

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
CITY OF GIG HARBOR EMPLOYEES'	)	
GUILD	)	CASE 9524-E-91-1579
	)	
Involving certain employees of:	)	DECISION 4020-A PECB
	)	
CITY OF GIG HARBOR	)	ORDER DETERMINING
	)	ELIGIBILITY ISSUES
	)	

Karin Ashabraner, Representative, appeared on behalf of the petitioner.

Ogden, Murphy and Wallace, by Wayne D. Tanaka, Attorney at Law, appeared on behalf of the employer.

On December 6, 1991, the City of Gig Harbor Employees' Guild (union) filed a petition seeking investigation of a question concerning representation involving certain employees of the City of Gig Harbor (employer). An election was held on March 17, 1992, and the union received interim certification as the exclusive bargaining representative of a bargaining unit described as:

All full-time and regular part-time non-uniformed employees of the employer; excluding supervisors, confidential employees and all other employees of the employer.

City of Gig Harbor, Decision 4020 (PECB, 1992).

The parties had filed a supplemental agreement under WAC 391-25-270, reserving three bargaining unit eligibility issues for later determination.

The parties disagreed over the bargaining unit status of employees holding the positions of Administrative Assistant, Public Works Supervisor, and Treatment Plant Supervisor. A hearing was

conducted concerning the disputed positions on April 17, 1992, before Hearing Officer Kenneth J. Latsch. The parties submitted closing statements.

### BACKGROUND

The City of Gig Harbor is a municipal corporation of the State of Washington located in the western portion of Pierce County. The city is under the policy direction of an elected city council. An elected mayor and an appointed city manager are responsible for implementing the council's policies. The city manager, Mark Hoppen, also serves as the city clerk and coordinates policy requirements for the various department directors.

The city has a collective bargaining relationship with the Gig Harbor Police Guild involving a bargaining unit of police department personnel. Prior to the onset of this proceeding, the remainder of the city's workforce was not represented for purposes of collective bargaining.

### The Disputed Positions

#### Administrative Assistant

Administrative Assistant Karin Ashabraner reports directly to City Manager Hoppen. The job description is instructive as to Ashabraner's general responsibilities in that position:

Under the direction of the City Administrator, the person(s) occupying this position assists in general government office operations within established procedures. The person will exercise control over specific administrative decisions as delegated by the City Administrator.

Representative Examples of Duties and Responsibilities

Performs all secretarial work.

Collects and prepares data for reports; prepares and presents recommendations pertaining to specific subject matter as directed by the City Administrator.

Supervises Administrative Receptionist and the maintenance of records and files.

Monitors use of office supply purchasing; recommends office equipment requirements.

Supervises issuance of all municipal business licenses.

Prepares City Council agenda and compiles necessary information for presentation.

Attends City Council meetings and records legal minutes.

Ensures all ordinances and resolutions are properly documented.

Ensures public notices and requests for proposals or bids are properly advertised.

Administers custodial contract.

Assists City Administrator in completing various tasks.

Makes recommendations to the City Administrator on matters relative to office organization and management.

Performs other assigned tasks as directed by the City Administrator.

Ashabraner works as Hoppen's secretary, and performs related duties. The record indicates that the city administrator often does his own typing, but Ashabraner routinely checks for spelling and general form. Ashabraner has routine access to all files kept by the city manager, and has occasionally been directed to prepare the mayor's correspondence. Ashabraner performs her assignments at

a work station located immediately outside the city manager's office. While the office has a door, the record indicates that Ashabraner has regular and complete access to the office and its contents.

Apart from her work as an administrative assistant, Ashabraner also serves as assistant city clerk. The assistant city clerk job description is identical to the administrative assistant job description concerning types of duties and responsibilities expected of the incumbent. While Ashabraner has only attended one city council executive session, the city administrator testified that she would be expected to attend such meetings in his absence. Ashabraner has not participated in collective bargaining negotiations involving the police department contract.

#### Public Works Supervisor

Public Works Supervisor Dave Brereton has been an employee of the City of Gig Harbor for approximately 15 years. At the time of the hearing, he held the position of public works supervisor for approximately three months. Brereton reports directly to Director of Public Works Ben Yazici, who is also the city engineer. Yazici has an office in the city hall, while Brereton reports to work at the city's shop facilities, approximately two miles from the city hall.

Brereton oversees seven public works employees. Brereton's job description specifies duties and responsibilities associated with the position he holds as follows:

Under supervisory control and guidance of the Public Works Director, the incumbent's work is performed with considerable latitude for independent judgment and action. Assignments are received in the form of oral instructions, work orders, established maintenance and service schedules, blueprints, sketches, and rough notes. Work requires the application of sound judgment and the application of techni-

cal engineering and trades and crafts techniques and practices in a wide variety of public works activities. Incumbent's work is reviewed for supervisory effectiveness, quality and timeliness of completed projects, and conformance with governing laws, ordinances, and local policies and procedures.

Representative Example of Duties and Responsibilities

Supervises public works crew(s) engaged in a wide variety of tasks such as maintenance and repair of water mains, pumps, motors, main line valves, fire hydrants, meters and storage tanks; meter reading; operating and servicing heavy road and construction equipment and light motor vehicles; cleaning roadside ditches, culverts and catch basins; repairing streets, guardrails, and sidewalks; installing and repairing street and traffic control signs; pavement striping; brush cutting and tree trimming; clearing snow, ice, and slide debris from streets and walks; maintenance of buildings and grounds; upkeep of city parks; and maintenance and repair of sewer lines, pumps, and related facilities.

Supervises the operation and routine maintenance of the Sewage Treatment Plant and attendant equipment and facilities.

Analyzes and troubleshoots problems such as street and sidewalk damages or obstructions; water and sewer main leaks and breaks; malfunctioning or inoperative sewer and water system pumps, motors, controls; and water system overload or misuse.

Plans and schedules daily work assignments and establishes work priorities; requisitions supplies and equipment; and periodically inspects tools and equipment to ensure that proper care and maintenance is being performed.

Prepares periodic work progress reports; maintains required records, logs, maps, blueprints and charts; and maintains employee time and attendance records.

Provides on-site direction and guidance to employees during assignments, and inspects work in progress and upon completion to ensure compliance with work standards and local codes, and proper safety techniques and procedures. Accomplishes personnel activities such as performance evaluations and salary revisions of the public works crew(s).

Brereton routinely prepares performance evaluations which are forwarded to Yazici for review and comment. Yazici can modify the evaluations after reviewing them with Brereton.

Brereton makes routine work assignments, and monitors work to insure that it is being completed in proper fashion. Brereton does not routinely go to the work site with the crew, but does visit to inspect work progress.

Brereton schedules vacations for the public works crew, and he must approve requests for time off for appointments. Brereton prepares budget requests covering the public works area and submits them to Yazici as part of the city's overall budget preparation process.

Brereton does not have independent authority to discipline or discharge employees. Final authority in such matters rests with the city administrator. If a disciplinary problem arose, Brereton would give information, along with recommendations for action, to Yazici. In turn, Yazici, would forward the matter to City Administrator Hoppen for resolution. The record indicates that Brereton has never initiated any disciplinary actions against any of the public works crew.

In the area of hiring, Yazici screens applications, and Brereton is allowed to review the applications after Yazici's review. Yazici is primarily responsible for the interviewing process, but Brereton has participated in interview panels, and his recommendations about hiring decisions have been followed.

Treatment Plant Supervisor

Bill Irej has held the position of treatment plant supervisor for approximately two years. The treatment plant is located approximately two miles from the City Hall, and is designed for a variety of water treatment activities. The record indicates that the plant is being expanded for increased operation. The remodeled facility is to be ready by mid-1993.

Irej reports directly to the treatment facility, and is responsible for the work of two plant operators.<sup>1</sup> Irej's job description specifies that he is responsible for the following types of duties and responsibilities:

Under the general supervisory control of the Public Works Director, incumbents operate with relative independence of action in planning and carrying out day-to-day activities. Technical guidance in the form of operating procedures and processes has been established by equipment manufacturers, design engineers, and the Department of Ecology. As the city's technical authority in sewage treatment and disposal, incumbents will be confronted with problems for which these guidelines are inadequate, requiring the exercise of sound judgment in modifying or extending traditional methods. In the resolution of serious operational problems, the incumbents may consult with the manufacturer's local representatives as well as the Public Works Director and City Engineer. Supervision may be exercised over one or more plant operators, maintenance workers, or laborers. Work is reviewed mainly for effectiveness in meeting the established processes and procedures, conformance with Federal and State laws, and resolution of problems as they occur.

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The record indicates that the employer anticipates hiring a third treatment plant operator when the facility's renovation is complete in 1993. However, no firm commitments to extra hiring were made as of the date of hearing.

Representative Examples of Duties and Responsibilities

Operates a sewage treatment and disposal plant which provides treatment of sewage through primary and secondary treatment stages; operates gate valves to hold or discharge sewage in primary treatment tanks; monitors operation of aerators to remove solids and reduce acidity and alkalinity of fluids; provides secondary treatment of sewage through oxidation tanks where nonsettling solids are disposed of by bacteriological or biological growths; discharges purified effluent through outfall for disposal into harbor.

Periodically collects samples from the incoming sewage, recirculated sludge, discharged effluent, aeration chamber, and digester to determine such things as biochemical oxygen demand; temperatures; PH; suspended and dissolved solids; food to micro-organism rates; recirculation rates; chlorine residual; etc. Test results are correlated and the treatment process is adjusted to maintain the best possible treatment of sewage at the lowest reasonable cost.

Maintains operator log to record daily flow of sewage; reads flow meters, records readings and replaces meter charts; records daily maintenance performed on equipment; records amount of chemical used and chlorine residual; and prepares periodic reports to State Health and Ecology Departments.

Orders, stores, and accounts for chemicals and other materials.

Inspects and maintains plant and system equipment which includes assuring proper operation of sewage lift stations by checking operation of pumps, valves and ventilators; cleaning and servicing equipment; and checking telemetry alarm system which detects malfunctioning equipment.

Operates auxiliary diesel power generator to maintain plant and system operations during commercial power failure.



Oversees the general maintenance of plant buildings and grounds.

Irey prepares evaluations on the two plant operators. As in Brereton's case, the evaluations are submitted to Yazici who can modify them. Irey schedules work assignments and routinely inspects work in progress to insure that it is being done in compliance with applicable standards.

Irey can schedule vacation leave, and the plant operators must seek his approval if they are going to be absent for part of a work shift. Irey spends a considerable amount of time in laboratory analysis of ongoing tests to insure that the treatment plant is operating within accepted ranges and limits. Irey prepares budget requests for the treatment plant and submits them to Yazici for possible inclusion in the public works' proposed budget.

Like Brereton, Irey does not have independent authority to discipline or discharge employees. Irey testified that he would use the same procedure outlined by Brereton in his testimony. The record indicates that Irey has not initiated disciplinary actions against either of the two plant operators reporting to him.

In the area of hiring, Irey has participated in hiring interviews, and Yazici has relied on his input in making hiring decisions for the treatment plant.

#### POSITIONS OF THE PARTIES

As the moving party on these eligibility issues, the employer maintains that the three positions should be excluded from the bargaining unit. The employer argues that the Administrative Assistant is a confidential employee within the meaning of Public Employment Relations Commission precedent. The employer argues

that the administrative assistant is in routine contact with sensitive information pertaining to the employer's labor relations policy formulation, and that inclusion of the position in the bargaining unit would create inherent conflicts of interest. The employer contends that the public works supervisor and the treatment plant supervisor are supervisors within the meaning of Commission precedent, and cannot be included in a "rank-and-file" bargaining unit.

The union maintains that the disputed positions should not be excluded from the bargaining unit. The union argues that the administrative assistant's position does not require regular contact with the employer's labor relations materials, and that such matters could be handled by the city administrator without undue hardship. Turning to the two disputed supervisory positions, the union contends that the affected "supervisors" do not possess independent authority to act on behalf of the employer, and that they often perform the same types of work done by the crews they allegedly supervise. The union argues that the disputed supervisory positions do not meet the criteria for exclusion set forth by the Commission.

#### DISCUSSION

The Public Employment Relations Commission is charged with the responsibility of determining the propriety of bargaining units. RCW 41.56.060 specifies, in pertinent part:

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 the bargaining representatives; the extent of organization among public employees; and the desire of the public employee...

As part of its statutory duty, the Commission routinely determines whether individuals should be excluded from bargaining units on the basis of alleged supervisory or confidential duties.

The instant case presents two questions for resolution: Should the administrative assistant position be excluded from the bargaining unit as a confidential employee<sup>2</sup>; and should the public works supervisor and the treatment plant supervisor be excluded from the bargaining unit as supervisory personnel?

#### The Confidentiality Issue

Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act, allows public employees to form or join labor organizations for the purposes of collective bargaining with public employers. RCW 41.56.030(2), defines "public employee" and sets forth the exclusion of "confidential" employees at the same time. In pertinent part, the statute states that a public employee is:

...any employee of a public employer except any person (a) elected by popular vote, or (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, or (c) **whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship**

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Throughout the course of the hearing, the parties focused on the administrative assistant's duties as they relate to a "confidential" claim. While the assistant's job description referred to supervision of another office employee, neither party raised the issue, and this decision is therefore limited to a determination of whether the administrative assistant is a confidential employee within the meaning of Commission precedent.

**to the executive head or body of the applicable bargaining unit... (Emphasis supplied).**

If an individual is found to be a confidential employee, that individual is denied the right to form or join any labor organization. Since a finding of confidentiality has such a serious impact, close scrutiny must be given to confidential claims.

The Supreme Court of the State of Washington has reviewed the "confidential" exclusion and has adopted the "labor nexus" test used in such cases by the National Labor Relations Board. In International Association of Fire Fighters, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978), the Court found that the confidential relationship:

...arrives when continuous trust is reposed by one person in the skills or integrity of another. An employee who stands in such a relationship to an employe must act for the benefit of the employer...

When the phrase confidential relationship is used in the collective bargaining act, we believe it is clear that the legislature was concerned with an employee's potential misuse of confidential employer labor relations policy and a conflict of interest.

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 this close association must concern the official and policy responsibilities of the public office or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

The party seeking exclusion of a proposed confidential employee has a heavy burden in establishing the required "labor nexus". See: City of Seattle, Decision 689-A (PECB, 1979).

In this case, it appears that the administrative assistant is a confidential employee. The administrative assistant works in continuous and direct contact with the city administrator, and she has ready access to all pertinent files in his office. The assistant can also serve as secretary to the city council and can attend executive sessions where personnel matters are discussed. As noted in Clover Park School District, Decision 2243-A (PECB, 1987), an employer will be allowed some reasonable number of personnel who are exempt from the coverage of the collective bargaining statute, in order to assist in performance of the employer's labor relations activities. Considering the testimony offered in the instant case, and the general management structure of the City of Gig Harbor, the administrative assistant is the logical choice to serve as a confidential employee. Accordingly, that position must be excluded from the bargaining unit.

#### The Supervisory Issues

Chapter 41.56 RCW neither defines the term "supervisors" nor excludes them from collective bargaining rights. See: Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). The Commission has ruled, however, that supervisors must be excluded from the same bargaining unit as the employees that they supervise to avoid conflicts of interest within bargaining units. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

The Richland decision sets forth the criteria for determining supervisory status. In that case, the Commission relied on the

definition found in Section 2(11) of the National Labor Relations Act (NLRA), as follows:

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 employees or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action 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.

In a number of cases following Richland, the Commission has continued to use the above-quoted criteria as a basis for determining whether a position is "supervisory".

In Morton General Hospital, Decision 3521-B (PECB, 1991), the Commission made clear that use of the term "supervisor" as a job title or in a job description does not automatically lead to exclusion under established precedent. The Commission observed:

A distinction has been drawn between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship...

It was further noted in City of Toppenish, Decision 1973-A (PECB, 1985):

... [S]uch employees are not always allowed to exercise a degree of independent judgment in important areas that compels their exclusion from the bargaining unit. The question in each case is whether a position enjoys substantial independent responsibility of a kind

that requires exclusion from the rank-and-file unit.

With these established precedents in mind, analysis can shift to the supervisory positions in dispute in the instant case.

The public works supervisor and the treatment plant supervisor both report to the public works director, who in turn reports to the city administrator. While "layers" of bureaucracy often indicate that exclusion is inappropriate, the employer provided enough factual evidence to indicate that both of the disputed individuals are supervisors and should be excluded from the bargaining unit. They both prepare evaluations, direct work, and actively participate in hiring decisions. In addition, they are expected to make recommendations in the disciplinary process. The record indicates that neither of the supervisors routinely does the work of employees under their respective direction, and the supervisors do not otherwise share a substantial community of interests with those employees they supervise. Given these factors, exclusion is appropriate.

#### FINDINGS OF FACT

1. The City of Gig Harbor is a "public employer" within the meaning of RCW 41.56.030(1).
2. The City of Gig Harbor Employees' Guild is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. In City of Gig Harbor, Decision 4020 (PECB, 1992), the union received interim certification to be the exclusive bargaining representative of a bargaining unit composed of:

All full-time and regular part-time non-uniformed employees of the employer; excluding supervisors, confidential employees and all other employees of the employer.

4. The administrative assistant reports directly to the city administrator. The administrative assistant has access to the administrator's office and files; routinely does typing for the administrator; and can be required to attend city council meetings where personnel issues are discussed.
5. The public works supervisor directs the work of seven public works employees. The public works supervisor evaluates the employees' performance, schedules work, approves leave requests, participates in disciplinary matters on behalf of the employer, and makes effective recommendations in hiring.
6. The treatment plant supervisor directs the work of two treatment plant operators. The treatment plant supervisor evaluates the employees' performance, schedules work, approves leave requests, participates in disciplinary matters on behalf of the employer, and makes effective recommendations in hiring.

#### 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. The position of administrative assistant is a "confidential", employee within the meaning of RCW 41.56.030(2)(c), whose duties require regular contact with the employer's labor relations policy formulation and implementation.



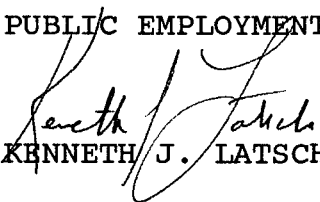
3. The public works supervisor is a supervisor, whose exclusion from the rank-and-file bargaining unit is warranted under RCW 41.56.060, based on the potential for conflicts of interest within the unit.
4. The treatment plant supervisor is a supervisor whose exclusion from the rank-and-file bargaining unit is warranted under RCW 41.56.060, based on the potential for conflicts of interest within the unit.

ORDER

1. The bargaining unit described in Finding of Fact 3, above, is clarified by the exclusion of the administrative assistant, the public works supervisor, and the treatment plant supervisor.
2. The interim certification issued in City of Gig Harbor, Decision 4020 (PECB, 1992), is not affected by the proceedings conducted in the instant matter.
3. The interim certification issued in City of Gig Harbor, Decision 4020 (PECB, 1992), will stand as the certification of representative in this proceeding.

ENTERED at Olympia, Washington, this 20th day of July, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
KENNETH J. LATSCH, Hearing Officer

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).