

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON STATE COUNCIL OF)	CASE 19218-C-05-1227
COUNTY AND CITY EMPLOYEES,)	
AFSCME LOCAL UNION 846 CC)	
)	DECISION 9259 - PECB
For clarification of an existing)	
bargaining unit of employees of:)	ORDER CLARIFYING
)	BARGAINING UNIT
CITY OF CHELAN)	
_____)	

David Kanigel, Legal Counsel, for the union.

David Fonfara, City Administrator, and *Menke Jackson Beyer Elofson Ehliis & Harper, LLP*, by *Anthony F. Menke*, Attorney at Law, for the employer.

Washington State Council of County and City Employees, AFSCME Local Union 846 CC (union) filed a petition for clarification of its bargaining unit with the City of Chelan (employer) on February 24, 2005. The union represents an existing bargaining unit of all non-uniformed employees of the employer, excluding: employees working less than 20 hours per week, all seasonal employees working less than 10 consecutive months in any 12 month period, confidential employees, and supervisors. The petition listed three positions that the parties are seeking to have clarified: the Golf Professional/Manager, currently held by Jim Oscarson, which the union seeks to have included in the existing bargaining unit; the Senior Accountant/Assistant Finance Director, currently held by Pat Lingle, which the Employer seeks to have excluded from the bargaining unit; and the City Engineer, which the parties have agreed will remain in the bargaining unit. The Golf Professional/Manager and the Senior Accountant/Assistant Finance Director

are new, recently established positions on the employer's mid-level management staff, but are held by long-time employees of the city. Hearing Officer Claire Collins held a hearing on June 8, 2005. The parties filed briefs. Acting under WAC 391-25-390(2), the Executive Director delegated the authority to resolve the reserved eligibility issue to the Hearing Officer.

ISSUES

1. Is the golf professional/manager and/or the senior accountant/assistant financial director a supervisor properly excluded from the bargaining unit?
2. Is the senior accountant/assistant financial director a confidential employee properly excluded from the bargaining unit?

The Hearing Officer rules that neither the golf professional/manager nor the senior accountant/assistant financial director is a supervisor who should be excluded from the bargaining unit. The Hearing Officer further rules that the senior accountant/assistant financial director is not a confidential employee.

LEGAL PRINCIPLES APPLICABLE TO ISSUE 1

WAC 391-35-340 codifies long-standing Commission and judicial precedents that recognize the right of "supervisors" to bargain collectively under Chapter 41.56 RCW, but require their placement in separate bargaining units:

WAC 391-235-340 UNIT PLACEMENT OF SUPERVISORS - BARGAINING RIGHTS OF SUPERVISORS. (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.

(2) It shall be presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

Neither party challenges those well-established principles in this case.

ANALYSIS OF ISSUE 1

Three facts about this workforce and workplace make analysis of both disputed positions somewhat problematical:

1. The employees in both of the disputed positions are long-term employees of this employer who have been placed in the disputed positions with little evidence of real change. The new positions have responsibilities that are, for the most part, no more than variations of the duties those same employees had for many years before the change.
2. No additional nonsupervisory employees were added when the disputed individuals were supposedly elevated to new positions. This employer is a relatively small, rural municipality with only about 30 employees in the bargaining unit, so this left the disputed individuals with little opportunity to exercise supervisory authority on behalf of the employer over subordinate employees.

3. There is minimal evidence of any actual exercise of authority by the disputed individuals since the claimed change of circumstances. There is not a lot of employee turnover (hiring/firing) or employee discipline in the employer's workforce, so there have been few opportunities for actual exercise of any new supervisory authority in the relatively short time these employees have held their revised positions.

The Golf Professional/Manager

Oscarson has held a variety of positions with this employer since 1987, and he has held this position (without even a change of title) since 1995 or 1996. The history of the golf course operation is of interest here:

- The employer made its municipal golf course a city department in 1995 or 1996, and made Oscarson the department head for the golf course at that time. Oscarson then oversaw an assistant golf professional and several employees that worked on the greens, and was regarded by both parties to be a supervisor.
- The employer combined its Parks and Recreation Department and the Golf Course into a single organization in 2001, but Oscarson remained the manager responsible for the golf course.
- In December 2004, the employer modified Oscarson's job description to state that he was to report to a then-vacant "business manager" position, but Oscarson retained many of his former responsibilities.
- In the spring of 2005, the employer hired Parks and Recreation Business Manager John Keates under a job description that includes under "Examples of Duties and Responsibilities" that the position is responsible for "Personnel management/administration, including recruitment, hiring, evaluating,

training, supervision, organization development, etc." Keates has taken over responsibility for organizing Recreation Board meetings, long-term planning, budgeting, and creating a business plan for the golf course. Keates now supervises Oscarson.

The arrival of Keates in 2005 is the basis for the union's assertion that the golf professional/manager is no longer a supervisory position, and that Oscarson should be in the bargaining unit.

The evidence in this record supports a conclusion that the change higher in the management structure did result in the golf professional/manager losing responsibilities and authority with respect to several key indicia of supervisory status:

- Oscarson no longer has final or effective authority to hire subordinates, and instead only makes recommendations to the business manager.
- Oscarson no longer has final or effective authority regarding promotion of subordinates, and instead only makes recommendations to the business manager.
- Oscarson no longer has final and effective authority regarding transfers of subordinates, and instead only makes recommendations to the business manager.

Although Oscarson's revised job description includes "performs personnel actions such as hiring and termination" language, it is clear that the real authority lies with Keates, subject to review by the city manager. The fact that Oscarson's revised job description includes "supervises . . . attendants" language is not persuasive here, because that refers to four to six part-time employees who are hired on a seasonal basis and are specifically excluded from the bargaining unit by the parties' collective bargaining agreement.

From testimony and the organizational chart that was admitted in evidence, it appears that another position within the existing bargaining unit closely parallels the revised golf professional/manager position. A "parks operations supervisor" also reports to Keates and has responsibility for directing the daily work of bargaining unit employees. The current incumbent in that position gave uncontroverted testimony that he only recommends hiring and does not have the actual authority to hire or fire.

Senior Accountant

Lingle has been employed by this employer since 1993, when she was hired as a billing clerk. She was promoted to an "accounting/payroll clerk" position in 2001. It appears that the employer's finance director was on an extended leave of absence in 2004, and that Lingle performed many of the duties of that position during that period. Lingle was then promoted to a newly-created "senior accountant" position (which also has an "assistant finance director" title) in December 2004. Lingle continued to perform many of the responsibilities of the accounting/payroll position when she was given her new title.

Some reference to subordinates was added in the new job description, as follows:

Acts as primary support to the Finance Director in the administration of the City's policies and procedures. Supervises and oversees the Utility Billing Clerk & Receipting Clerk in the absence of the Finance Director.

The evidence indicates, however, that Lingle has her own set of substantive accounting responsibilities, and only acts regarding other employees in the absence of the finance director. It was clear from the testimony that the finance director makes the final decisions on matters within the traditional indicia of "supervisory"

authority. For example: Lingle testified that she was "involved" in the interview of prospective new hires, but that the final decision was made by the finance director. The potential for conflicts of interest that underlies the separation of supervisors under *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981) is minimized, where an employee only fills in during absences of the real supervisor. Additionally, the senior accountant position held by Lingle is parallel on the employer's table of organization to the golf professional/manager and the parks facilities supervisor discussed above.

CONCLUSION ON ISSUE 1

The Hearing Officer is not persuaded that either of the disputed positions has sufficient supervisory authority to warrant their exclusion from the bargaining unit represented by the union. In light of the small size and stability of the employer's workforce, the proliferation of new positions and titles is not persuasive evidence of actual exercise of supervisory authority. Further, the insertion of Parks and Recreation Business Manager John Keates into the employer's table of organization is a significant change of circumstances within the meaning of WAC 391-35-020(3), and has effectively reduced any authority that may have been held by the golf professional/manager in the past to that of a leadworker; the new title and "backup" role do not elevate the "senior accountant/assistant finance director" above the leadworker level. Both employees are properly included in the bargaining unit.

LEGAL PRINCIPLES APPLICABLE TO ISSUE 2

The definition of "public employee" in RCW 41.56.030 excludes a class of "confidential" employees. In 2001, the Commission adopted a rule concerning the "confidential" exclusion, as follows:

WAC 391-35-320 EXCLUSION OF CONFIDENTIAL EMPLOYEES. Confidential employees excluded from all collective bargaining rights shall be limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

That rule codifies the "labor nexus" test applied in judicial precedents dating back to *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978), and in numerous Commission decisions.

There is some evidence showing that Lingle had some involvement with collective bargaining negotiations while she was working under her former "accounting/payroll clerk" title, but it is clear that she was not in the bargaining process for the most recent negotiations held in 2004. An employee who ceases to perform "confidential" functions is properly reverted to the bargaining unit from which he or she was excluded. *Richland School District (Public School Employees of Washington)*, Decision 2208-A (PECB, 1985).

This record also demonstrates a lack of need for exclusion of Lingle as "confidential" under the employer's current table of organization. Finance Director Heidi Kollmeyer provided the necessary support for the contract negotiations in 2004, and Lingle testified that any information she could provide from her computer is also on the computer used by the finance director. The Commission imposes a high standard of proof on a party that would exclude an employee from all collective bargaining rights. *City of Seattle*, Decision 679-A (PECB, 1979). While employers will be allowed some reasonable

number of excluded personnel to perform the employer functions in collective bargaining, exclusions must be necessary. *Clover Park School District*, Decision 2243-A (PECB, 1987).

Much of the evidence offered concerning the exclusion of Lingle as a confidential employee was based upon her role as a "keeper of secrets" for the employer. However, examples in her job description such as, "A highly confidential position monitoring all activities concerning (L&I) claims" do not meet the labor nexus test under WAC 391-35-320. It is only persons who have access to the type of confidential information which might damage the collective bargaining process that are properly excluded from bargaining rights under RCW 41.56.030(2)(c) and WAC 391-35-320. Occupying a position of general responsibility and trust does not establish a relationship warranting exclusion if the individual is not privy to labor relations material, strategies, or planning sessions. *Bellingham Housing Authority*, Decision 2140-B (PECB, 1985). Thus, the "secrets" kept by Lingle are not of a type that are of interest to the Commission in this case. The testimony showed that the employer created the "assistant finance director" title with an intention that it be what it termed an "exempt" position, but exclusions from collective bargaining rights are narrowly construed, and no such exclusion exists in Chapter 41.56 RCW. See *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977).

CONCLUSION ON ISSUE 2

The employer has not met its heavy burden to establish that Lingle currently meets the labor nexus test. The senior accountant position should continue to be included in the bargaining unit.

FINDINGS OF FACT

1. The City of Chelan is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local 846 CC, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory, non-uniformed employees of the City of Chelan, excluding confidential employees.
3. The union filed a petition with the Public Employment Relations Commission, seeking clarification of the existing bargaining unit that it represents following changes of circumstances.
4. Among other services, the employer maintains and operates a golf course under its Parks and Recreation Department. In early 2005, the employer appointed Parks and Recreation Business Manager John Keates to a new position inserted into the organization above a "golf professional/manager" which had historically been excluded from the bargaining unit as a supervisor. Upon arrival of Keates, the supervisory duties and authority of the "golf professional/manager" position were reduced, so that the incumbent no longer exercises independent authority or makes effective recommendations on hiring, promotion, transfer, discipline, or other indicia of supervisory authority over bargaining unit employees. Any recommendations on such matters are now made to Keates, who makes decisions subject to review by the city manager and/or mayor. The "golf professional/manager" position now aligns with a "park facilities supervisor" who has historically been included in the bargaining unit represented by the union.

5. Among other municipal services, the employer maintains and operates a Finance Department. In December 2004, the employer created a new "senior accountant/assistant finance director" position and promoted the employee who was holding an "accounting/payroll clerk" position within the bargaining unit, without hiring a new employee for the bargaining unit position. Although there is evidence speculating that the incumbent of the new position may have some involvement in hiring in the future, there is no evidence that she has had any actual involvement or would have an effective recommendation.
6. Although the incumbent of the new "senior accountant" position assisted in the employer's preparations for collective bargaining negotiations earlier, she did not have any involvement in the most recent negotiations. The employer's finance director has access to all information that can be accessed by the incumbent of the "senior accountant" position, and actually assisted in the employer's preparations for collective bargaining in the most recent round of negotiations.

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. Authority to decide the "eligibility" issues framed in this case has been delegated to the Hearing Officer under WAC 391-35-190(2).
3. As described in paragraph four of the foregoing findings of fact, there has been a change of circumstances so that the incumbent in the "golf professional/manager" position is no

longer a supervisor within the meaning of WAC 391-35-020 and Commission precedents developed under RCW 41.56.060.

4. As described in paragraph five of the foregoing findings of fact, the incumbent in the senior accountant/assistant finance director is not a supervisor within the meaning of WAC 391-35-020 and Commission precedents developed under RCW 41.56.060.

5. As described in paragraph 6 of the foregoing findings of fact, the senior accountant/assistant finance director is a public employee within the meaning of RCW 41.56.030(2), and is not a "confidential employee" within the meaning of RCW 41.56.030(2)(c).

ORDER

The existing bargaining unit of City of Chelan employees represented by Washington State Council of County and City Employees, Local 846 CC, is clarified to include the "golf professional/manager" position and the "senior accountant/assistant finance director" position.

Issued at Olympia, Washington, on the 13th day of March, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CLAIRE COLLINS, 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.