

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)		
)	
TEAMSTERS UNION, LOCAL 760)	CASE NO. 6150-E-85-1104
)	
Involving certain employees of:)	DECISION NO. 2490 - PECB
)	
CITY OF ROYAL CITY)	DIRECTION OF ELECTION
)	
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L. E. "Louie" Leininger, Business Agent,
appeared on behalf of the petitioner.

Lemargie, Whitaker, Cordell by James A. Whitaker, Attorney at Law, appeared on behalf of the employer.

On December 19, 1985, Teamsters Union Local 760 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 Royal City. A hearing was held on March 5, 1986 before Jack T. Cowan, hearing officer. The parties made closing arguments on the record, and waived filing of post-hearing briefs.

BACKGROUND

Royal City is a community of approximately 800 persons, located in Grant County, Washington. The entire workforce of the city consists of seven employees, as follows:

Finance Director
Deputy Clerk (part-time)
Chief of Police
Police Officers (2 positions)
Public Works Director
Maintenance Employee

The union initially sought to have all seven of those employees included in a city-wide bargaining unit. The city initially asserted that the finance director was both a supervisor and a confidential employee; that the deputy clerk was a confidential employee; that the chief of police was a supervisor; and that the public works director was a supervisor.

Prior to the commencement of the hearing, the parties agreed to exclude the chief of police from the proposed bargaining unit. During the course of the hearing, the parties stipulated to exclude the finance director from the bargaining unit, and to include the deputy clerk position in the bargaining unit. Thus, the sole position remaining in dispute is that of the public works director.

Royal City was incorporated in January, 1985, as a non-charter code city under Chapter 35A.02 RCW. As a code city, Royal City began reorganization of the structure of city government. That process included adoption, on November 19, 1985, of Ordinance No. 85-5, which deals with organization of the various departments of the city. Four city departments are created: Finance, Public Works, Police and Law. Of those, the law department consists of a part-time city attorney, while each of the three remaining departments has one or more full-time city employees. It appears that the finance director and deputy clerk will continue to provide all of the clerical support for the police and public works departments, the creation of the separate departments notwithstanding. The ordinance provides for each of the departments to be headed by a department head who reports directly to

the mayor. By the time of the hearing in this matter, the reorganization process remained incomplete, however. The city council was in the process of developing and approving job descriptions for the various positions created by Ordinance No. 85-5.

The Public Works Department maintains the city's water and sewer system and is responsible for animal control. Staffing includes the director (formerly known as street superintendent) and a maintenance employee on a year-around basis. They are supplemented during the summer months by hiring of one additional employee (for approximately two months) to assist with park and street work. At the time of hearing, Vance Stewart was the public works director.¹ Stewart had not seen the proposed job description for his position prior to the hearing in this matter.

The proposed job description for the position of Public Works Director reads, in part, as follows:

The director shall be responsible to the Mayor, for the management of the public works department. The Public Works Director will be responsible for the supervision of departmental employees and effectively administrate construction and development of public work and related public facilities. ... Must be able to work with hands and be mechanically inclined as the Public Works Department is small and the Director must be a jack of all trades.

. . .

¹ On the morning of the hearing, a letter from the mayor was delivered to Director Stewart, indicating the mayor's intent to request the city council to confirm Stewart's termination from the position of director. This information was provided by counsel for the city "to establish any interest or bias of the witness".

Must have the ability to trouble shoot and analyze problems related to area of assignment. Must be able to operate, maintain and service all equipment assigned for department.

The Public Works Director is responsible to manage the Public Works budgets including the water/sewer and garbage current expense budget. The Public Works Director shall attend all staff meetings, council meetings and study sessions unless excused by the Mayor.

The public works director is responsible to supervise and train or arrange training within budgeting limits for all public works department employees to accomplish the function outlined herein. The public works is the first line supervisor of all departmental employees. All requested disciplinary actions beyond written reprimands are to be submitted to the mayor for review. Termination of departmental employees may be made for any reason but only after conferring with the mayor on the intent to terminate an employee. If the mayor is not available, the public works director may immediately suspend a departmental employee without pay until a conference with the mayor is held.

After reviewing the proposed job description, Stewart was asked, "Is there any portion of that proposed job description that the public works director does not presently do?" He responded in the negative. Stewart testified he spends an average of two hours per day on administrative duties. When asked if he was responsible for his own public works budget, however, he responded in the negative.² Stewart testified that he initiates a monthly work schedule and gives direction to the maintenance

² Thus, at the time of the hearing, the situation remained as it had been prior to adoption of the ordinance, such that the so-called finance director (formerly clerk/treasurer) was responsible for the public works budget and for annual preparation of a six-year street plan.

employee about three times per week. Depending on cost, Stewart initiates purchase orders which are then submitted to the finance director for approval, after which Stewart or his designee picks up locally purchased items. In response to the question, "Is it necessary for you to discipline any of your people? Do you write warning notices?" Stewart replied, "I never have, we have been lucky, we have had good help." He also responded in the negative when asked whether he had the authority to terminate or suspend an employee. He went on to elaborate, "I never felt like I had the power to do much of anything, as far as supervise and just do my work. I never felt like I had the power to hire and fire anybody." It is clear that the balance of Stewart's work time (i.e., approximately 6 hours per day) was spent performing manual labor tasks with the tools of the trade.

POSITIONS OF THE PARTIES

The union contends the public works director is a working foreman, and the majority of his work is bargaining unit work. It contends that, historically, the responsibility and job duties have been the same as they are now. Further, it points out that the new changes in the job description are projected but have not taken place.

The employer acknowledges the versatile nature of the position. However, the employer argues that to have an effective work force, it must have someone in charge of each organization. It contends that under the new structure, the position would have responsibility for budget preparation and would likely be the first-line grievance person for the city when a labor agreement comes into existence. It indicates concern that if the position were not excluded from the bargaining unit, the city would be left with a management team in which all directors are not

members; a situation which would be disruptive to the city's organization.

DISCUSSION

The applicable statute, Chapter 41.56 RCW, does not exclude "supervisors" from its coverage. The Public Works Director is a public employee within the meaning of RCW 41.56.030(2). The rights of public employees include, as a norm, the right to organize for the purposes of collective bargaining.

The Commission, with the approval of the courts,³ has acted under the unit determination provisions of the statute, RCW 41.56.060, to exclude "supervisors" from the bargaining units containing their subordinates, where necessary to effect appropriate separations of communities of interest and to avoid a potential for conflicts of interest that would otherwise tend to exist within a mixed bargaining unit. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wa.App. 599 (1981), cert. den. 96 Wn.2d 1005 (1981). When making such a unit determination, the matter must be decided on the record made, as if by a photographic snapshot of the employment relationship. Historical considerations, including changes of circumstances over time, are incorporated into the picture. The picture does not, however, include speculation as to possible future changes.

The Public Works Director in Royal City does not have unique duties, skills or responsibilities which would distinguish him

³ See: City of Tacoma, Decision 95-A (PECB, 1977) and Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Also noteworthy is the Supreme Court's rejection in METRO of the existence of an excluded class of "managerial" employees.

from the one other bargaining unit employee working in the department. By the proposed job description and from the testimony as to the historical facts, the incumbent of the disputed position spends the majority of his work time using the tools of the trade, sharing similar working conditions with bargaining unit employees.

Further, it is concluded from the record made in this case that the director possesses only limited authority in administrative matters. See: Clallam County Transit, Decision 1079-A (PECB, 1981). He assigns work duties but does no evaluation of employees. He does not exercise independent judgment in matters such as promotion, transfer or work performance. The factors which go into the determination of true supervisory authority include the ability to effectively recommend hiring and discipline or discharge, Thurston County, Decision 1064 (PECB, 1980), and it is clear that the director's authority in this area is extremely limited. There has been no substantial change in duties or responsibilities, such as training, supervising or disciplining employees, since Stewart took over the position. In particular, there had been no real change since the adoption of the ordinance giving Stewart a new title. His community of interest is more properly aligned with that of the bargaining unit. City of Toppenish, Decision 1973-A (PECB, 1985). It is thus concluded that the director does not qualify for exclusion as a supervisor, and should be included in the bargaining unit.

FINDINGS OF FACT

1. The City of Royal City is a non-charter code city organized under the laws of the state of Washington and is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Local 760, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), has petitioned for certification as exclusive bargaining representative of all employees of the City of Royal City.
3. The employer asserted that its Finance Director was a supervisor as well as a confidential employee, and that the Chief of Police and Public Works Director were supervisors who should be excluded from the petitioned-for bargaining unit. The parties have agreed during the course of these proceedings to exclude the city's Finance Director and its Chief of Police from the bargaining unit.
4. The position of Public Works Director remained in dispute. The title was created by an ordinance adopted by the city council in November of 1985, as a replacement for the "street superintendent" title previously used within the city's workforce. No job description had been adopted for the new position by the time of the hearing in this case, nor had the incumbent of the disputed position taken responsibility for budget or long-term planning. Under a proposed job description, the disputed position will continue to require substantial expertise and work in mechanical and labor activities. Further, under the proposed job description, the disputed position will continue to lack authority to act or make effective recommendations in the areas of evaluation, hiring, promotion, discipline and discharge of subordinate employees.
5. The Public Works Director is a public employee whose duties, skills and working conditions are generally similar to those of other bargaining unit employees, so as to have a similar community of interest.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. A bargaining unit of all full and regular part-time employees of the City of Royal City, excluding confidential employees and supervisors, is an appropriate unit for purposes of collective bargaining within the meaning of RCW 41.56.060.
3. The parties have stipulated the exclusion of the finance director and the chief of police from the bargaining unit described in paragraph 2 of these conclusions of law.
4. The public works director is a public employee within the meaning of RCW 41.56.030(2), who shares a community of interest with other city employees and is appropriately included under RCW 41.56.060 in the bargaining unit described in paragraph 2 of these conclusions of law. The incumbent of that position will be an eligible voter in the election directed in this proceeding.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission in the bargaining unit described as:

All full and regular part-time employees of the City of Royal City, excluding confidential employees and supervisors

for the purpose of determining whether a majority of the employees in that bargaining unit desire to be represented by Teamsters Union Local 760 or by no representative.

DATED at Olympia, Washington, this 19th day of August, 1986.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director

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