

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
TEAMSTERS UNION LOCAL 252 ) CASE 21496-E-08-3333  
 )  
Involving certain employees of: ) DECISION 10003-A - PECB  
 )  
CITY OF TENINO ) ORDER REMANDING CASE AND  
 ) REOPENING THE RECORD  
 )  
\_\_\_\_\_ )

On January 28, 2008, Teamsters Union Local 252 (union) filed a petition seeking to represent a bargaining unit of police officers and sergeants. During the investigation conference, the City of Tenino (employer) argued that the position of sergeant should not be included in the bargaining unit because the position is supervisory. The union argued that the police sergeant is not supervisory and should be included in the unit.

A cross-check was conducted on March 18, 2008, and a majority of employees voted to be represented by the union. An interim certification was issued on the same date.

The sole unresolved issue concerns the placement of the police sergeant.<sup>1</sup> A hearing was scheduled and held before Hearing Officer J. Martin Smith on May 21, 2008. The employer and the union were

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<sup>1</sup> The parties are advised that Section 2(11) of the National Labor Relations Act is not the proper standard for determining supervisory status in the public sector. For a discussion of the appropriate test when determining supervisory status, see *Ronald Wastewater District*, Decision 9874-B (PECB) 2008.

allowed to call and cross-examine witnesses; however, the only witness at the proceeding was Mayor Kenneth Jones. Neither Sergeant Evans, who currently occupies the police sergeant position, nor his supervisor, Police Chief Vukich, were present at the hearing.

The Legislature has delegated determination of bargaining units to the Commission. RCW 41.56.060 states:

The Commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills and working conditions of the public employees, the history of collective bargaining by the public employees and their bargaining representatives, the extent of organization among the public employees and the desire of the public employees.

Further, pursuant to WAC 391-35-340(1):

It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

In order to effectively discharge the Commission's responsibility for determining appropriate bargaining units, a record must be established, normally through the hearing process; that provides sufficient evidence to make a determination. In this case, Mayor Jones attempted to provide evidence concerning the duties and responsibilities of the police sergeant. Even though Mayor Jones is involved in some decision-making, including hiring of police

officers, he is not a police officer, does not work in the police department, and does not directly supervise the sergeant position at issue. Mayor Jones was not able to testify with certainty concerning some supervisory authorities granted to the sergeant or the extent that those authorities are actually exercised by the sergeant. In sum, it is not clear whether the mayor can knowledgeably testify concerning the day-to-day responsibilities or duties of the sergeant because the relationship between the mayor and the sergeant is too attenuated to provide a reliable record upon which to base a decision concerning unit placement.

ORDER

Accordingly, this case is remanded to the Hearing Officer to adduce testimony from the police sergeant and the police chief concerning the actual duties and responsibilities of the police sergeant and the extent the police sergeant may exercise any supervisory authorities that he may have been granted. The Hearing Officer may call witnesses and question witnesses in order to create a complete record, per the authority conveyed in WAC 391-35-170 and WAC 10-08-200(8) and (9). The hearing should be held as soon as practicable.

Issued at Olympia, Washington, this 13<sup>th</sup> day of October, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director