

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS UNION, LOCAL 252

Involving certain employees of:

CITY OF WINLOCK

CASE 9487-E-91-1576

DECISION 4056 - PECB

DIRECTION OF CROSS-CHECK

Mike Mauermann, Business Representative, appeared on behalf of the petitioner.

Hillier and Scheibmeir, P.S., by Mark Scheibmeir, Attorney at Law, appeared on behalf of the employer.

On November 15, 1991, Teamsters Union, Local 252 filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of all employees of the City of Winlock. The Commission directed a routine letter to the employer on November 19, 1991, supplying notices for posting pursuant to WAC 391-25-140 and requesting a list of the employees involved. The employer filed a formal response to the petition on December 11, 1991, objecting to the unit description proposed. A pre-hearing conference was therefore deemed unnecessary.<sup>1</sup> A hearing was held at Winlock, Washington, on February 20 and 26, 1992, before Hearing Officer Katrina

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<sup>1</sup> Teamsters Local 252 filed a complaint charging unfair labor practices against the employer on January 16, 1992 (Case 9581-U-91-1576). The allegations of the complaint were such that it became a "blocking charge" to this representation petition under WAC 391-25-370. On January 23, 1992, the union filed a Request to Proceed, asking that the instant representation case be processed notwithstanding the unfair labor practice charges.

I. Boedecker. The parties made closing arguments at the hearing in lieu of filing post-hearing briefs.

### BACKGROUND

The City of Winlock is an incorporated municipality with a population of approximately 1025, located in Lewis County. Operating under Title 35A RCW, the Optional Municipal Code, an elected mayor and five elected city council members set policy for the employer. As mayor, Kenneth Crocker receives a salary of \$75.00 per month. Since his recent election, Mayor Crocker has been more involved with the operations of the city than previous elected officials.

The petitioned-for bargaining unit consists of all of the full-time and regular part-time employees of the employer, and touches all of its operations. Included in the petitioned-for unit are the police chief, police officer, public works superintendent, water/sewer operator, clerk-treasurer, assistant clerk, court clerk, and laborer. The two employees in the police department perform law enforcement duties; the water, sewer and the street employees perform operations and maintenance work of the types suggested by their titles; the three administration/court employees perform office-clerical duties. Employees of the City of Winlock have not been represented for collective bargaining in the past.

The employer does not have a written labor relations policy, but it does have an employee policy and procedures manual which has existed essentially without change since it was developed in the 1970's. All of the petitioned-for employees are covered by that personnel manual.<sup>2</sup>

Overtime work is common for the clerk-treasurer, the water/sewer operator, the street superintendent, and the police chief. Those employees are also credited for "overtime" for required attendance at city council meetings. In lieu of cash wages, however, they receive time and one-half compensatory time off for their overtime work.

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<sup>2</sup> None of the petitioned-for employees were involved with the drafting of the manual.

The employer does not hold any meetings for the "supervisors". The city council does ask for preliminary budgets, referred to by the parties as "wish lists", from the clerk-treasurer, the water/sewer operator, the street superintendent and the police chief for their departments. The elected officials then develop the budget.

#### POSITIONS OF THE PARTIES

The union contends that a community of interest exists among all of the employees in a town the size of Winlock, so that the petitioned-for bargaining unit is appropriate. It argues that all of the petitioned-for employees are "public employees" within the meaning and coverage of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, that the employees' responsibilities and duties cause their paths to cross on a regular basis, and that none of the petitioned-for employees has a confidential labor relations nexus to management.

The employer argues that both the police chief and the clerk-treasurer are appointed under RCW 35A.12.020, and so should be excluded from collective bargaining under RCW 41.56.030(2)(b). Additionally, it contends that the clerk-treasurer is in contact with sensitive labor relations information which makes her a confidential employee under RCW 41.56.030(2) (c) . Claiming that the assistant clerk has the same contact and access to information as does the clerk-treasurer, the employer argues that she is also a confidential employee. The employer advances that the court clerk must be excluded from bargaining rights under RCW 41.56.030(2)(d), as a personal assistant to the municipal court judge. The employer maintains that the clerk-treasurer, police chief, water/sewer operator, and street superintendent are supervisors, since they assign tasks, are active in the budget process, are spokespersons for their departments to the city council, and are responsible for the hiring and firing of subordinates. The employer asserts that the police patrolman is a "uniformed" employee having a separate community of interest. Thus, in the

employer's view, only the laborer remains as a non-supervisory public employee eligible to organize and bargain under the statute.<sup>3</sup>

## DISCUSSION

### The Propriety of the Petitioned-For Bargaining Unit

The administration of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and particularly the determination of appropriate bargaining units, is a function delegated by the Legislature to the Public Employment Relations Commission. The unit determination criteria to be considered are:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT—  
BARGAINING REPRESENTATIVE. 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** ....  
[emphasis supplied]

The task is not limited to establishing "the most appropriate" bargaining unit. Ben Franklin Transit, Decision 2357-A (PECB, 1986). A variety of concerns must be weighed in determining whether a proposed bargaining unit is "an appropriate unit" under the statute. City of Winslow, Decision 3520-A (PECB, 1990). The Commission recognizes "that there may be more than one

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<sup>3</sup> This is not a meaningful concession. Established Commission precedent since Town of Fircrest, Decision 248-A (PECB, 1977), is that a bargaining unit cannot be considered appropriate if it includes only one employee.

configuration of appropriate bargaining units in any given organization". King County Fire District 39, Decision 2638 (PECB, 1987).

Where, as here, the employees involved have not been represented in the past, there is no "history of bargaining" to be considered. Similarly, there is no occasion to invoke the "desires of the employees" aspect of the unit determination criteria in this case, where there is only one organization and only one proposed unit configuration.<sup>4</sup> Thus, the "duties, skills and working conditions" and "extent of organization" will tend to be the operative criteria in determining the existence of a community of interest in this case. City of Vancouver, Decision 3160 (PECB, 1989).

#### Extent of Organization -

The "extent of organization" aspect of the statutory unit determination criteria compares the petitioned-for unit to the whole of the employer's workforce. In the case at hand, the bargaining unit proposed by the union would be a true "wall-to-wall" unit covering the whole of the employer's workforce. Clearly, the union's petition provides no basis for concerns about "fragmentation" of the employer's workforce or bargaining relationships. Such concerns arise here, if at all, only from the employer's position.

A bargaining unit encompassing all of the employees of an employer is inherently an appropriate unit. City of Winslow, *supra*. All such employees clearly share a community of interest in

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4 Where two or more organizations are seeking two or more different bargaining unit configurations, the "desire of employees" on the unit determination question (as distinguished from any question concerning representation) will be assessed by the Commission by conducting a "unit determination election" under WAC 391-25-530(1). See, for example, Tumwater School District,, Decision 1388 (PECB, 1982).

dealing with their common employer.<sup>5</sup> In Wahkiakum County. Decision 1876 (PECB, 1984) , an election was directed in a unit of all of the county's employees, including deputy sheriffs, road maintenance workers, and clerical employees. Although there was a history of separate bargaining and evidence of substantial differences in employment conditions, it was noted that labor relations matters were ultimately determined by one body: The county board.

Duties, Skills and Working Conditions -

The bargaining unit proposed by the union includes a mix of "law enforcement", "office-clerical" and "blue collar" positions. There are substantial differences among those generic occupational types, but nothing in the statute or in Commission precedent categorically precludes their inclusion in a single bargaining unit. As was noted in Wahkiakum County, supra, the Commission is likely to find a wall-to-wall unit appropriate in the absence of:

... compelling grounds, such as the existence of divergent impasse . . . procedures or the existence of separate employer entities . . . which preclude the employees from attempting to band together for the purposes of advancing their common interests through collective bargaining with their common employer

Put another way, differences between classifications, such as different working hours, receiving a salary as opposed to being paid an hourly wage, and performing "blue collar" work versus "clerical" work do not necessarily require separate units where the extent of organization is employer-wide.

In this case, the employer has only eight non-elected employees. All of the employees receive similar benefits which are set by the mayor and city council. There is substantial interaction

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5 An exception, as described below, is where a "wall-to-wall" unit would mix employees qualifying as "uniformed personnel" under RCW 41.56.030(7) with persons who are not "uniformed personnel".

among the petitioned-for employees, given their job responsibilities and the small size of the employer's overall operation.

The employer's claim that the police officers are "uniformed personnel" is not well-founded. Commission precedent does, indeed, hold that persons who are "uniformed personnel" within the meaning of RCW 41.56.030(7) are not to be mixed in the same units with persons who are not "uniformed personnel". City of Yakima, Decision 837 (PECB, 1980); Benton County, Decision 2221 (PECB, 1985). That policy stems, however, from the fact that "uniformed personnel" within the cited definition are entitled to interest arbitration under RCW 41.56.430, et seq. As to police officers, the definition of "uniformed personnel" is limited to those employed by a city having a population of 15,000 or more. With a population of substantially less than 2,000, this employer falls far short of qualifying for interest arbitration. The cases separating "uniformed personnel" are inapplicable where the statutory interest arbitration procedure does not apply. City of Prosser, Decision 3283 (PECB, 1989) ; Okanogan County, Decision 2800 (PECB, 1987). Differences of specific duties, skills and working conditions have not precluded mixing law enforcement officers with other employee types in smaller communities. Winslow, supra; Grays Harbor County, Decision 3067 (PECB, 1988). The proposal to mix police officers with other employees here does not render the petitioned-for bargaining unit inappropriate.

#### Eligibility Issues

##### Employees Claimed as Exempt by "Appointment" -

RCW 41.56.030(2) provides for the exclusion of certain "appointed" officials from the coverage of the Public Employees' Collective Bargaining Act:

##### RCW 41.56.020 Definitions.

...

(2) "Public employee" means any employee of a public employer except any person ... (b) **appointed** to office pursuant to statute, ordinance or resolution **for a specified term of office** by the executive head or body of the public employer, ...

The employer contends that both the clerk-treasurer and the police chief are "appointed" under provisions of the optional municipal code, as follows:

RCW 35A.12.020 Appointive officers Duties — Compensation. The appointive officers shall be those provided for by charter or ordinance and shall include a **city clerk** and a **chief law enforcement officer**. The office of city clerk may be merged with that of a city treasurer ...  
[emphasis supplied]

RCW 35A.12.090 provides for the appointment and removal of those appointed officials by the mayor of the municipality.

Clerk-Treasurer Kathy Korpi has been an employee of the City of Winlock for 19 years, and she has been the clerk-treasurer since June, 1988. Police Chief Forest McPherson has held his present position for the past nine years. There is no evidence in the record that either the clerk-treasurer or the police chief has been appointed for a specified term of office, and it must be inferred that they serve at the pleasure of the mayor under RCW 35A.12.090.

The absence of a fixed term of office is a critical factor which distinguishes appointees under RCW 35A.12.020 and 35A.12.090 from the class of employees excluded from coverage of the Public Employees' Collective Bargaining Act. RCW 41.56.020(2)(b) is clearly limited to those appointed **for a specified term of office**. It appears that the two "appointees" at issue in this case are similar to the town clerk and police chief at issue in Town of Granite Falls, Decision 2617 (PECB, 1987), both of which were found to serve at the pleasure of the mayor under RCW 35.27.070, and had no fixed term of office. Similarly, a "building official" appointed without any limitation on the length of his employment was found to be outside the class of "appointed" officials contemplated in RCW 41.56.030(2)(b). City of Snohomish. Decision 2712 (PECB, 1987).

Employees Claimed Exempt as "Confidential" -

RCW 41.56.030(2) also provides for the exclusion of certain "confidential" employees from the coverage of the Public Employees' Collective Bargaining Act:



RCW 41.56.020 Definitions.

...

(2) "Public employee" means any employee of a public employer except any person ... (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

The Supreme Court of the State of Washington has defined the "confidential" exclusion narrowly:

We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. **The nature of the close association must concern** the official and policy responsibilities of the public officer or executive head of the bargaining unit, **including formulation of labor relations policy.**

International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978), at 106. [emphasis supplied]

Status as a "confidential employee" deprives the individual of all collective bargaining rights under Chapter 41.56 RCW. City of Chewelah, Decision 3103-B (PECB, 1989); City of Winslow, supra. Accordingly, the party proposing to exclude an individual as a "confidential" employee bears a heavy burden. City of Seattle, Decision 689-A (PECB, 1979).

Clerk-treasurer Kathy Korpi is in charge of the "front office". She attends all public meetings of the city council, where she is responsible for taking the minutes. She attended executive sessions

of the city council in the past, but has not been included in such meetings since the union organizing began in approximately September, 1991. Korpi has access to all personnel files, and is responsible for preparation of the budget that is approved by the city council. She is privy to budget information that would show the employer's bargaining strategy. She meets the test for exclusion from the bargaining unit as a "confidential employee". See, Town of Granger, Decision 2634 (PECB, 1987).

Assistant Clerk Bonnie Givens has held her present position since approximately 1989. Her duties are similar to, and partially overlap, those of the clerk-treasurer. She answers the telephone, types letters, receives payments at the counter, and issues utility billing receipts on the computer. She also does claims coding, processes bank transactions and the mail, and prepares the month-end report. Her desk is in an open area adjacent to the private office in which the employer's computer and Korpi's desk are located, but she has keys to Korpi's office and regularly uses the computer. Givens could obtain access to all of the employer's personnel files under the existing physical arrangements, but she has never reviewed any of them and has no ongoing responsibility to do so. Givens assumes the duties of the clerk-treasurer when Korpi is on sick leave or vacation, and she typed a letter for the mayor in the past. Since the representation petition was filed, she has typed one document for an employee's personnel file. Those minimal contacts are not sufficient to demonstrate necessary access to, or inclusion in the development of, the employer's labor relations policies. Reasonable steps taken by the employer should be sufficient to safeguard its "labor nexus" information without depriving this employee of her statutory bargaining rights. See, Crescent School District. Decision 1572 (PECB, 1983); Clover Park School District. Decision 2243-B (PECB, 1987). The position does not meet the test for the "confidential" exclusion.

Employee Claimed Exempt as "Judicial Assistant" -

RCW 41.56.03 0(2) also provides for the exclusion of certain judicial assistants from the coverage of the Public Employees' Collective Bargaining Act:

RCW 41.56.020 Definitions.

...

(2) "Public employee" means any employee of a public employer except any person ... (d) who is a personal assistant to a district judge or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

That exclusion was added to the statute in 1989, in connection with extension of the coverage of the statute to include district courts.<sup>6</sup> Although the status of district and municipal court employees has been a subject of other decisions, this case presents the first opportunity for the Commission to directly interpret or apply the exemption added to the statute in 1989.

Court Clerk Debra Hensley has been a part-time employee of the City of Winlock for approximately two years. Her hourly rate of pay is established in the budget adopted by the city council. She receives no sick leave or vacation leave. Starting in 1992, she has begun to receive a pension contribution from the employer. Hensley reports to Korpi, and would speak to Korpi if she wanted to change her hours. Her duties relate to the municipal court, which is in session two evenings a month. Hensley is in the courtroom two to four hours per month, and works in the office for 7-hour shifts two days per week. She enters traffic tickets and notices of appearance on the records, and establishes the court calendar. She acts on behalf of the judge in contacting the prosecuting attorney. She prepares information on court files for the judge, and records fines, etc. on the court's docket. Although she is not responsible for the front counter work, she does help Korpi and Givens with inquiries from the public, if she has time.

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<sup>6</sup> This section of the statute was again amended during the 1992 legislative session, and now reads:

(d) who is a personal assistant to a district court judge, superior court judge or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

[Underlining indicates language added in 1992.]

The Final Legislative Report Fifty-first Washington State Legislature, 1989 Regular, First and Second Special Sessions gives the following background to House Bill 1020, which became Chapter 275, Laws of 1989, effecting the amendment at issue here:

The Public Employees Collective Bargaining Act covers all municipal and county employees, with specified exceptions. In 1975, the Washington State Supreme Court decided that certain superior court employees who are paid by the county are only covered under the collective bargaining act with respect to bargaining over wages. The court determined that because the operation of the courts is a matter of state concern rather than local concern, the judicial branch, as opposed to the county, is the employer for purposes of hiring, firing and working conditions.

In a 1986 decision [Grant County, Decision 2233-A (PECB, 1986)], the Public Employment Relations Commission applied the court's reasoning to district court employees and held that these employees are "state employees" for personnel matters other than wages. Therefore, these employees are entitled to collectively bargain with the county employer only over wages. The commission did not find a statutory requirement for district court judges to collectively bargain over other personnel matters.

The Report goes on to summarize the effect of the amendment, as follows:

The public employee collective bargaining laws are made applicable to district courts. The public employer of the district court employees with respect to collective bargaining over wage-related matters is the county legislative authority. The public employer with respect to nonwage-related matters is the judge or judge's designee. Each judge or court commissioner may exclude no more than one personal assistant from a bargaining unit. [Emphasis supplied.]

The amendment became effective July 23, 1989. The question to be addressed in this case is whether RCW 41.56.030(2)(d) applies to municipal court judges, as well as district court judges.

The decision in City of Centralia, Decision 3232 (PECB, June 22, 1989) was issued after the passage of Chapter 275, Laws of 1989, but prior to the effective date of that legislation. The Examiner found in that case that municipal court clerks in general did not qualify as district court clerks under the Grant County precedent, and that the employer in that case had committed an unfair labor practice when it refused to bargain beyond wages and wage related matters affecting its municipal court clerks. The Examiner saw Chapter 3.46 RCW, which can be utilized by "any city" and which addresses the matter of court personnel relations in RCW 3.46.140, as pivotal:

**All such personnel shall be deemed employees of the city**, shall be compensated wholly by the city, and shall be appointed under and subject to any applicable civil service laws and regulations. [emphasis supplied]

The Examiner also cited Chapter 3.50 RCW, which can be utilized only by cities with a population of 400,000 or less, and addresses the matter of court personnel relations as follows:

Salaries of municipal court judges shall be fixed by ordinance. All costs of operating the municipal court, including but not limited to salaries of judges and court employees, dockets, books of records, forms, furnishings, and supplies, shall be paid wholly out of the funds of the city or town. The city shall provide a suitable place for holding court and pay all expenses of maintaining it. **All employees of the municipal court shall, for all purposes, be deemed employees of the city or town.** They shall be appointed by and serve at the pleasure of the court. (emphasis supplied)

Thus, the Examiner found in Centralia that the control over the court clerks was vested with the city. That decision neither interprets Chapter 275, Laws of 1989, nor addresses the same question that is presented in this case under RCW 41.56.030(2)(d).

It is conceded that the City of Winlock has created a municipal court. As last amended in 1987, Chapter 3.46 RCW states:

**Judges.** Each judge of a municipal department shall be a judge of the district court in which the municipal department is situated. Such judge shall be designated as a municipal judge.

#### RCW 3.46.020

The Legislature is deemed to know its current statutes when it passes amendments. Therefore, the Legislature must be held to have known that municipal court judges were considered district court judges when it passed Chapter 275, Laws of 1989. Without regard to the facts or other traditional bases for exemption of employees from collective bargaining rights, RCW 41.56.030(2) (d) now excludes one personal assistant for each district court judge, upon request. The employer has asserted a request for exclusion of Hensley on behalf of its municipal (district) court judge. Hers is the only position for which such an exemption is requested in this case. That request must be honored.

#### Employees Claimed Exempt as "Supervisors" -

Chapter 41.56 RCW does not define or exclude "supervisors", and they have collective bargaining rights under the Public Employees' Collective Bargaining Act. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). At the same time, it has long been established that the potential for conflicts of interest warrants exercise of the unit determination authority of the Commission under RCW 41.56.060, resulting in exclusions of "supervisors" from the bargaining units which include their rank-and-file subordinates. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

Working foremen, who merely oversee and assist other employees, are not excluded supervisors. City of Bellingham, Decision 2823 (PECB, 1987) . An employee was not found to be a supervisor in City of Chewelah, Decision 3103-B (PECB, 1989) , even though her responsibilities included reviewing and commenting on the work of other employees. A lead

worker in the public works department was found to be a working foremen in City of Winslow, supra, where his limited authority to assign work and approve overtime in emergency situations did create a potential for conflict of interest sufficient to warrant his exclusion from the bargaining unit. The court administrator in Winslow, on the other hand, had significant supervisory responsibilities, including hiring, disciplining and directing the work of the part-time employees in that department, and was excluded because of a substantial potential for conflicts of interest if she were to be included in the same bargaining unit with her subordinates.

All of the alleged supervisors at issue in this case are "on the clock" and receive overtime compensation. They make minimum and routine assignments to one or two other employees, and receive no special privileges due to supervisory status. They perform work of the same type as that performed by their alleged subordinates, and share a community of interest with the other employees. Based on the record developed here, it appears that the authority of the disputed employees (and particularly that of the police chief) has been diminished recently, while the intervention and exercise of authority by the mayor has increased. Similar situations were before the Commission in Granite Falls, supra, and in the Town of Granger, supra.

Clerk-Treasurer Kathy Korpi exercises some authority, on behalf of the employer, concerning the assistant clerk and the court clerk. Korpi sat, with the former mayor, on the interview teams for those positions, and she asked independent questions and made recommendations, but the mayor made the final decision. Korpi approves minor changes in their hours, but the mayor must approve unpaid leaves of absence and other substantial changes. Korpi regularly assigns tasks to the assistant clerk, but the duties of the court clerk are largely pre-defined. Korpi can counsel the other employees for rudeness, tardiness or errors in bookkeeping, but she has never issued any written disciplinary notices. The mayor would have to authorize the suspension or termination of any employee. While she receives a higher monthly salary than the assistant clerk, and has somewhat higher status, it is clear that Korpi receives her directions from the mayor. While she will be excluded as a "confidential" employee, for reasons indicated above, she would not be excludable as a supervisor on this record.

Police Chief Forest McPherson is responsible for the day-to-day operation of the police department, traffic control and enforcing the laws of the state. The one patrol officer in the

department, Terry Williams, has been a full-time officer for eight years; previously he was a reserve officer for two and one-half years. The police department follows the county sheriff's department policy manual for law enforcement procedures, and follows the city's manual for determining working conditions within the department. The chief and the patrol officer wear the same style of uniform. The chief drives his own vehicle to work and then uses a patrol car during his shift, while Williams is issued a patrol car for 24-hour-per-day usage. Both the chief and the mayor believe that the chief should perform patrol duties, and McPherson testified that he does do a great amount of patrol work because of a lack of administrative duties. Although the chief set the work schedules at one time, the mayor currently directs the scheduling.<sup>7</sup> The chief has a separate office, but Williams has complete access to it and any interviews are conducted in the chief's office. The chief orally counseled a reserve officer in the past, and he terminated a reserve officer in the past, but such authority now is questionable. Currently, only the mayor has the authority to suspend or terminate an employee in the department. The chief is required to attend all public city council meetings, but he does not attend executive sessions of the council. In Granger, the police chief was included in the bargaining unit, because he performed regular patrol duties in a small police force and did not possess sufficient supervisory authority to warrant exclusion. While McPherson receives a higher monthly salary than the patrol officer, he is not excludable as a supervisor on this record.

Public Works Superintendent Leroy Zwiefelhofer has held his position since 1985. He and the water/sewer operator work together on projects, when needed, and they cooperate to schedule and assign the work of the laborer who works with them.<sup>8</sup> Zwiefelhofer works primarily on keeping the streets maintained, repairing potholes and keeping street signs in place, but he has

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7 Chief McPherson generally works the day shift, while the patrol officer works the night shift.

8 The county sponsors a youth employment program which occasionally sends high school age seasonal employees to Zwiefelhofer for his assignment and supervision during the summer, but there is no indication that such activities would create a potential for conflicts of interest within the meaning of Commission precedent.



also worked with other city employees (e.g., from the police department or the front office) during floods, slides and traffic accidents. He operates equipment, such as the back hoe, dump truck, air compressor, tamping machine, trailer mower, and jackhammer. The mayor directs his work, and Zwiefelhofer sees the mayor about once per week, usually in chance meetings on the sidewalk. Zwiefelhofer works in the shop where other employees have access, and has no separate office. He and the water/sewer operator requested that the city council hire an additional employee because of the workload. The council approved the request. The two men interviewed applicants for the part-time laborer position. The mayor recommended one citizen for the position, but during the interview, the candidate indicated that he would also be working for other employers. The interviewers decided that would not fit with the on-call requirements of the position. They recommended another applicant for the position and the mayor approved. He has never disciplined any employee, and he testified that only the mayor and city council would have the authority to suspend or discharge an employee. He puts together a "wish list" of budget requests for the city council, and he is required to attend all city council meetings, but does not attend the executive sessions. The city council hires contractors to do major street or water/sewer projects. Zwiefelhofer has answered questions the city council has had when they are considering project bids and decisions.<sup>9</sup> While Zwiefelhofer is paid more than the laborer, it is clear that he receives his directions from the mayor. He is not excludable as a supervisor on this record.

Water/Sewer Operator Michael Risley has held that position for one and one-half years. His duties are to operate and maintain the water and sewer systems for the city. He holds special licenses from the state Department of Ecology and the state Department of Social and Health Services, and gets direction from those agencies. His daily function is to ensure that the reservoir is full, that there are no major leaks in the system, and that the water quality meets state guidelines. Risley assigns duties to the laborer, such as washing down the sewer plant and assisting in maintaining the pumps and repairing water leaks. Risley works with Zwiefelhofer on a weekly basis, and has helped with cleaning streets and repairing potholes. He has operated the back hoe and the dump truck. Risley is required to attend meetings of the city council, but not the

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<sup>9</sup> The contractors send their own spokesperson to the city council meetings, also.

executive sessions of the council. As with the other claimed supervisors, it is clear that the mayor directs Risley's activities. He is not excludable as a supervisor on this record.

#### FINDINGS OF FACT

1. The City of Winlock is a public employer within the meaning of RCW 41.56.030(1). The city is governed by an elected city council and mayor. The city has a population of less than 2,000 people.
2. Teamsters Union, Local 252, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of a bargaining unit comprised of all of the non-elected employees of the City of Winlock.
3. The City of Winlock employs eight people in eight separate job classifications. All these employees share similar working conditions established in the city personnel manual and by the city council and mayor. Employees from all classifications have participated in the organizing activity, and the unit sought by Local 252 includes all of the employees.
4. The clerk-treasurer and police chief are appointed by and serve at the pleasure of the mayor.
5. The clerk-treasurer attends and takes minutes at all public meetings of the city council. Prior to the union organizing activity leading to this proceeding, the clerk-treasurer was required to attend all the executive sessions of the city council. She is the full-time custodian of the employer's records, has access to all the personnel files, and is privy to budgetary information from the city council that would show the employer's bargaining strategy.
6. The assistant clerk has, on rare occasion, typed correspondence regarding employee discipline. She does not use the employer's personnel files on a regular basis, and does not have necessary access to confidential information concerning the labor relations

policies of the employer. Reasonable steps taken by the employer would suffice to secure its confidential records.

7. The employer has requested exclusion of the court clerk, who is the sole personal assistant to the municipal court judge in the operation of the employer's municipal court.
8. The clerk-treasurer, the police chief, the superintendent of streets, and the water/sewer operator are working foremen who oversee employees, making minimum and routine assignments to them, and assist other employees in performing work of the same nature as they themselves perform. They receive no special privileges based on a "supervisory" status. They interview applicants, but have no independent authority to hire or to make effective recommendations on hiring. They can counsel subordinates on minor infractions, but have no independent authority to discipline other employees.
9. The union has provided a showing of interest indicating that it has the support of a substantial majority of the employees in the petitioned-for bargaining unit.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. A bargaining unit consisting of all full-time and regular part-time employees of the City of Winslow, excluding elected officials, officials appointed for a fixed term, confidential employees, and supervisors, is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and a question concerning representation presently exists in that bargaining unit.
3. The clerk-treasurer and police chief are not appointed for a fixed term, and so are not excluded from collective bargaining rights under RCW 41.56.030(2)(b).
4. The clerk-treasurer is a confidential employee within the meaning of RCW 41.56.030(2), and is not a public employee eligible to be included in the petitioned-for bargaining unit.

5. The assistant clerk 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).
6. The court clerk is excluded, per the request of the employer on behalf of its municipal (district) court judge made under RCW 41.56.030(2)(d), from the definition of public employee, and is not eligible to be included in the petitioned-for bargaining unit.
7. The police chief, the superintendent of streets and the water/ sewer operator are working foremen with limited authority to act on behalf of the employer, and are not supervisors whose inclusion in the petitioned-for bargaining unit will create a potential for conflicts of interest within the appropriate bargaining unit created pursuant to RCW 41.56.060.
8. The conditions precedent to direction of a cross-check under RCW 41.56.060 and WAC 391-25-391 have been met in this case.

#### DIRECTION OF CROSS-CHECK

A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the bargaining unit described in paragraph 2 of the foregoing conclusions of law, to determine whether a majority of the employees in that bargaining unit have authorized Teamsters Union, Local 252 to represent them for the purposes of collective bargaining.

ENTERED at Olympia, Washington, on the 29th day of April, 1992.

PUBLIC EMPLOYMENT

RELATIONS COMMISSION

[SIGNED]

MARVIN L. SCHURKE

Executive Director

This order may be appealed  
by filing timely objections  
with the Commission pursuant  
to WAC 391-25-590.