

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CITY OF LYNNWOOD)	CASE 21595-E-08-3343
)	
Involving certain employees of:)	DECISION 10069-A - PECB
)	
WASHINGTON STATE COUNCIL OF)	ORDER DETERMINING
COUNTY AND CITY EMPLOYEES)	ELIGIBILITY ISSUE
_____)	

Inslee, Best, Doezie & Ryder, P.S., by Katherine F. Weber, Attorney at Law, for the employer.

David M. Kanigel, Legal Counsel, for the union.

On March 14, 2008, the Washington State Council of County and City Employees (union) filed a petition seeking to represent maintenance mechanics employed by the City of Lynnwood (employer).

On April 2, 2008, Sally J. Iverson, Representation Coordinator for the Commission, conducted an investigation conference during which the employer asserted that the position of Automotive Shop Supervisor, currently held by Brian Barrett, should be excluded from the proposed bargaining unit as a supervisor. The union asserted that the position should be included as Barrett's position is not supervisory.

On May 2, 2008, the Commission conducted a representation election to determine if the employees would be represented by the union. On May 13, 2008, the Commission issued an interim certification certifying the union as the representative of the bargaining unit and deferring the unit placement of the shop supervisor to this

proceeding.¹ The interim certification described the bargaining unit as:

ALL FULL-TIME AND REGULAR PART-TIME MAINTENANCE MECHANICS OF THE CITY OF LYNNWOOD, EXCLUDING SUPERVISORS, CONFIDENTIAL EMPLOYEES AND ALL OTHER EMPLOYEES.

On October 13, 2008, Hearing Officer Emily Martin conducted a hearing on whether Barrett should be excluded from the bargaining unit as a supervisor. Both the employer and the union filed post-hearing briefs.

ISSUE

Is the position of Automotive Shop Supervisor appropriately excluded from the bargaining unit as a supervisor?

The Executive Director holds that the Automotive Shop Supervisor exercises sufficient authority on behalf of the employer over subordinates for the position to be excluded from the bargaining unit as a supervisor.

APPLICABLE LEGAL PRINCIPLES

Supervisors are employees within the meaning of Chapter 41.56 RCW and are entitled to organize for the purpose of collective bargaining. *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977). In order to prevent a conflict of interest, supervisors are separated from the bargaining units that contain the employees they supervise. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App.

¹ *City of Lynnwood*, Decision 10069 (PECB, 2008).

599 (1981), *review denied*, 96 Wn.2d 1004 (1981). This principle has been codified in WAC 391-35-340 which states:

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

The determination about whether an employee is a supervisor is based on an examination of their actual duties, and not merely on their job title or description. *Community College District 28 (Bates)*, Decision 10155 (PECB, 2008).

As Chapter 41.56 RCW does not explicitly define the term "supervisor," the Commission has often applied the definition found in the Educational Relations Act, RCW 41.59.020(4)(d). *Granite Falls School District*, Decision 7719-A (PECB, 2003). According to that definition, a supervisor is:

any individual having authority, in the interest of the employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgement . . . the term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

A supervisor can perform a "preponderance" of the supervisory duties in two ways. If a majority of an individual's time is spent on supervisory duties, that individual is a supervisor. *Richland School District*, Decision 10151 (PECB, 2008). Alternatively, an

individual who spends less time performing supervisory duties but performs a preponderance of the enumerated duties, is also a supervisor. *King County*, Decision 10075 (PECB, 2008).

In contrast, a lead worker is an employee who performs some supervisory duties but not enough to qualify as a supervisor. Lead workers may remain in a rank-and-file bargaining unit as they do not have a sufficient conflict of interest to warrant their exclusion. *City of Lynnwood*, Decision 8080-B (PECB, 2006).

ANALYSIS

The position at issue, the Automotive Shop Supervisor, works in the employer's automotive repair shop along with other employees. The shop maintains and services the employer's fleet which includes motorcycles, automobiles, fire trucks, backhoes, bulldozers, graders, dump trucks, hydraulic and air pumps, compressors, generators and fire apparatus. The fleet is used mostly by the employer's fire, police and public works departments.

Four positions work in the shop: the shop supervisor, two heavy equipment mechanics and a vehicle service technician. The shop supervisor performs administrative tasks, such as scheduling repairs and ordering spare parts, and works in the repair shop with the mechanics. The mechanics repair and maintain the existing fleet. The vehicle service technician customizes new equipment, such as adding specialized equipment to new police cruisers or fire apparatus.

The automotive shop is part of the employer's public works department. Barrett's supervisor is Deputy Director of Public Works Lester Rubstello. Rubstello is a mid-level manager who

reports to the employer's director of public works who, in turn, reports to the elected mayor. Rubstello oversees five departments: Water and Sewer Maintenance, Water Treatment, Streets and Storm-water, Traffic and the Automotive Repair Shop. He typically spends only fifteen minutes per day in the automotive shop.

Barrett has been the automotive shop supervisor since November 2007. Before November 2007, he served as the interim shop supervisor for several months after his promotion from a heavy duty mechanic position in the same shop.

Analysis of the Standards of RCW 41.59.020(4)(d)

Assignment of Work

Barrett is responsible for assigning all work in the shop. He authorizes and pre-approves overtime work, and approves employees' leave requests. He has assigned each mechanic to speciality work within the shop and adjusts the mechanics' assignments so that the public safety vehicles are quickly repaired.

Hiring

The testimony establishes that since becoming the shop supervisor, Barrett has been involved in the hiring of a heavy equipment mechanic and the vehicle service technician. In these situations, Barrett worked with the employer's human resources department to advertise the available position and to convene an interview panel. Barrett then served on the panel which interviewed the candidates. The panel then made a hiring recommendation which was approved by the directors of the public works and human resources departments. Rubstello served on one of the hiring panels with Barrett and

testified that Barrett had the overriding voice on the panel, while he was there to assist Barrett who would be responsible for the newly hired employee.

Barrett was responsible for checking references and communicating the employer's job offer to the selected applicant. He was authorized to negotiate the starting position on the salary schedule within a range determined by the human resources department. Barrett checked references, communicated the offer, and negotiated the starting salary in the hiring of the heavy equipment mechanic. But for an injury which kept him from work for an extended period of time, Barrett would have also performed these tasks when the vehicle service technician was hired.

Transfers, Promotions, and Performance Evaluations

No employees in the automotive shop have been transferred since Barrett has become the shop supervisor. Barrett testified that he expects to have input in any transfer of automotive shop employees to other departments. As Barrett has the only position in the shop that is not entry level, there is no opportunity for Barrett to authorize promotions.

Barrett plays an extensive role in the shop employees' performance evaluations. In cases where employees are not at the top of their pay range, the employer uses the performance evaluations to determine whether the employees will receive a step increase. Thus, the evaluations have a definite impact on employees' wages. Barrett drafts the evaluations, both by writing comments and making ratings. He then confers with the evaluated employee and they both sign the evaluation. Afterwards, the public works director and the human resource director review the evaluation. The evaluation is reviewed

for defects, such as being incomplete or containing comments inconsistent with the ratings. Rubstello and the other directors sign the evaluations, but they do not amend or supplement them. For example, in one instance when the director of public works noticed that Barrett's comments were too sparse on an evaluation, he returned it to Barrett for additional comments.

The facts in this case regarding performance evaluations are distinguishable from an earlier case involving the same parties. See *City of Lynnwood*, Decision 8080-B (PECB, 2006). In the earlier case, the Commission affirmed the Executive Director's determination that the employees at issue were lead workers rather than supervisors. That decision was partially based on the lead workers' lack of independence regarding performance evaluations. The lead workers drafted evaluations and reviewed them with their department directors. The department directors could modify the evaluations prior to signing them. For most of the lead workers, the modifications would be made before the evaluation was discussed with the evaluated employee. One lead worker did review draft evaluations with the employees prior to giving the drafts to his department director. Even in that situation, supervisors could make changes to evaluations "as they see fit."

In contrast, Barrett's supervisors do not modify the evaluations. Rubstello testified that "the shop supervisor is solely responsible for performing the annual evaluation" and "essentially, all I try to do is to make sure that the checkbox answers and the text descriptions are supposed to match." Therefore, while Rubstello, the director of public works and the human resource directors sign evaluations before they are placed in the employees' files, it is Barrett's independent judgement that is reflected in the performance evaluation process of the automobile shop.

Discipline, Suspension and Discharge

Only one instance of employee discipline has occurred since Barrett became the shop supervisor. Barrett independently conducted a verbal counseling and worked with the employee to provide additional training to correct the performance issues.

From the evidence presented by his supervisors, Barrett has the authority to recommend the most serious levels of discipline, such as suspension and discharge. During the tenure of the previous shop supervisor, an employee was terminated. The previous shop supervisor documented the employee's performance problems and effectively recommended the discipline that ultimately ended with the termination. The record indicates that Barrett has the same authority as the prior shop supervisor.

Adjustment of Grievances

No grievances have been filed by automotive shop employees since the creation of the shop supervisor position. Prior to this union being certified, the employer's grievance procedure for non-represented employees applied to all the shop employees. According to this procedure, Barrett has the initial responsibility to respond to employees' grievances. Rubstello does not have a role. If a grievance is not resolved with Barrett, the next step in the grievance process calls for a written complaint to be submitted to the public works director.

CONCLUSION

The totality of the evidence in the record shows that Barrett is a supervisor whose presence in the bargaining unit would create a

conflict of interest with the rank-and-file employees represented by the union. He assigns the work of the current employees, and is largely responsible for hiring new employees. He is responsible for drafting performance evaluations that determine whether employees receive pay raises. Barrett would have input in the event of an employee transfer. Barrett has conducted verbal counseling and could effectively recommend an employee's termination or suspension. Under the present circumstances, Barrett is responsible for addressing employee's grievances at the first step. In all, Barrett performs a preponderance of the supervisory functions. Because of these supervisory responsibilities, the position is appropriately excluded from the bargaining unit.

FINDINGS OF FACT

1. The City of Lynnwood is an employer within the meaning of RCW 41.56.030(1).
2. The Washington State Council of County and City Employees is a bargaining representative within the meaning of RCW 41.56.030(3) and is the exclusive representative of all the employees classified as maintenance mechanics.
3. Brian Barrett currently holds the position of Automotive Shop Supervisor.
4. Barrett reports to the deputy director of public works who is responsible for four other departments and reports to the director of public works. The director of public works reports to the mayor.

5. Barrett assigns the work to the employees in the automotive shop and schedules repairs. He approves overtime and leave requests.
6. Barrett is very involved in the hiring in the automotive shop. He works with the human resources department to advertise positions. He is part of the interviewing panel and the evidence showed that his input is the most influential. He checks references, presents the offer of employment, and negotiates the starting position on the salary schedule.
7. Barrett is responsible for performance evaluations, which are signed by his supervisors only after the employee and Barrett discuss and sign them. These evaluations are used to determine whether employees will receive a step increase in their wages.
8. Barrett would have input in the transfer of an employee from the automotive shop to another department.
9. Barrett has the authority to discipline employees. He can independently issue verbal counseling and effectively recommend serious discipline, such as termination or suspension.
10. Barrett is the first step of authority to resolve employee grievances.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. The position of Automotive Shop Supervisor is a supervisor under WAC 391-35-340 and is appropriately excluded from the automotive shop bargaining unit represented by the union.

ORDER

The Automotive Shop Supervisor is excluded from the automotive shop bargaining unit represented by the Washington State Council of City, County and State Employees.

Issued at Olympia, Washington, on the 3rd day of March, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.