers are allowed a "small nucleus" of employees whose function it is to assist the employer in developing its employer-employee relations positions. Sierra Sands Unified School District (1976) EERB Decision No. 2 (Sierra Sands).⁹ In accordance with the Act, such functions must be performed as part of the "regular course of their duties." Fremont Unified School District (1976) EERB Decision No. 6 (Fremont). "Employer-employee relations" includes, at the least, collective negotiations and grievance-processing. Ibid. The exclusion of confidential employees from statutory coverage dictates that section 3540.1(c) be given narrow construction. Los Rios Community College District (1977) EERB Decision No. 18 (Los Rios). Accordingly, an employee must perform confidential duties more than a "fraction" of the time. Ibid.

In San Diego Community College District (1977) EERB Decision No. 28 (San Diego), the Board itself affirmed its hearing officer's decision that systems analyst programmers working for

⁹Prior to January 1, 1979, PERB was known as the Educational Employment Relations Board.

that employer were not confidential employees. Specifically, it was found as a matter of law that, inter alia:

- (1) Access to personnel matters is not necessarily related to "employer-employee relations" (footnote omitted);
- (2) The making of computer runs of prerequisite statistical information without additional evidence appears closer to compiling data than evaluating data. (Id, attached Proposed Decision at p.15.)

Also see Franklin-McKinley School District (1979) PERB Decision No. 108 (Franklin-McKinley) where a business office supervisor was found not to be confidential despite having costed out negotiations proposals and scattergrams showing the number of employees on each range and step of the salary schedule.

However, the administrative secretary to the assistant superintendent for business services was found to be confidential in San Rafael City Schools (1977) EERB Decision No. 32 (San Rafael) where she was responsible for typing financial proposals used during negotiations, even though such work constituted "only a small portion of her time." Id, at p.3 (contrast Los Rios, supra). The administrative secretary to the director of instruction in San Rafael was similarly found to be confidential, even though her typing was confined to certificated (as opposed to classified) employee proposals. Further, secretaries who assisted with "confidential" communications between their bosses (members of the employer's negotiating team) and other managers were found to be confidential in Marin Community College District (1978) PERB Decision No. 55 (Marin). However, the Board later

said in Centinela Valley Union High School District (1978) PERB

Decision No. 62 that:

[T]he small nucleus concept contemplates that only a small number of employees necessary to the employer to do the staff work needed to develop its positions shall be given access to confidential information. Employers cannot unnecessarily distribute confidential information to large numbers of employees and then claim them as confidential. Therefore, in each case in which there is a dispute as to whether positions are confidential, the Board will examine the facts to determine whether the employees in question must necessarily have access to confidential information in the regular course of their normal duties. In this case, the record shows that principals are on the management negotiating team which develops proposals, and on the administrative cabinet which discusses negotiations policies. The record shows that principals receive various documents, such as draft negotiations proposals, through the mail, to which their secretaries currently have access. However, the mere receipt by the secretary's superior of confidential material cannot make the secretary a confidential employee. Persons who open mail are not involved in the development of confidential material and have no essential need to deal with it. To classify them as confidential would allow easy abuse of the "small nucleus" concept articulated in Sierra Sands, since employers could exclude all ~~secretaries~~ from a unit by unnecessarily allowing them access to confidential information.

Therefore, the Board needs additional information on the principal's role in negotiations and grievance processing, particularly as to the types of written responses they are regularly expected to make. Most of the principals testified that if they responded in writing, their secretaries would type their response. But it was unclear whether written responses are a normal or necessary part of the District's negotiating structure. Similarly, the content of such responses was not defined.

The amount of writing that principals are required to do in connection with negotiations is highly significant in determining whether their secretaries are sufficiently involved in developing confidential material. Other important factors are whether secretaries are expected to take minutes of meetings in which negotiations are discussed or to actively organize and maintain negotiations files. (Id, at pp. 7-9.)

To summarize, where there is evidence that secretaries type or otherwise prepare actual negotiation or grievance documents or themselves maintain files of such documents for their supervisor, they will be found to be confidential (assuming such duties are regularly performed). Mere access to draft proposals or memoranda between managers not directly involved in negotiations or grievance adjustment does not constitute sufficient evidence for a finding of confidential status. Cf., Campbell Union High School District (1978) PERB Decision No. 66 (Campbell).¹⁰ See

¹⁰The Board said in Campbell:

The individual must, in other words, have access to or possess sufficient information to warrant the conclusion that the employer's ability to negotiate with employees from an equal posture might be jeopardized, and the balance in employer-employee relations sought to be achieved by the EERA thus distorted, if the information was prematurely made public. (Id, at p. 4, citing Sierra Sands).

In this regard, PERB's policy is consistent with that of the National Labor Relations Board. Contrast United States Postal Service (1978) 232 NLRB 556, 558 [96 LRRM 1271] citing San Diego Transit Corporation (1970) 182 NLRB 428 [74 LRRM 1145] (typing of, or access to, "confidential" personnel memoranda between managers not dispositive of confidential status), with Reymond Baking Company (1980) 249 NLRB 1100 [104 LRRM 1253] (typing of bargaining proposals and other documents containing employer's official labor relations positions and labor-related

also, Dinuba Public Schools (1979) PERB Decision No. 91 (Dinuba) [access to personnel records which do not directly relate to collective negotiations or grievance processing does not, in itself, dictate a finding of confidential status].

Typist Clerk III, Personnel Services

The Association contends that the TC III should not be found confidential since the position's primary duties concern involvement with the filling of positions and such duties are not confidential. While the Association may be correct, to be found confidential, an employee need only perform confidential functions "in the regular course of their duties" (Fremont, supra) even if such duties occupy "only a small portion of her time." (San Rafael, supra).

During negotiations and grievance processing, the TC III regularly takes messages for Dr. Pederson from other managers and RUSD's attorney regarding topics at issue, including concerning their merits. Moreover, she has typed and/or duplicated a negotiations counter-proposal and grievance-related documents for Pederson. Regular access to RUSD's position on the merits of a grievance is information potentially prejudicial to the District should it become known to RCEA, prematurely. Campbell, supra. Hence, the TC III is found to be confidential.

Typist Clerk II, Personnel Services

correspondence compels confidential finding). [It is assumed that the "confidential" information available to the secretaries' managers in Marin involved actual negotiating positions to be taken by the employer.]

The District would have PERB find the TC II to be confidential. The District's position is based on the physical proximity of the incumbent's desk to that of the TC III and two personnel technicians stipulated to be confidential, including that the TC II, Anita Massaro, at times may have access to personnel or grievance files located in separate rooms within the personnel office. The District also contends that Massaro's position should be found confidential since Massaro maintains a log of certificated employee absences, including those for purposes of contract negotiations and contractual released time used by the RTA president. Massaro provided these figures to Dr. Pederson through Connie Krogman to be used during the factfinding process with RTA. RUSD also cites Massaro's functioning as a backup to the TC III in answering the main telephone line and distributing mail in the TC III's absence.

The TC II is not a confidential employee. Since certificated union members who use statutory released time for meeting and negotiating (see Government Code section 3543.1(c)) and are released for contractually-authorized RTA business, this is patently information already known to RTA such that Massaro's divulging of it to RCEA could in no way jeopardize RUSD's ability to deal with the union on an equal basis.¹¹ As to Massaro's

¹¹Further, Massaro's perfunctory contribution to the District's proposal on this can be seen in Krogman's response to a question from RUSD's legal counsel:

Q: [D]id you work with Anita in developing a District counterproposal regarding release[d] time or a District position?

backing up the TC III with respect to answering the telephone and opening and distributing the mail, contrary to Cheryl Martin there is no evidence that Massaro has ever come in contact with confidential information while performing these duties in Martin's absence. The District's contention that she would is mere speculation. Moreover, since she only backs up Martin, Massaro does not perform these duties in the regular course of her work. Fremont, supra.

The fact that Massaro's desk may be physically near personnel files housed in an adjoining room is by no means itself evidence of confidential status (Dinuba, supra), nor is Massaro's proximity to grievance files maintained by Administrative Secretary Connie Krogman in Krogman's separate office. Again, there is no evidence that Massaro has ever accessed these files for any confidential purpose delineated in the above-cited precedent.

Employee Benefits Clerk, Accounting

Even if Employee Benefits Clerk Margaret Hickok does act as Palmer's secretary as asserted by the District and disputed by RCEA and, consequently, would do all his typing, such status is irrelevant to a confidential finding since Palmer is not involved in the development of District proposals, nor is there any

A: Well, she input the information and then it was given to the chief negotiator to do the proposal. [Transcript, Vol. I, at p. 40.]

evidence that he has in any manner been involved in the adjustment of grievances.

Hickok may make cost projections concerning alternatives under consideration at the bargaining table. However, this is not confidential work (San Diego, supra and Franklin-McKinley, supra), particularly here where Palmer does not develop negotiating proposals. Hickok is not a confidential employee. Payroll Technician, Accounting

As with the employee benefits clerk, the payroll technicians do not perform confidential duties simply by costing out financial information for negotiations. They are not confidential.

CONCLUSION

Of the five positions in question, the typist clerk III, personnel services is confidential and will not be added to the unit. The following positions are not confidential: typist clerk II, personnel services; employee benefits clerk, accounting; and two payroll technicians, accounting (classified and certificated) and will be added to the unit.

PROPOSED ORDER

It having been found that the typist clerk III, personnel services is confidential, that position is hereby DISMISSED from RCEA's unit modification petition and remains confidential. As to the other four positions at issue, RCEA's petition is hereby GRANTED and the positions of typist clerk II, personnel services, employee benefits clerk, accounting, and the two payroll

technicians, accounting (classified and certificated) are hereby added to RCEA's unit effective the date this proposed decision becomes final.

RIGHT TO APPEAL

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, part III, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305 and 32140.

Dated: September 21, 1988

ROBERT R.

Hearing Officer