

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
DOUGLAS F. GOETT)	CASE NO. 3012-E-80-580
)	
Involving certain employees of:)	DECISION NO. 1229 - PECB
)	
CITY OF SEATTLE)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Douglas F. Goett, appeared as decertification petitioner.

Douglas N. Jewett, City Attorney, by P. Stephen DiJulio, Assistant City Attorney, appeared on behalf of the employer.

Hafer, Cassidy & Price by John Burns, Attorney at Law, appeared on behalf of intervenor United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 32, AFL-CIO.

On September 3, 1980, Douglas F. Goett filed with the Public Employment Relations Commission a decertification petition, which in effect, sought to sever water pipe crew chiefs and transmission crew chiefs^{1/} from an existing unit of certain classifications within the city's water department. The incumbent representative, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 32, AFL-CIO, moved to intervene in the proceedings. A hearing was held on February 19, 1981 before Rex L. Lacy, Hearing Officer.

BACKGROUND:

The City of Seattle and Local 32 have had a collective bargaining relationship since at least 1972. The "crew chiefs" at issue in these proceedings were classified as "foremen" in the first agreement between the City and Local 32. Under both titles, they have historically been included in the bargaining unit represented by the union and have been listed in the appendices to the collective bargaining agreement.

^{1/} Transmission crew chiefs are referred to in the petition as "foremen headworks" and "foremen pipeline maintenance".

Approximately 400 employees work in the city's water department at various locations in the Seattle metropolitan area and its surrounding watershed. The petition covers twelve of the 140 positions in the bargaining unit represented by Local 32.

The employer's water department has both represented and unrepresented employees within its workforce who hold titles of crew chief or equivalent. Some of the unrepresented crew chiefs head groups of rank-and-file employees represented by Local 32, while others have subordinates who are not represented by Local 32. Some of the crew chiefs are part of bargaining units separate from Local 32's unit. The three classifications listed in the petition represent all the crew chiefs in the Local 32 unit.

The water department is headed by the city's superintendent of water and is divided into six divisions. Four of the divisions employ crew chiefs (sometimes referred to as foremen). Four to ten employees report to each of the crew chiefs. The crew chiefs report to "supervisors" who in turn report to the division "manager".

Nine of the petitioned-for employees are water pipe crew chiefs in the water distribution section of the operations division of the water department. The three other crew chiefs in the Local 32 unit are referred to as transmission crew chiefs and are situated in the forestry division.

The crew chiefs in the Local 32 unit supervise crews in the installation, maintenance, repair and operation of waterworks facilities, including pipelines and mains, service lines, valves, hydrants, headworks, structures, reservoirs, pumping stations, roads, drainage ditches, remote controls, and related equipment. They may oversee dispatching operations, and the location and marking of existing underground facilities.

The crew chiefs determine what work has to be done, partly by observation, partly by notification from the dispatcher or other water department employees, and partly by direction from higher management. The crew chiefs prioritize the work and then make assignments to the crews. They visit the work sites in the field but usually do no hands on work. The crew chiefs oversee the training of new personnel by the lead workers and are responsible for the safety of their crews and other people at the work site. They serve on interview boards which effectively recommend the hiring and promotion of personnel. Individual crew chiefs may effectively recommend an employee's transfer. The chiefs collectively decided on common evaluation criteria and regularly prepare written evaluations of the employees in their crews.^{2/} They may give verbal disciplinary warnings and may effectively recommend suspension or discharge. Crew members seek the crew chief's permission in order to leave early.

^{2/} Contrary to the assertion of the city, a recent modification in the evaluation procedure does not significantly change the responsibilities of the crew chiefs.

The crew chiefs may requisition water department materials and equipment or order such items from outside sources. They may represent the water department in pre-construction meetings and later coordinate work with the construction contractors. They may also coordinate services between the water department and other utilities, other divisions of the water department and the police department, and frequently deal with residents and building superintendents. One crew chief wrote the water department's freeze contingency plan. Another serves as the water department's representative on a county coordinating council which sets standards for marking and locating facilities of the various utilities. The crew chiefs are responsible for preparing time sheets, progress reports, accident and damage reports, and other records.

Crew chiefs generally have obtained their positions after long service as crew workers. Unlike the crew workers, each crew chief has a desk and some are assigned city vehicles. The water pipe crew chiefs are scheduled to arrive and depart fifteen minutes sooner than their crew members, excepting several employees who work the night shift to deal with emergencies. The transmission crew chiefs report at the same time as the crew members. Certain benefits are offered by the city uniformly to the various bargaining units and unrepresented employees. These include vacation leave, sick leave, holidays, pension, and certain civil service matters. Unique to the Local 32 contract is one day of emergency leave and a grievance and arbitration procedure.

POSITIONS OF THE PARTIES:

The petitioner asserts that the petitioned-for classifications are supervisory and should be disassociated from the employees whom they supervise because of the differences in duties and working conditions and because of the conflict of interest caused by their job responsibilities and their affiliation with Local 32. The city supports severance based on its view that supervisors should not be maintained in a unit with non-supervisory personnel.

Local 32 argues that severance is not justified because of the long bargaining history of inclusion in the existing bargaining unit and because the petitioned for employees share, to a significant extent, the duties, skills and working conditions of the other bargaining unit employees.

DISCUSSION:

RCW 41.56.060 provides:

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. The commission shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor.

RCW 41.56.060 is silent with regard to decertification petitions.^{3/} WAC 391-25-070(4) provides that a representation petition must contain among other things:

* * *

- (4) A statement that: (a) The employer declines, after having been requested to do so, to recognize the petitioner as the exclusive representative of the employees in the bargaining unit which the petitioner claims to be appropriate, or (b) the employees in the bargaining unit which the petitioner claims to be appropriate wish to change their exclusive bargaining representative, or (c) the employees in the bargaining unit do not wish to be represented by an employee organization.

* * *

The above-cited rule (c), which applies to decertification petitions, is significantly different from (a) and (b) which apply to petitions for certification of exclusive bargaining representatives. While (a) and (b) refer to "the bargaining unit which the petitioner claims to be appropriate", (c) refers merely to "the bargaining unit". The difference indicates that in a decertification petition, the petitioner does not have the prerogative of claiming an appropriate unit, but rather must decertify in the context of "the bargaining unit", i.e., the existing bargaining unit. This conforms to the long standing policy of the National Labor Relations Board that "a decertification election will be directed only in the recognized or certified unit". Oakwood Tool & Engineering Co., 122 NLRB No. 93 (1958); See also Associated General Contractors of California, Inc., 209 NLRB 363 (1974). This policy was enunciated by the Board in Campbell Soup Co., 111 NLRB 234 (1955), where it reasoned that, while severance may be permitted so

^{3/} See RCW 41.59.070 where the legislature set forth specific decertification procedures for decertification petitions filed in units of certificated employees of school districts.

that specialized employees can be better served by separate representation, the decertification process does not result in separate representation. The Board concluded that it would not permit a craft to sever from a larger bargaining unit for the purpose of decertification, relying on its reluctance to find units appropriate for severance where there existed a broader established bargaining history. PERC has similarly been reluctant to grant severance in the context of a significant bargaining history of inclusion within a broader bargaining unit. Yelm School District No. 2, Decision 704 (PECB, 1979); Snohomish School District No. 201, Decision 750 (PECB, 1979); West Valley School District No. 208, Decision 1129 (PECB, 1981).

The bargaining unit which the petitioner claims to be appropriate for severance is not, in fact, an appropriate bargaining unit. The unit corresponds to those supervisory employees included in the existing bargaining unit. It encompasses some, but not all of the supervisors in two separate divisions of the water department and entirely excludes supervisors in other divisions. Other supervisory employees who are unrepresented and have direct supervisory authority over employees in the existing bargaining unit have been excluded. Broad supervisory units are favored, particularly where the employer involved is a utility. Municipality of Metropolitan Seattle, Decision 958 (PECB, 1980). There is no thread which logically connects the positions in the petitioner's proposed unit to the exclusion of other crew chief positions.

Similarly, it would be inconsistent with PERC precedent to base unit determinations solely on the extent of organization. Bremerton School District No. 100-C, Decision 527 (PECB, 1978). The extent of organization has more bearing on the existing bargaining unit than on petitioner's proposed unit, in which no separate organization has been shown.

Petitioner's aim is to remove from the existing bargaining unit a relatively small number of supervisory positions which are claimed to have been inappropriately included in the rank and file unit. PERC has dealt with such issues frequently, but always in the context of a unit clarification proceeding. City of Richland, Decision 279-A (PECB, 1978); City of Sunnyside, Decision 1178 (PECB, 1981). Unit clarification petitions may be filed only by the employer or the exclusive representative. WAC 391-35-010. King County, Decision 298 (PECB, 1977). The employee petitioner in the case at hand does not have standing to clarify the crew chiefs out of the bargaining unit.

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. The petitioner, Douglas F. Goett, is employed as a water pipe crew chief in the Water Department of the City of Seattle.
3. The intervenor, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 32, AFL-CIO, is a bargaining representative within the meaning of RCW 41.56.030(3).
4. The intervenor has been the exclusive representative of a bargaining unit consisting of approximately 140 positions within the Water Department of the employer. Approximately 12 of those positions are water pipe crew chiefs and transmission crew chiefs. The existing bargaining unit has included water pipe crew chiefs and transmission crew chiefs since at least 1972.
5. The petitioner filed a petition seeking decertification of the intervenor as exclusive representative of that portion of the existing bargaining unit consisting only of water pipe crew chiefs and transmission crew chiefs.
6. The water pipe crew chiefs and the transmission crew chiefs assign work, evaluate employees, and effectively recommend transfers and discipline, and perform other duties relating to rank and file employees within the existing bargaining unit indicative of first line supervisory status. They are the only supervisory employees within the bargaining unit.
7. First line supervisors who supervise other employees within the existing bargaining unit are unrepresented. Other first line supervisors within the same divisions as the water pipe crew chiefs and the transmission crew chiefs are in other bargaining units.
8. No testimony was proffered concerning desires of the employees.

CONCLUSIONS OF LAW


1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. A unit consisting of only water pipe crew chiefs and transmission crew chiefs is not an appropriate unit for severance from the existing unit for the purpose of holding a decertification election, and no question concerning representation presently exists.

ORDER

The petition of Douglas F. Goett for investigation of a question concerning representation is dismissed.

DATED at Olympia, Washington this 28th day of September, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written over a horizontal line.

MARVIN L. SCHURKE, Executive Director