

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
TEAMSTERS UNION, LOCAL 690	)	CASE 7559-E-88-1296
Involving certain employees of:	)	DECISION 3103-B - PECB
CITY OF CHEWELAH	)	SUPPLEMENTAL ORDER
	)	DETERMINING CHALLENGED
	)	BALLOT

John DeLauder, Business Representative, appeared on behalf of the union.

Duane Wilson, Labor Consultant, appeared on behalf of the employer.

On September 9, 1988, International Brotherhood of Teamsters, Local 690 (Teamsters), filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of a unit of "public safety dispatchers" employed by the City of Chewelah. A pre-hearing conference was held on October 27, 1988, at which it was stipulated that a bargaining unit limited to the dispatch personnel was appropriate, and that an election would be held to determine a question concerning representation. The parties disagreed as to the eligibility of one employee, Mildred McBee, and the parties filed a supplemental agreement to preserve that eligibility dispute for post-election determination. McBee's ballot was taken under challenge at the representation election conducted on November 23, 1988.

An Interim Certification was issued on February 21, 1989, in City of Chewelah, Decision 3103-A (PECB, 1989), designating

Teamsters Union Local 690 as exclusive bargaining representative.<sup>1</sup> The bargaining unit was described in that certification as:

All full time and regular part time public safety dispatchers in the City of Chewelah, excluding the Chief of Police, all other city employees and auxiliary employees.

A hearing was held on the challenged ballot cast by Mildred McBee on January 26, 1989 at Chewelah, Washington, before J. Martin Smith, Hearing Officer. Briefs were filed by the parties to complete the record in this case.

#### BACKGROUND

The City of Chewelah, Washington, is a small municipality located in Stevens County, in the northeast quadrant of the state. The Mayor is Larry Richmond; the City Clerk is Dorothy Stumpf. Chief of Police James Murphy heads a department with a staff consisting of three regular police officers, a number of "reserve" police officers, one clerk-dispatcher, and two "home-based" dispatchers. The regular police officers are organized for the purpose of collective bargaining under Chapter 41.56

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<sup>1</sup> The employer's observer at the election also challenged the eligibility of one Frances Trapp, on the grounds that she worked for the Fire Department and ought to be excluded from the list of eligible employees. Trapp's ballot was also taken under challenge, and the matter was referred to the Executive Director. On January 23, 1989, the challenge to the ballot cast by Trapp was overruled in City of Chewelah, Decision 3103 (PECB, 1989), wherein he overruled the challenge to Frances Trapp's ballot and provided an amended tally of ballots. The amended tally showed there having been two valid ballots cast in favor of Teamsters Union Local 690.

RCW, but the reserve officers have never been included in a bargaining unit.

Mildred McBee currently holds the clerk-dispatcher position in the Chewelah Police Department. She has worked in that capacity for the past five years. McBee was originally hired as a part-time, federally funded (CETA) employee, and was elevated to full-time status after six months. In her capacity as a CETA employee, McBee occasionally hired other CETA employees for summer help, after joint interviews with Chief Murphy.

McBee wears a uniform, works within 15 feet of the chief's office, and acts as personal secretary for Chief Murphy. She estimates that 80% of her time is spent in dealing with secretarial and administrative matters, phone-calls and other organizational tasks for the department. McBee receives and files police officers' reports. She reviews the time cards of Police Department employees, keeps a record of their duty time and, together with Chief Murphy, makes corrections to obvious errors on the time cards. McBee is directed from time to time to type correspondence for Chief Murphy. Some letters were to employees; some were to citizens who had registered various complaints. She has typed out the vacation schedule for police officers, so that county and city prosecutors know the officers' availability for court proceedings. McBee testified that she is the only secretary to the chief, and that she is accustomed to keeping matters "confidential", including citizen complaints with police in the City and other jurisdictions. She explained: "Anything that I handle shouldn't be out in the public, I don't think -- any kind of talk is damaging." Although she keeps a key to the chief's office, she has no access to the personnel files kept there, and would open them only at the chief's direction. This has not occurred.

The remainder of McBee's work time is spent in dispatching calls to patrol officers or fire departments in Chewelah and surrounding portions of Stevens County.<sup>2</sup>

While the police officers report to the city hall/police department complex, McBee is the only Police Department employee that has her work station, and spends her entire work time in the Police Department office. When McBee is absent, other secretarial employees answer the Police Department telephones and take messages, or the calls are directed to the home-based dispatchers.

McBee has been asked to monitor the radio and telephone calls handled by the home-based dispatchers, which are tape-recorded by equipment located in the police chief's office. She sometimes suggests different methods of communication for particular emergency calls. She has not imposed any discipline on the other dispatchers, however.

McBee testified of having no knowledge of bargaining proposals made in collective bargaining negotiations concerning the police officers. She has not been involved with typing of

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<sup>2</sup> A document in evidence as Exhibit 1 in this proceeding purports to be a job description for a position called "Clerk/Dispatcher", and appears to be about the job which McBee has held for five years. On its face, the document assigns several supervisory duties and confidential duties. The probative value of the exhibit as evidence is diminished, however, by the fact that much of McBee's testimony -- even in response to questions asked by management representatives -- contradicts the document. Additionally, there is no date on the document, and it was made clear by the testimony that the document was signed by McBee some time after the petition in this case was filed with the Public Employment Relations Commission. It thus appears that the document is self-serving, developed in contemplation of these proceedings.

bargaining proposals, taking of minutes of meetings, or the like.

#### POSITIONS OF THE PARTIES

The City of Chewelah argues that Mildred McBee "operates substantially as an arm of management in the Police Department", that she supervises two other dispatchers, and that she ought to be excluded from the bargaining unit in this case as both a "confidential employee" and a "supervisor".

Teamsters Union Local 690 counters that McBee has no ability to hire, discipline or discharge employees among the public safety dispatchers. Further, the union contends that she has no access to personnel files or other pertinent labor relations material which justifies her exclusion as a "confidential employee".

#### DISCUSSION

##### The Confidentiality Issue

Because status as a "confidential" employee deprives the individual of all rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, the party that seeks exclusion of an employee as "confidential" has a heavy burden of proof. City of Seattle, Decision 689-A (PECB, 1979).

Further, under precedent which dates back to International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978), exclusion must be supported by evidence that the individual has a "labor nexus" -- a direct participation in the

formation or implementation of the employer's labor relations policy. See, also, San Juan County, Decision 1690-A (PECB, 1984). Where an employee has not been involved in collective bargaining on behalf of the municipality, or in executive level meetings where labor relations policy is discussed, there is little need to exclude them as "confidential" employees. Grays Harbor County, Decision 1948 (PECB, 1984); Richland School District, Decision 2208 (PECB, 1985).

The "confidential" exclusion specifically protects the collective bargaining process, protecting the employer (and the process as a whole) from conflicts of interest and divided loyalties in an area where improper disclosure could damage the collective bargaining process. Possession of other types of information that are to be kept from public disclosure is not a threat to the collective bargaining process, and a showing that an employee holds a position of general responsibility and trust does not establish a relationship warranting exclusion from collective bargaining rights, where the individual is not privy to labor relations material, strategies, or planning sessions. Bellingham Housing Authority, Decision 2140-B (PECB, 1985); Benton County, Decision 2719 (PECB, 1989).

The position occupied by Mildred McBee does not involve the administration of a budget or the making of cost estimates for bargaining proposals, as did the police administrative accountant in City of Lacey, Decision 2112 (PECB, 1985). McBee does not participate in labor negotiations, as did the parks director in City of Toppenish, Decision 1973, 1973-A (PECB, 1985). As she is not the only full-time office-clerical employee of the employer, it is not necessary that she be the custodian of official records relating to labor relations policy, as were the town clerks in Town of Granite Falls, Decision 2617 (PECB, 1987) and Town of Granger, Decision 2634

(PECB, 1987). Clearly, the city clerk or some other clerical employee could prepare and maintain sensitive labor relations documents and materials for the City of Chewelah, without hardship to the city or its Police Department. Indeed, it is clear that 80% of McBee's duties involve routine clerical matters and that, when she is absent, that work is not suspended. Rather, other clerical employees substitute for her at her work station in the police department.

Mildred McBee holds a position of responsibility and trust in the City of Chewelah Police Department, but she is not a "confidential employee" of the type to be excluded from bargaining units under RCW 41.56.030(2)(c).

#### The Supervisor Issue

Although they may remain "employees" under the coverage of the collective bargaining statute, and form bargaining units of their own under RCW 41.56.060, employees who exercise authority over other employees are commonly excluded from the bargaining unit(s) containing their subordinates. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App 599 (Division III, 1981), rev. den. 96 Wn.2d 1004 (1981); Spokane International Airport, Decision 2008 (PECB, 1984); City of Pasco, Decision 2636 (PECB, 1987); Grays Harbor County, Decision 1948 (PECB, 1984).

The exclusion of "supervisors" is based on the potential for conflicts of interest when an individual is given authority to act independently, but on behalf of the employer, in areas such as hiring, discipline, discharge, adjustment of grievances, assignment of work, evaluation of employee work, and scheduling of overtime, vacation, or sick leave. In some cases, supervisors wear differing uniforms, are paid at higher levels of

pay, and attend management meetings. City of Pasco, Decision 2636, 2636-B (PECB, 1987); Spokane County, Decision 3011 (PECB, 1988). A supervisory relationship can be found if an employee can "effectively recommend" that action by management be taken with respect to any of the criteria listed above. Mildred McBee does not fit into any of these categories.

The employer's brief points out and attaches all of the exhibits introduced in evidence at the hearing in this matter. For the most part, those exhibits indicate that McBee does clerical, reporting and administrative duties on behalf of the chief of police. But individually and collectively, they do not involve her in the discipline of employees. The employer's attempt to characterize McBee's review and comment<sup>3</sup> on the work of the "home-based" dispatchers is not persuasive. A dictionary definition of "discipline" mentions: (1) Training to act in accordance with rules (as in military drill), (2) instruction and exercise designed to train to proper conduct or action, (3) punishment inflicted by way of correction and training, (4) the training effect of experience, adversity, etc., and (5) the subjection to rules of conduct or action.<sup>4</sup> Although "teaching" may seem to be a component of the term in general use, "punishment" is the key meaning of the term in the world of labor-management relations. In the Roberts' Dictionary of Industrial Relations,<sup>5</sup> discipline is defined as:

[A]n action by the employer, short of discharge, against an employee for

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3 At one point in the testimony, the employer's representative invited testimony that "discipline means to teach, not to punish". The witness did not directly answer the question.

4 American College Dictionary, Random House (1965).

5 BNA Books (1966).



infraction of company or contract rules. Discipline may take the form of loss of rights under the agreement . . . loss of pay, or other penalties set out in the contract or agreed to as a method of avoiding or reducing the incidence of the infractions . . . Discipline is designed to encourage workers to follow procedures so that the work of the group can go on without undue difficulty.

It is the latter definition which is applied in administering the definition of "supervisor" set forth in Section 2(11) of the National Labor Relations Act. That is also the definition to be applied here. Looking at the documents in evidence, in light of the foregoing, it is readily apparent that:

- \* A letter to Teamsters Union official Lynn Lehrbach refers to a vacant position at Chewelah. It is not a disciplinary matter, or anything more than a common, contract-enforcement on the part of the union. There is nothing in this letter related to dispatch personnel.
- \* The exhibits related to a citizen complaint by an Idaho resident were directed to an officer of the police department. One can envision that reply by the chief might be withheld from general public disclosure, but it did not relate to any discipline against officer Adair.<sup>6</sup>
- \* A December, 1986 memorandum from Chief Murphy to the city administrator again involved a citizen complaint about a city employee, but the individual involved was not within the dispatcher bargaining unit, or even the Police Department. Again, no disciplinary action was taken.

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<sup>6</sup> Aside from noting the officer's failure to give the motorist a copy of the speeding citation, the chief defended the officer's handling of the incident.

- \* A February, 1987 memorandum to the prosecuting attorney for Stevens County is merely a listing of the vacation schedule for members of the Police Department for that year. The document includes the police chief's vacation plans, as well as McBee's. This appears to be a routine, administrative document, summarizing choices made by others. It does not indicate that McBee exercised any authority or discretion in the vacations listed.
  
- \* A March, 1988 memorandum to the city administrator is a lengthy explanation about why Washington State Patrol personnel failed to appear for a state vehicle inspection. McBee may have been privy to disciplinary action involving the Washington State Patrol, but the matter has nothing to do with oversight of employees of the City of Chewelah.
  
- \* A memorandum to the Marshal of Springdale did not involve the discipline of any employee of the City of Chewelah, or any other confidential labor relations matter.

In the absence of a showing that Mildred McBee has and exercises some authority over other dispatcher employees of the employer, particularly with respect to their hiring, discipline, or discharge, there is no basis upon which to conclude that she is a "supervisor" of the type excluded from bargaining units under Commission precedent.

#### FINDINGS OF FACT

1. The City of Chewelah is a municipal corporation 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 Union, Local 690 is a labor organization qualified to act as exclusive bargaining representative as defined in RCW 41.56.030(3).
3. Teamsters Union, Local 690 is the certified exclusive bargaining representative of a bargaining unit described as: "All full time and regular part time public safety dispatchers in the City of Chewelah, excluding the chief of police, all other city employees and auxiliary-employees."
4. Mildred McBee is the most senior clerk-dispatcher in the Chewelah Police Department. Twenty percent of her work time and job content is devoted to dispatching work, while the remaining 80 percent involves administrative duties.
5. Although she holds a position of trust and confidence within the Police Department, McBee does not attend labor-management meetings or participate in collective bargaining on behalf of the employer, and does not otherwise hold a fiduciary position in the department such that is necessarily privy to confidential information concerning the labor relations policies of the City of Chewelah.
6. Mildred McBee does not exercise substantial, independent supervisory authority over other secretarial, police, or dispatch personnel, such that her inclusion in the bargaining unit of public safety dispatchers would create a conflict of interest within the bargaining unit.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this case pursuant to RCW 41.56.060.

2. Mildred McBee is a "public employee" within the meaning of RCW 41.56.030(2) who is properly included under RCW 41.56.060 in the bargaining unit described in paragraph 3 of the foregoing findings of fact.

ORDER

1. The clerk-dispatcher position held by Mildred McBee, and the incumbent of that position, are included in the bargaining unit for which an exclusive bargaining representative is certified in this proceeding.
2. The challenged ballot cast by Mildred McBee will not affect the results of the election or proceedings, and so is impounded to preserve the right of the employee to cast a secret ballot.
3. The certification issued in this proceeding as Decision 3103-A shall stand as the certification of representatives in this proceeding.

Issued at Olympia, Washington, the 11th day of May, 1989.

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.