

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES, LOCAL 1516)	CASE 15007-C-00-967
)	
For clarification of an existing)	DECISION 7204 - PECB
bargaining unit of employees of:)	
)	
CITY OF LAKEWOOD)	ORDER CLARIFYING
)	BARGAINING UNIT
)	

Audrie B. Eide, General Counsel, appeared on behalf of the union.

Daniel B. Heid, City Attorney, appeared on behalf of the employer.

On January 26, 2000, the Washington State Council of County and City Employees, Local 1516 (WSCCCE) filed a petition with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking clarification of an existing bargaining unit of employees of the City of Lakewood (employer). A hearing was conducted on June 7, 2000, before Hearing Officer Katrina I. Boedecker. The employer filed a Hearing Memorandum on June 7, 2000; the parties made oral closing arguments at the hearing in lieu of written briefs. Authority to determine this eligibility dispute has been delegated by the Executive Director to the Hearing Officer, under WAC 391-35-190(2).

The Hearing Officer concludes the employee holding the position in dispute has sufficient independent authority to warrant exclusion from the existing bargaining unit as a supervisor.

BACKGROUND

The City of Lakewood was incorporated on February 28, 1996, and subsequently established a Municipal Court under Chapter 3.50 RCW.

On September 30, 1998, the WSCCCE was certified as exclusive bargaining representative of the office assistant, court clerks and the lead clerk in the Lakewood Municipal Court.¹ There are currently six employees in the unit.

Prior to January 1, 2000, the court clerks and lead court clerk reported to the court administrator who, in turn, reported to the assistant to the city manager. However, the employer's organizational structure was changed in January 2000. Under the new arrangement, the court clerks report to the newly-created position of "court operations supervisor" who reports to the court administrator. The new position was filled by the former lead clerk.

When the petition was filed, on January 26, 2000, the parties had just concluded negotiations on their first collective bargaining agreement. The agreement was signed on February 4, 2000, and describes the bargaining unit as:

[A]ll regular full-time and regular part-time employees of Lakewood Municipal Court **excluding** confidential and **supervisory employees**.

[Emphasis by **bold** supplied].

Though reference to the lead court clerk position remains in the collective bargaining agreement, the position no longer appears on the employer's 2000 organizational chart.

¹ City of Lakewood, Decision 6401 (PECB, 1998).

The departmental organization chart and testimony in this matter disclose that the court operations supervisor, Sandra Piro, is responsible for five court clerks. The evidence concerning possession and exercise of authority and independent judgment regarding those subordinates is summarized as:

- Hiring - Beginning with the last new hire, Piro serves as one of three equal members of the hiring panel. The panel, comprised of Piro, the court administrator, and the human resources analyst, makes its recommendations to the city manager who is the ultimate hiring authority.
- Assignment of work - The work schedule in the department is basically set. However, Piro makes any daily or weekly adjustments to the schedule. She also is the person who approves, albeit informally, overtime.
- Promotion, Transfer, Layoff or Recall - There is no evidence that either Piro or the court administrator has more than the authority to make effective recommendations in any of the areas in this group. The ultimate authority rests with the city manager.
- Suspension, Discipline or Discharge - The evidence indicates that no discipline has yet been meted out above the informal counseling level. However, Piro has the authority to issue discipline up to and including a written reprimand. Only discipline above a verbal warning must be reviewed by the human resources department. Again, only the city manager has the ability to suspend or discharge.
- Adjustment of Grievances - Apparently, no grievances have been filed in the department to date, and no evidence was provided on how grievances would be handled. However, Piro has given a written directive to one employee, and testimony indicated

she would have the authority to solve employee-related performance problems.

- Evaluations - Piro will draft, review and sign evaluations of the employees in the bargaining unit.

Even where the city manager retains authority, Piro's recommendations have a weight that was lacking in her former "lead" position.

POSITIONS OF THE PARTIES

The WSCCCE argues that the court operations supervisor position is nothing more than the lead court clerk position renamed. It asserts the court operations supervisor does not have the necessary supervisory duties to warrant removal from the bargaining unit.

The employer argues that, as a relatively new and evolving organization, it has had to make significant changes to its organizational flow since the unit was certified in 1998. The employer concedes that the court operations supervisor position may not have met every element of "supervisor" when it was implemented on January 1, 2000, but the employer contends the position has evolved, since that time, into a legitimate supervisory position requiring exclusion from the bargaining unit.

DISCUSSION

Definition and Placement of Supervisors

The determination and modification of bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

... 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. ...

Recognizing the potential for conflicts of interest if supervisors and their subordinates are included in the same bargaining unit, the Commission has routinely exercised its unit determination authority to exclude supervisors from units in such situations. See, City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), and numerous subsequent decisions applying those principles in various employment settings.

Because Chapter 41.56 RCW does not contain a definition of "supervisor", the Commission consistently looks to the definition found in the Educational Employment Relations Act (EERA), at RCW 41.59.020(4)(d):

[S]upervisor ... means **any employee having authority, in the interest of an 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 judgment.** . . . The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

[Emphasis by **bold** supplied.]

Except for the "preponderance" test, the EERA definition is patterned after the exclusionary definition in Section 2(11) of the National Labor Relations Act.

The 10 types of authority specified in the EERA and NLRA definitions of "supervisor" have been utilized in numerous cases to determine supervisor status. In Benton County, Decision 6990 (PECB, 2000), where one of the positions at issue was a "cashiering supervisor" in a court, evaluation under those 10 elements and the "preponderance" test resulted in a conclusion that the disputed position did not have sufficient independent authority to warrant exclusion from the bargaining unit as a supervisor. Conversely, where an employer revised its organizational structure a year after a certification and the union claimed that several previously-excluded positions no longer had supervisory authority sufficient to warrant their exclusion, the Commission concluded in Lakehaven Utility District, Decision 5401 (PECB, 1995), that the supervisory exclusions should continue under the new structure.

The Commission distinguishes supervisors from "lead workers", who merely direct the work of other employees and lack the power to independently make substantial changes to the employment relationship. Such employees are routinely included in bargaining units with the employees they lead. See, City of Blaine, Decision 6122-A (PECB, 1998); Snohomish Health District, Decision 4735-A (PECB, 1995); and Franklin County, Decision 5192 (PECB, 1995).

Application of Standards

The Employer's Job Description is Inconclusive -

Comparison of the job descriptions for the former and current positions provides at least a first step toward determining whether

the disputed court operations supervisor is, in fact, a supervisor whose exclusion from the bargaining unit is warranted, or merely a dressed up version of the lead court clerk position:²

Lead Court Clerk

- Reports to Ct. Administrator
- In the absence of Ct. Admin., assumes duties
- Serves as a court clerk
- Performs record-keeping/ clerical duties
- Trains & provides technical guidance to clerks
- Provides court-related information to the public
- Assists in selection of new clerical personnel
- N/A
- N/A
- N/A
- N/A
- Sets & tracks cases
- Maintains warrant control & time pay accounts
- Tracks prisoners
- Calculates/accepts/accounts for bail, fines, etc.
- Prepares & processes forms, orders & documents
- Screens & assists domestic violence victims in filings

Court Operations Supervisor

- Reports to Ct. Administrator
- In the absence of Ct. Admin. **serves as Acting Ct. Admin.**
- Serves as a court clerk
- Performs record-keeping/ clerical duties
- Trains and provides technical guidance to clerks
- Provides court-related information to the public
- **Makes hiring recommendations on new clerical personnel**
- **Performs personnel evaluations**
- **Administers low-level discipline**
- Develops procedures of operational functions of the court
- Oversees collections/accounting functions of the court & special projects
- N/A
- N/A
- N/A
- N/A
- N/A
- N/A

² Job descriptions promulgated by employers are never controlling. In Benton County, supra, the job descriptions provided no useful comparative information.

Several of the differences between the job descriptions in this case however (as indicated with emphasis by **bold**, above), provide *some indication*, though not conclusive evidence, that the court operations supervisor position is tasked with a greater degree of responsibility when it comes to directing personnel performance and behavior versus the lead court clerk's directives focused at overseeing the daily functions of the court.

Disputed Position Exercises Hiring Authority -

The record establishes that Piro's participation in the most recent hiring of a court clerk was as an equal member of the hiring panel. This constituted a significant change. When she held the lead court clerk position, she may have participated in the hiring process, but she was not an equal member of the panel.

Authority to Assign Employees -

In her new position, Piro can, and does, assign daily work to the other employees in the office. She did not do this when she was the lead court clerk, as her authority then stopped at gathering information and problem-solving under her supervisor's direction. In addition, Piro can now approve overtime hours as court operations supervisor, where she could not do so when she was the lead court clerk. This compares to Lakehaven Utility, supra, where the "senior accountant" excluded as a supervisor conducted training, assigned work, handled scheduling, approved leaves, and had authority to approve overtime. See also, Benton County, supra.

Authority to Discipline and Adjust Grievances -

There has only been one occasion since January 1, 2000, when an employee needed informal counseling from a supervisor. In that instance, Piro provided the written directive. The Commission also dealt with a new organization in Lakehaven Utility, supra:

The union contention that [the employee] had not performed some of the supervisory activities claimed by the employer must be evaluated in light of the fact that she had been in the supervisory position for only four months at the time of the hearing.

Therefore, this limited exercise of disciplinary authority is enough, where the record reveals an expectation that Piro will be the department's disciplinarian, with the authority to issue written reprimands if necessary.

Evaluation of Subordinates -

In Benton County, supra, the disputed supervisor merely drafted evaluations of fellow bargaining unit members for signature by her supervisor. Piro, on the other hand, will draft and sign the evaluations, as well as review them with the employee. This is further evidence that her authority presents a potential for conflicts of interest with the rest of her fellow bargaining unit members.

Lack of Evidence on Promotion, Transfer, Layoff and Recall -

There is no evidence that any promotions have occurred in this department since its creation, other than the one at issue in this case. The record is also silent with regard to transfers, layoffs and recalls from layoff. Those omissions do not destroy the employer's position, however, considering the testimony presented on other areas of responsibility under the collective bargaining agreement. Where an employer, union, and bargaining unit members all raised concerns about the potential for conflicts of interest between several supervisory responsibilities of a lead mechanic and the rights of fellow bargaining unit members, they jointly submitted the issue of the new classification's bargaining unit

status to the Commission. After hearing testimony similar to that presented in this case, the Commission concluded that:

Although the record is silent on the role of the supervisor of maintenance in the collective bargaining agreement's grievance process, the classification is entrusted with following and enforcing the collective bargaining agreement with respect to the employees' daily activities.

Intercity Transit, Decision 5709 (PECB, 1996).

Additionally, although testimony here indicates that neither Piro nor her supervisor would have authority to do more than make recommendations to the city manager, if the need arose to promote, transfer, layoff or recall, this protocol is not uncommon in the public sector setting.

For this employer, as for any other, there is a system of checks and balances which allows managers to maintain an overview of actions taken by line supervisors. Tasks and decisions which don't require management input or affirmation have been delegated to the supervisors. With delegation goes authority and responsibility.

Lakehaven Utility District, supra.

Additionally, in the case at hand, as in Lakehaven Utility, the union did not provide any testimony controverting Piro's supervisor's assertion that Piro has the necessary authority and responsibility to be excluded, even though these particular activities have not yet occurred.

Conclusion

When all is said and done, Piro, as the court operations supervisor, will effectively hire, supervise, discipline and evaluate the employees in the bargaining unit. When combined with the fact that this is a new bargaining unit with an initial contract and a newly created position, the conclusion is that Piro has sufficient independent authority to warrant her exclusion from the bargaining unit as a supervisor.

FINDINGS OF FACT

1. City of Lakewood is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local 1516, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain full-time and regular part-time employees of the City of Lakewood who work at the courthouse.
3. The employer and union are parties to a collective bargaining agreement effective from January 1, 1999 to December 31, 2000.
4. The above-captioned proceeding was initiated by a petition for clarification of an existing bargaining unit filed by the union on January 26, 2000.
5. No question concerning representation currently exists in the bargaining unit involved in this proceeding.

6. On January 1, 2000, the employer created a new classification titled "court operations supervisor." The employee in the new classification supervises the work of bargaining unit members, including participating in their hiring, evaluating their performance, having the authority to discipline them, determining their training needs, and approving their overtime.
7. The employee in the court operations supervisor position is responsible, on behalf of the employer, for ensuring the parties' collective bargaining agreement is followed.
8. The lead court clerk classification, the bargaining unit position that formerly possessed some of the above-described responsibilities, has not been filled, and no longer possesses those responsibilities since the court operations supervisor position was created.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The petition for clarification of an existing bargaining unit in this matter was timely filed under WAC 391-35-020, by reason of having been filed before the parties signed their current collective bargaining agreement.
3. The employee holding the position titled court operations supervisor in the municipal court is a "public employee" within the meaning and coverage of RCW 41.56.030(2), but is a supervisor whose duties and authority on behalf of the employer present a present and ongoing potential for conflicts

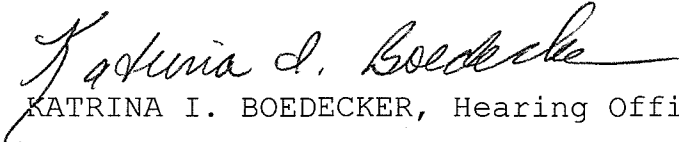
of interest warranting separation from the existing bargaining unit, and is therefore properly excluded, under RCW 41.56.060, from the existing bargaining unit of rank-and-file employees represented by the union.

ORDER

The employee holding the position titled court operations supervisor in the City of Lakewood Municipal Court shall be excluded from the existing bargaining unit involved in this proceeding.

ISSUED at Olympia, Washington, this 23rd day of October, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Hearing Officer

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.