

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	CASE NO. 7056-E-87-1214
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL 46	)	DECISION 2830-A - PECB
	)	
Involving certain employees of:	)	
	)	ORDER DETERMINING
SEATTLE SCHOOL DISTRICT	)	ELIGIBILITY ISSUE
	)	
	)	

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Hafer, Price, Rinehart, and Schwerin, by  
Cheryl French, Attorney at Law, appeared on  
behalf of the petitioner.

Tom R. Schmidt, Director of Staff Rela-  
tions, appeared on behalf of the employer.

International Brotherhood of Electrical Workers, Local 46, filed a petition with the Public Employment Relations Commission on October 6, 1987, seeking investigation of a question concerning representation involving employees of the Seattle School District engaged in office machine repair work.

At a pre-hearing conference held on November 6, 1987, the employer took the position that the shop supervisor should be excluded from the proposed bargaining unit on the basis that he was a confidential employee and a supervisor. The parties executed an election agreement and a supplemental agreement, deferring the eligibility dispute for post-election determination.

A secret ballot election was conducted on December 1, 1987, the results of which were conclusive in favor of the union, and an

interim certification was issued. Seattle School District, Decision 2830 (PECB, 1987).

A hearing regarding the eligibility dispute was held on March 4, 1988, before Hearing Officer Frederick J. Rosenberry. In the course of the hearing the employer withdrew its contention that the shop supervisor is a confidential employee. The parties submitted post-hearing briefs. Authority to determine the eligibility issue has been delegated to the Hearing Officer under WAC 391-25-390.

#### BACKGROUND

The parties stipulated to the composition of the bargaining unit, which is set forth in the interim certification as:

All full-time and regular part-time employees employed in the office machines repair shop; engaged in the installation, service, and repair of office machines; excluding supervisors, confidential employees and all other employees of the employer.

The office machine shop is located at the district's maintenance compound. Its personnel are responsible for keeping all of the district's office machines, including computers, typewriters, copy machines, staple machines and related equipment, in operating order. Some shop employees are cross-trained to repair different types of equipment, while others are specialists whose scope of work is limited.

These employees call on district offices and schools to repair and perform periodic maintenance on office machines. All district work order requests are channeled through a work

control center which initiates computerized work order tickets that are relayed to the appropriate shop for action.

The repair shop employs five regular employees in addition to the disputed shop supervisor, Del Linstead. All of the shop's regular employees are employed on the basis of a 260 day work year.

Linstead's formal job title is "Office Machine Shop Supervisor". He has been employed in the office machine sales and/or service industry for more than 40 years, and was hired by the district in 1984, as a "copier technician". In April, 1986 he was promoted to his current position, which the district formally describes as:

General Summary Statement:

Under general direction from the Supervisor of Maintenance, administers and organizes daily shop operations; supervises staff of office machine, micro-computer, and copy machine technicians; performs repair work on equipment.

Duties and Responsibilities

1. Administers daily shop operations; organizes work schedules and service routes.
2. Spot checks and inspects work performed by staff to assure that quantity and quality are maintained; identifies problems or deficiencies and initiates correction action.
3. Supervises assigned staff; assigns work and evaluates performance; recommends hiring, dismissal, or change in assignment.
4. Assures that training or retraining of staff is accomplished as required.

5. Check and approves time sheets.
6. Audits purchases made by staff members; purchases and maintains parts and stock inventory as required; maintains purchase and stock distribution records.
7. Maintains complete and accurate repair (sic) records on each item of equipment.
8. Researches and assesses capabilities of office equipment and supplies; recommends equipment for District use.
9. Participates in repair work in various types of office machines, including microcomputers and associated accessories.
10. Performs related duties as assigned.

Education:

Graduation from an accredited vocational school with training in the repair of a majority of office equipment; or factory training in the repair of at least one kind of equipment.

Length and type of experience:

Two years experience in the repair of a majority (at least two types) of office equipment, and two years of lead or supervisory experience.

Special licenses:

Must possess a valid Washington State driver's license.

Skills:

Knowledge of:

Equipment repair methods.

Ability to:

Operate electronic diagnostic equipment, soldering and desoldering tools; read and interpret schematic diagrams; lift up to 50 pounds; organize and schedule work; supervise staff.

Linstead spends a majority of his work time at the shop, where he has an office adjacent to the shop work area. His scheduled work day starts at 7:30 a.m.,<sup>1</sup> and his daily work agenda calls for him to review pending work order requests for completion, review, prioritize, and assign new work orders to the appropriate shop technician,<sup>2</sup> and order necessary parts. In addition to his basic duties, Linstead attends a weekly shop foreman's meeting, monitors the department's purchases for compliance with its budget, occasionally accompanies technicians in the performance of their field duties, performs periodic employee evaluations, and takes whatever steps are necessary to see to it that the department performs its assigned tasks.

Linstead personally handles work orders calling for repairs or maintenance on printing presses and graphic arts equipment, because no one else at the shop is trained to perform such work. In the event that a work order for a repair comes in and the assigned technician is absent, Linstead will take the call and perform the repair if he is capable of doing so. He estimates that he spends 10% to 15% of his time repairing office equipment and the balance of his time managing the shop.

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<sup>1</sup> The record does not indicate that Linstead's normal work day or work week is different than that of the other employees in the shop, and the Hearing Officer infers that it is the same.

<sup>2</sup> On occasion there may be as many as 50 separate malfunctioning typewriter work orders during a day.

In the course of a typical day, the shop technicians other than Linstead spend approximately six and one-half hours in the field and one and one half hours at the shop.

Salaries vary among employees based on entry rate, length of service, and job classification. Linstead is paid at the CS 31 salary level,<sup>3</sup> which is the highest level paid in the shop. Two other shop employees are placed at salary level CS 30, while the remaining three are at salary level CS 29. The CS 31 rate of pay is approximately 8% than that paid at the CS 30 level, and approximately 16% greater than that paid at the CS 29 level.

The district's sick leave, emergency leave, and medical programs are the same for all of the shop employees.

Vacations are based on both length of service and classification. Employees at salary levels CS 20 - CS 34 and classified as "support staff" are granted 12 days of annual leave with 0 to 4 years of service. Employees classified as "supervisory, non-managerial" at salary levels CS 31 - CS 34, and those classified as "professional/ technical" at salary levels CS 29 - CS 35, are granted 15 days of annual leave with the same length of service. Linstead is receiving the higher benefit level, while the record indicates that at least some of the other shop employees may be receiving the lower benefit level.

Linstead reports to Samuel Buyco, who is the district supervisor of maintenance. Buyco oversees the operation of 13

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<sup>3</sup> The district maintains a consolidated salary schedule for its non-represented employees who are employed on the basis of a 260 day work year. The schedule starts at salary level CS 20 and ends at salary level CS 45. Each level has nine steps.

maintenance shops and determines their staffing levels. Buyco does not perform office machine repair or provide day-to-day direction of the shop's activities. He visits the office machine shop at least once per month to observe its operation.

#### POSITION OF THE PARTIES

It is the union's position that the shop supervisor shares a community of interest with the other employees in the bargaining unit, because he performs a significant amount of the same non-supervisory work that is performed by the bargaining unit employees. While the union acknowledges that Linstead performs some supervisory duties, it maintains that those are not of an extent warranting his exclusion from the unit. It sees no likelihood of a supervisory conflict of interest in the event that Linstead is placed in the unit. The union contends that Linstead should be looked upon as a working foreman and that, in conformity with the historical practice in the maintenance department, he should be included in the unit. The union sees exclusion from the bargaining unit as a deprivation of the right to representation, maintaining that Linstead would be stranded in his position without the possibility of being included in any bargaining unit.

The district argues that Linstead exercises substantial judgment and has significant independent responsibility in the operation of the shop, so that he is a supervisor who should be excluded from the bargaining unit. The district contends that Linstead has different working conditions, skills and duties from those of the other shop employees, and that he is paid a higher rate of pay. It argues that he interviews and hires new employees, effectively recommends salary placement, assigns work, sets priorities, evaluates employees, approves

leave, approves overtime, schedules work, checks work, determines training needs, has authority to impose discipline, is the first appeal step in the grievance process, effectively recommends lay-offs, attends staff meetings, and has purchasing and budgeting authority. The district urges that past unit placement history in the other shops is not relevant because this is a newly created bargaining unit; that Linstead does not have a community of interest with the bargaining unit; and that his inclusion in it would pose the potential for a conflict of interest.

#### DISCUSSION

Supervisors are public employees within the meaning of Chapter 41.56 RCW, Municipality of Metropolitan Seattle v. Department of Labor and Industries, 88 Wn. 2d 925 (1977). Supervisors will not be included in a bargaining unit composed of their subordinates where there is the potential for a conflict of interest, City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wa.App. 599 (1981); cert. den., 96 Wn.2d 1004 (1981). Such separation is accomplished under the unit determination criteria of RCW 41.56.060, because supervisory employees have duties, skills and working conditions as supervisors which are separate from those of their subordinates, and so have a fundamentally different community of interest. Grays Harbor County, Decision 1948 (PECB, 1984). Bellingham School District, Decision 2823 (PECB, 1987).

#### Criteria for Classification as "Supervisor"

The Public Employment Relations Commission and the Washington courts have applied compatible federal precedent in the administration of Chapter 41.56 RCW, Nucleonics Alliance, Local



1-369 v. WPPSS, 101 Wn.2d 24 (1984). The term "supervisor" is not defined in Chapter 41.56 RCW, but is defined in Section 2(11) of the National Labor Relations Act (NLRA) as:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employee, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Educational Employment Relations Act, Chapter 41.59 RCW, which is applicable to the district's certificated employees defines the term "supervisor" in a manner similar to the NLRA definition, and is also looked to for guidance in making bargaining unit determinations. City of Bothell, Decision 2724 (PECB, 1987).

In evaluating a claim of supervisory status and differing community of interest under Chapter 41.56 RCW, the scope of the disputed supervisor's employment relationships with the alleged subordinates is taken into consideration. Factors such as hiring, assignment of work, direction of the work force, promotion, transfer, layoff, recall, time off, discipline and discharge are critical. Supervisors must have the authority to exercise discretion or independent judgement, or the authority to effectively recommend such personnel actions.

Authority to Hire -

The district encourages the maintenance shops to employ youths from the district's high schools during the summer break

through a district-administered program. As shop supervisor, Linstead has the exclusive authority under the program to interview student participants and to select one or two applicants of his choosing to be trained to dismantle, clean, and lubricate the machines.

Linstead testified that he has requested additional permanent help since he became shop supervisor, however shop staffing levels are determined by Buyco. Linstead's requests for more staff have been rejected, so Linstead has not had occasion to be involved in the hiring of regular employees. The record reflects, however, that Linstead's predecessor hired three of the shop's current employees, apparently without Buyco's participation. Linstead testified that there were several individuals present during his own pre-employment interview with the district, but that he was interviewed only by his predecessor when he was actually hired, a few months later. Buyco testified that he would not normally participate in applicant interviews for jobs in the office machine shop. Instead, it was Buyco's testimony that the shop supervisor would conduct interviews and then notify both himself and the personnel department of any individual recommended for hire. Such recommendations would normally be accepted. Absolute hiring authority is frequently vested with the executive head of an employing entity in the public sector, so that hiring authority is limited at subordinate levels of management to the making of effective recommendations. There is every indication in the case at hand that the shop supervisor's recommendation weighs heavily, and would be effective in the absence of external considerations, in hiring.

Authority to Determine Salaries -

The district's salary grid is applicable to all non-represented employees. Salaries are administered by the district's

personnel department in accordance with the grid. The record fairly reflects that the shop supervisor has some influence over what salary step will be assigned to a new hire. The exercise of such discretion is supported by the circumstances of Linstead's own hire. His previous experience and training were recognized by his predecessor, who placed Linstead at a salary step greater than the entry rate.

Periodic Performance Evaluations -

Linstead conducts the performance evaluations for the office machine shop. New hires are to be evaluated at the completion of six months of service, and all employees are to have annual evaluations. Linstead periodically visits district facilities to discuss the performance of the office machine shop personnel. He is the only person who observes and accompanies shop personnel to evaluate their performance in the field. The district requires the evaluator to use a district-developed, comprehensive, five-page evaluation report. The report is broken down into five principal sections; position description requirements rating form, standards of effective performance, specific objectives evaluation, and overall rating and recommendations. Much of the form simply requires the evaluator to place a check mark in the rating box that is appropriate, but some written comment is also required.

The record does not reflect that personnel action has been initiated for or against any office machine shop employee as a result of a performance evaluation, and the impact or effect of a poor work evaluation initiated by Linstead has not been specifically established. It is reasonable to assume, however, that periodic evaluations would be used as evidence in disciplinary proceedings regarding job performance. The record fairly reflects that Buyco would have to be consulted by Linstead before he could place an employee on probation or

discharge an employee. In the event that there was an appeal from the evaluation, it would be to Buyco.

Authority to Discipline -

The District maintains a policy of progressive discipline. In routine situations, discipline is initiated as an oral warning and, if the condition persists, written warning is issued. Linstead has not had the occasion to impose discipline, but the record fairly reflects that he has the independent authority to impose verbal and written warnings, without need to consult with anyone prior to doing so. Should he do so, his discipline would have to comply with district procedures and guidelines in that regard.

Authority to Adjust Grievances -

The district maintains a grievance procedure that is available to non-represented employees, offering them recourse in the event that they believe that a district rule, regulation or procedure has not been complied with. There have been no grievances filed by shop personnel since Linstead's employ. The district offered un rebutted testimony, however, that in the event such a grievance would have been raised in the office machine shop, it would have been referred to Linstead at the first step for resolution.

Authority to Determine and Authorize Training -

The district offers periodic professional development training programs for its staff. It determines how many hours of training will be offered. Any training taking place under the program is scheduled in addition to regular work hours, and attendance is paid for as additional compensation. Large group seminars as well as individualized shop training may be offered. Employees can exercise some discretion in what training they will undertake. Linstead has the authority to

review the shop employees training preference, in order to assure that any training they may select is relevant to their individual job requirements. Linstead has made effective recommendations to Buyco concerning training for employees in the office machine shop. Linstead certifies employee participation in approved training sessions, so they qualify for additional compensation for attendance.

General Responsibilities -

Linstead has the undisputed authority to approve vacation requests. He also approves requests for sick leave and other forms of leave.<sup>4</sup> Linstead has not personally authorized overtime, as such authorization has come from his supervisor. Linstead is solely responsible for determining the priority of requests for repair and assigning calls for maintenance to the shop technicians. He is expected to operate the shop within the budget assigned by the district.

Conflict of Interest

If Linstead were to be placed into the same bargaining unit as his subordinates, he could be called upon to support the union in its representation of an individual on whom he imposed some form of adverse personnel action. Linstead would be placed in an untenable position, as his loyalties would be claimed by both the union and the employer. The employer has the right to expect support from its supervisors, as does a union have the right to expect support from its members. City of

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<sup>4</sup> Although the record is silent on the matter, there is an inference that claims for paid or unpaid leave must be in accordance with district rules and regulations, and that Linstead does not have discretionary authority to depart from them and allow greater or lesser benefit.

Mukilteo, supra. It is inimical to the interests of the parties to impose such situation on an employee.

#### Performance of Bargaining Unit Work

The union argues that Linstead performs a great deal of the same type of work as the other shop personnel and, therefore, should be included in the bargaining unit. Linstead testified credibly that he spends little time performing technical, repair functions. Rather, he spends the major portion of his time performing functions essential to the operation of the shop such as supervising the shop staff, assigning work, performing assorted personnel functions, preparing training, and performing miscellaneous administrative tasks, all of which are duties that only he performs.

Employees who perform traditional supervisory functions, even though they perform some substantial amount of bargaining unit work, are exposed to the potential for a conflict of interest, and will be excluded from the same bargaining unit as their subordinates. City of Bellevue, Decision 1214 (PECB, 1981). There is no statutory proscription against a "supervisor" performing bargaining unit work, and the performance of such work is not an automatic indicator of bargaining unit status.

#### Community of Interest

Linstead has little community of interest with the other shop employees. He is paid a higher salary, performs minimal hands-on work on office machines, and has separate duties as manager of the day-to-day operation of the shop, supervising the technicians and generally performing different functions than the other shop personnel. The shop operates with no day-to-day supervision other than that exercised by Linstead, as Buyco

relies on Linstead exclusively to exercise supervisory control of the shop, and has no direct contact with the shop technicians. All communication is channeled through Linstead.

The record reflects that even though Linstead may not have had reason to exercise all of the segments of his position's authority prior to the time of the instant hearing, he has authority in the interest of the district to hire, determine salary steps, prioritize and assign work, determine training, evaluate staff performance, and initiate discipline or to effectively recommend such. He has different skills and working conditions and a separate community of interest from that of the employees who are affected by such decisions.

Historic Practice of Inclusion Not Persuasive

The union argues that, historically, the persons in charge of the district's various maintenance shops that have a collective bargaining agreement have been viewed as foremen, and have been included in the same bargaining unit as the remainder of the employees of those shops. It contends that such a practice should be extended to the office machine repair shop. The district counters that past practice is not relevant to the case at hand, which involves the creation of a new bargaining unit.

The union has offered no evidence indicating that the matter of unit placement for the persons in charge in the other shops is the result of previous Commission determination.<sup>5</sup> It can be inferred that, at some time in the past, the district extended

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<sup>5</sup> In examining Commission records the Hearing Officer is unable to locate any docketed cases that address eligibility issues in any of the district's maintenance shops.

voluntary recognition to unions representing the employees in other shops, and that the potential for supervisory conflicts of interest was not contested. The determination of appropriate bargaining units has been delegated to the Commission by the Legislature, however, and unit make-up is not subject to the give and take of conventional collective bargaining. City of Richland, supra. The union's argument does not take the community of interest and conflict of interest factors into consideration. Unit clarification procedures are available to the employer to obtain rulings on the propriety of the other units, which are not before the Hearing Officer in this case.

The record here also reflects that there are differing degrees of supervisory authority granted to the persons in charge of the various shops. Employees of some shops that have collective bargaining relationships with the district do not undergo periodic performance evaluations. Supervisory distinction between the shops is further illustrated by union witness John Tobey, a IBEW business representative. Tobey, who periodically calls on members employed in district maintenance shops, testified that to the best of his knowledge, some available job positions in the shops that have collective bargaining agreements are filled by individuals who are referred by the union. This would seem to diminish the authority of the persons in charge in those shops, by effectively eliminating discretion in hiring.

#### Stranding Concerns Not Realistic

The union argues that an exclusion of Linstead from the office machine shop bargaining unit would result in his being stranded as an individual, with no means of exercising the right of selecting a bargaining representative of his choosing. This argument fails to recognize a key distinction between Chapter



41.56 RCW and the National Labor Relations Act (NLRA). While the NLRA does not extend any collective bargaining rights to supervisors, a finding that Linstead should be excluded from this unit under RCW 41.56.060 as a supervisor does not deprive him of access to collective bargaining. He could combine with other supervisory employees of the district to organize a separate unit of supervisors, based on their community of interest, separate and apart from their subordinates. City of Tacoma, Decision 95-A (PECB, 1977); City of Mukilteo, Decision 2202-A (PECB, 1986).

#### FINDINGS OF FACT

1. Seattle School District is a school district of the state of Washington, organized and operated under Title 28A RCW and is a "public employer" within the meaning of RCW 41.56.030(1).
2. International Brotherhood of Electrical Workers, Local 46, a "bargaining representative" within the meaning of RCW 41.56.030(3) filed a timely and properly supported petition for investigation of a question concerning representation of office machine repair shop employees on October 6, 1987.
3. The parties executed an election and supplemental agreement on November 6, 1987, stipulating to a proposed bargaining unit described as:

All full-time and regular part-time employees employed in the office machines repair shop; engaged in the installation, service, and repair of office machines; excluding super-

visors, confidential employees and all other employees of the employer.

The employer contended that Del Linstead, the incumbent "Office Machine Shop Supervisor", should be excluded from the proposed bargaining unit on the basis that he was both a confidential employee and a supervisor.

4. A secret ballot election was conducted on December 1, 1987, the results of which were conclusive in favor of the union. Thereafter, interim certification was issued.
5. The shop supervisor is classified at a higher salary level than the other employees in the shop. He can make effective recommendations regarding hiring, initial salary placement, the imposition of discipline, and discharge. The shop supervisor has authority in the interest of the employer to hire extra student staff, schedule training, adjust grievances, assign work, and evaluate employees.
6. The office machine repair shop supervisor spends a majority of his time performing duties that are related to the management and operation of the shop. Such duties are different from those assigned to other shop personnel.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The "Office Machine Shop Supervisor" exercises supervisory authority over employees employed in the bargaining unit

described in paragraph 3 of the foregoing findings of fact, and does not share a community of interest with them, so that the inclusion of the shop supervisor in the same unit as the other shop personnel would create the potential for a conflict of interest and would not be appropriate under RCW 41.56.060.

ORDER

The position of "Office Machine Supervisor" shall be excluded from the bargaining unit of non-supervisory office machine repair employees. The incumbent in the position was not an eligible voter in the representation election conducted in the above captioned matter.

DATED at Olympia, Washington, this 23rd day of November, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



FREDERICK J. ROSENBERY, Hearing Officer

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