

King County, Decision 10257 (PECB, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
TEAMSTERS LOCAL 117) CASE 21901-E-08-3385
)
Involving certain employees of:) DECISION 10257 - PECB
)
KING COUNTY) DIRECTION OF CROSS-CHECK
_____)

Spencer Nathan Thal, General Counsel, for Teamsters Local 117.

Camille Eckhart, Labor Negotiator, for the employer.

Jacob Metzger, Union Representative, for the intervenor, International Federation of Professional and Technical Engineers Local 17.

On July 30, 2008, Teamsters Local 117 (Teamsters) petitioned to represent a group of ten Administrator I's in the Transit Division of the King County Department of Transportation (employer).

Representation Coordinator Sally Iverson held an investigation conference on August 25, 2008. At that time, International Federation of Professional and Technical Engineers, Local 17 (Local 17) intervened. During the investigation conference, the parties were unable to stipulate to the propriety of any bargaining unit.

The Teamsters modified its petition and now seeks to represent all Administrator I employees in the Transit Division who report to transit section managers, except for a single Administrator I who works in the Design and Construction Division. The Teamsters asserted that the employees listed in the revised description were not represented by any union, while Local 17 asserted that the

employees listed in the revised description were, because of a reclassification, covered under its current collective bargaining agreement. The employer did not, at that time, take a position regarding the appropriate bargaining unit for these employees. On September 24, 2008, Hearing Officer Charity L. Atchison conducted a hearing to determine whether the petitioned-for employees were currently represented, and whether the petitioned-for employees shared a community of interest.

ISSUES

1. Whether the petitioned-for employees are currently represented?
2. Whether the petitioned-for employees share a community of interest sufficient to constitute their own bargaining unit?

The Executive Director concludes that the petitioned-for employees are not currently represented by any labor union, and the petitioned-for employees share a sufficient community of interest to form a separate bargaining unit. A cross-check is ordered.

ISSUE 1

Whether the petitioned-for employees are currently represented?

Analysis

The petitioned-for employees are classified under the broad job classification of Administrator I. According to King County Labor Negotiator David Levin, the administrator job classification is a "catch-all." There are employees working in the administrator job classification throughout the employer's operation. In the

professional and technical bargaining unit, Local 17 represents one employee classified as Administrator I.

The road the petitioned-for employees traveled in order to be classified as Administrator I is long and impenetrable in parts. While the petitioned-for employees have always supported section managers, their job classification has changed over time.

Virginia (Penny) Clevenger, who has been in her position for almost 11 years, began working in the job classification of Administrative Specialist III, and performed the same job she performs today. She, along with the other petitioned-for employees, was reclassified to administrative staff specialist before being classified as Administrator I. Levin testified that the official date of reclassification to Administrator I was January 1, 2003.

For many years, the employer viewed the petitioned-for employees as confidential employees having a sufficient labor nexus to be deprived of their statutory right to collective bargaining. Joy Pakulak, who has held her position for 10 years, testified that, to her knowledge, the confidential status ceased around 2003 to 2004, around that time that the employer reclassified the employees to Administrator I.

None of the parties to this case were certain of when the employer ceased to consider the petitioned-for employees as confidential. At the very latest, by July 3, 2008, the employer had ceased to consider the petitioned-for employees confidential. July 3, 2008 is an operative date because this is when the Commission certified Teamsters as the exclusive bargaining representative of the transit section managers, to whom the petitioned-for employees report. It stands to reason that the employer did not consider the petitioned-

for employees' supervisors to be confidential, so the petitioned-for employees could not be considered confidential.

The petitioned-for employees have never been represented for purposes of collective bargaining. Because the employer considered the petitioned-for employees confidential, they were excluded from their statutory right to be represented.

In December 1996, the Commission certified Local 17 as the exclusive bargaining representative of "all full-time and regular part-time professional and technical employees of the King County Transit Division. . ." *King County*, Decision 5785 (PECB, 1996). Local 17 asserts that its collective bargaining agreement with the employer encompasses the petitioned-for employees because the Administrator I job classification is listed in the agreement's appendix.

Although no one could state for certain when the employer ceased considering the petitioned-for employees as confidential, the employer did not, at any time, notify Local 17 of the change in the petitioned-for employees' confidential status. In fact, Local 17 claims that it did not learn that the employer no longer considered the petitioned-for employees confidential until the Teamsters began organizing the employees. However, in the five years following reclassification of these employees to Administrator I, Local 17 never raised questions regarding their continuing confidential status, and made no effort to represent the petitioned-for employees until after the Teamsters filed the representation petition. Simply because Local 17 represents one or more Administrator I's does not mean the petitioned-for employees are automatically included in its bargaining unit.

Conclusion

The petitioned-for employees are not currently represented for collective bargaining purposes. At the time the Commission certified Local 17 as the exclusive bargaining representative of the professional and technical employees in the Transit Division, the petitioned-for employees were considered confidential. While it is unclear when the petitioned-for employees ceased to be considered confidential, and while the employer failed to give Local 17 notice of any change in their confidential status, Local 17 took no steps to assert jurisdiction over these employees until after the Teamsters began their organizing drive leading to this petition.

ISSUE 2

Having determined that the petitioned-for employees are not represented, the question concerning whether the employees share a community of interest sufficient to constitute their own bargaining unit?

APPLICABLE LEGAL PRINCIPLE

Under RCW 41.56.060 the Commission is charged with determining appropriate bargaining units.¹ The goal is to group together employees with sufficient similarities (community of interest) to

¹ In addition to determining whether a bargaining unit is appropriate, a determination as to whether certain employees will be accreted into existing bargaining units is a decision for the Executive Director to make, not a decision for the employer. Levin testified that he has authority to handle accretion requests, stating the discussion often "starts and stops" with him. This Commission has a duty to see that employees' rights of self-determination are protected.

indicate they will be able to bargain effectively with their employer. *King County*, Decision 5910-A and 5911-A (PECB, 1997). The statute does not require the determination of the most appropriate bargaining unit; it is only necessary that the petitioned-for unit be an appropriate unit. *City of Winslow*, Decision 3520-A (PECB, 1990).

When determining whether a bargaining unit is appropriate, the Commission considers the duties, skills, and working conditions of the employees; the history of collective bargaining by the employees and their bargaining representative; the extent of organization; and the desires of the employees. RCW 41.56.060. Unit determinations are made on a case-by-case basis. No one factor is overriding or controlling. *Bremerton School District*, Decision 527 (PECB, 1979). All four factors need not be present in each and every case. Rather, the Commission applies the statutory criteria collectively to determine the existence of a community of interest among the employees. *Benton County*, Decision 7651-A (PECB, 2003). The Commission seeks to avoid stranding employees, proliferation of multiple bargaining structures, and conflicting work jurisdiction claims.

Analysis

In order to determine whether the petitioned-for employees share a sufficient community of interest, it is necessary to first examine the structure of the employer's organization. Second, the statutory criteria will be applied.

Structure of the Transit Division:

The petitioned-for employees work in the Transit Division of the King County Department of Transportation. The Transit Division is headed by the division manager, who is also called the general

manager. The Transit Division is divided into nine sections which are headed by transit section managers. Each transit section manager has at least one Administrator I assigned to support his or her office. Reporting to the transit section managers are supervisors, chiefs, professional and technical employees, bus operators, and other employees within the Transit Division.

Transit Division sections vary in size. For example, the operations section, the largest section in the Transit Division, consists of over 2000 employees and includes the King County Metro bus operations. Jim O'Rourke is the transit section manager overseeing the operations section. Approximately 25 supervisors report to him. Given the size of the operations section, it is not surprising that two employees classified as Administrator I, Clevenger and Mary Stevens, are assigned to support O'Rourke's office. In contrast to the operations section, the para-transit/rideshare section is much smaller, approximately 75 people. Park Woodworth is the transit section manager of the paratransit/rideshare section. One Administrator I, Pakulak, is assigned to support Woodworth.

Duties and Skills:

The Administrator I position is an entry-level classification. The petitioned-for employees support the transit section managers. The petitioned-for employees answer the phone, direct calls, and schedule meetings for the transit section managers. The petitioned-for employees schedule grievance hearings; attend meetings about grievances, though they are not part of the decision-making process; research the applicable collective bargaining agreements; and complete grievance paperwork.

Pakulak testified she handles correspondence that comes in to her section's office from the general manager. She determines who the correspondence should go to, determines whether the correspondence needs a signature, and, if a signature is needed, provides a deadline for returning the correspondence. She hands out assignments to supervisors. When requested, Pakulak creates and updates the employee website/handbook and sends a link to the employees. She updates staff about travel regulations and rules and is working on merit pay. Pakulak testified she does pretty much any work Transit Section Manager Woodworth assigns to her.

Clevenger, who supports the operations section manager, deals with payroll, purchasing, capital assets, and the operator uniform program. Both of the petitioned-for employees work on other projects as directed.

Both Pakulak and Clevenger testified that the petitioned-for employees have significant daily interaction with the transit section manager to whom they report. The petitioned-for employees often set their hours to match the hours of the transit section manager. As Levin testified, the petitioned-for employees are essentially "personal assistants of the section management."

Local 17 represents only one Administrator I, June Kamau. Kamau reports to Safety and Health Supervisor Michael Lemeshko, who is not a transit section manager. Kamau is responsible for the administration of many programs including: the safe driver award program; the traffic accident program, which she helped develop; verification of operator CDLs; and coordination of the bus rodeo. Kamau prepares correspondence, authorizes travel and expense reports, works on payroll, and generates statistics and monthly reports. Kamau also oversees two administrative staff and trains back-up staff.

The job duties of the petitioned-for Administrator I's and the Administrator I position represented by Local 17 are different. First, the petitioned-for employees provide direct administrative support to the transit section managers. In contrast, Kamau is not the direct administrative support to a transit section manager; rather, she reports to a supervisor, and there is no evidence Kamau is the supervisor's direct administrative support. Transit supervisors have administrative support employees classified as Administrative Specialist III. The fact that the main function of the petitioned-for employees is to support high level managers is a significant distinction in the job duties of the petitioned-for employees and the Administrator I represented by Local 17.

Second, the Administrator I position represented by Local 17 is responsible for a broad range of programs. It is true that Clevenger and Pakulak both administer certain programs; however, the petitioned-for employees' primary duty is to support transit section managers.

Third, the petitioned-for employees do not have any lead duties. While the testimony of Kamau is limited, she did testify she oversees other administrative staff.

While all of these positions perform administrative functions, and there is some overlap in duties, such as both Clevenger and Kamau's responsibility for payroll, the primary functions of the job are different.

Working Conditions:

The employer maintains various employment locations throughout King County. Eight of the ten petitioned-for employees work in the King Street building. Pakulak works in a building on Yessler, and Pamela Paul works in the rail and operations maintenance facility

in Georgetown. The employees represented by Local 17 in the professional and technical bargaining unit work in far more numerous locations, including the King Street building, and all of the employer's transit bases: Atlantic, Bellevue, Central, East, North, Ryerson, and South Base. Kamau works at South Base in Tukwila.

The reporting structure for the petitioned-for employees differs from the reporting structure of the Administrator I position represented by Local 17. Kamau reports to Supervisor Lemeshko. With the exception of Clevenger, who has a dual reporting structure, the petitioned-for employees report only to transit section managers.

Clevenger works as an Administrator I in O'Rourke's office. Two Administrator I's, Clevenger and Mary Stevens, are assigned to O'Rourke's office, the largest section in the Transit Division. Also working in O'Rourke's office are Assistant Manager Vicki LaRitz and Supervisor of Planning and Technology Ralph Keyport. Clevenger testified she reports to Keyport, and Keyport conducts her performance appraisal. However, Clevenger also testified she is the transit section manager's administrator and works closely with O'Rourke and Stevens. Clevenger and Stevens both support Keyport, LaRitz, and O'Rourke. The record supports that Clevenger has a dual reporting structure.

Local 17 argues that Clevenger does not report to O'Rourke, thus should not be included in the petitioned-for bargaining unit; that including Clevenger's position in a separate bargaining unit would ultimately lead to work jurisdictional disputes; and that if the petitioned-for bargaining unit is appropriate, Clevenger should not be included, but should be accreted to the Local 17 bargaining unit.

Clevenger's status as an employee with a dual reporting structure neither automatically excludes her from the petitioned-for bargaining unit nor renders the petitioned-for unit inappropriate. Additionally, Clevenger is an administrator assigned to a transit section manager's office, not an administrative specialist III assigned to support a transit supervisor or an Administrator I who reports to a supervisor. Thus, Clevenger's inclusion in this bargaining unit is appropriate.

Extent of Organization:

The employer has 70 bargaining units, many of which the employer voluntarily recognized. There are nine units within the Transit Division. The employer argues that the addition of the petitioned-for bargaining unit would further fragment the employer's workforce, thereby creating more work for the employer's labor relations staff. In its brief, the employer favors accretion of the petitioned-for employees to the professional and technical unit. It is clear that the employer's operation is already fragmented. The addition of this bargaining unit does not significantly alter that situation. Employer ease and convenience do not supercede the rights of employees.

Bargaining Unit Description:

The Teamsters have modified their proposed bargaining unit description to include:

All administrator I's of King County in the department of transportation who report to transit managers, excluding administrator I's who report to transit supervisors, confidential employees and employees in the design and construction section.

Testimony indicates that the Administrator I position that reports to the design and construction transit section manager is unrepresentative.

sented. However, the employee filling the position has acting status and is represented by the Technical Employees Association. Positions, not people, are used to determine bargaining units, as the people in the positions will change with time. Thus, the position is an unrepresented position, was considered confidential at one time and, like the other petitioned-for employees, is no longer confidential.

Two petitioned-for employees and the Administrator I represented by Local 17 testified. No testimony was presented regarding the duties of the Administrator I who reports to the transit section manager overseeing the Design and Construction Section. However, testimony from the petitioned-for employees revealed that all of the employees reporting to transit section managers have generally the same skill set and perform the tasks necessary to directly support the transit section manager to whom they report. There is no reason to conclude that the Administrator I who reports to the transit section manager of the Design and Construction Section has different duties, skills, and working conditions than the petitioned-for employees. To omit that position from the proposed bargaining unit raises the danger of stranding that position without the possibility of inclusion in an appropriate bargaining unit. Thus, the Administrator I position in the Transit Division Design and Construction Section will be included in the bargaining unit.²

² Notice is taken of Case 22023-E-08-3397, in which the Teamsters have petitioned to represent the employer's employees in the Design and Construction Section. Currently, the employees in the Design and Construction Section are represented by the Technical Employees Association.

Conclusion:

All Administrator I's who report to transit section managers share a community of interest and constitute an appropriate bargaining unit. The Representation Coordinator granted Local 17 intervention based on Local 17's representation that it represented the Administrator I's. Because Local 17 is not the representative of the employees at issue in this case, and because it did not submit a showing of interest, Local 17 is no longer a party in this representation proceeding.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(1).
2. Teamsters Local 117 is a bargaining representative within the meaning of RCW 41.56.030(3). The Teamsters petitioned to represent a bargaining unit of employees classified as Administrator I who report to transit section managers in the King County Department of Transportation Transit Division.
3. IFPTE, Local 17, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of professional and technical employees within the King County Department of Transportation Transit Division. That bargaining unit includes one employee classified as Administrator I.
4. The Administrator I's who report to transit section managers were once considered confidential and have never been represented for purposes of collective bargaining. The employer no longer considers them to be confidential employees.

5. Local 17 has never represented the Administrator I positions that report to transit section managers and is not the incumbent bargaining representative.
6. The Administrator I positions involved herein report to transit section managers. Petitioned-for employee Virginia Clevenger has a dual reporting structure to a transit section manager and a supervisor within the transit section manager's office.
7. The Administrator I positions reporting to transit section managers provide administrative support for the transit section managers and perform a wide array of administrative tasks.
8. IFPTE Local 17 represents one employee classified as an Administrator I, June Kamau. Kamau reports to supervisor Michael Lemeshko. Kamau administers programs including the safe driver award, traffic accident, driver CDLs, and bus rodeo. Kamau prepares correspondence, authorizes travel and expense reports, works on payroll, and generates statistics and monthly reports. Her reporting relationship and primary job duties differ from those of the petitioned-for employees.

CONCLUSIONS OF LAW

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

2. Employees in the Administrator I job classification who report to transit section managers share a community of interest and constitute an appropriate bargaining unit.

DIRECTION OF CROSS-CHECK

A cross-check of records shall be made by the staff of the Public Employment Relations Commission in the appropriate bargaining unit described as:

All full-time and regular part-time Administrator I's employed by King County in the Transit Division of the King County Department of Transportation who report to transit section managers, excluding all other employees.

to determine whether a majority of the employees in that bargaining unit have authorized Teamsters Local 117 to represent them for purposes of collective bargaining.

Dated at Olympia, Washington, this 19th day of December, 2008.

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 391-35-210.