

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 760

Involving certain employees of:

CITY OF YAKIMA

CASE 23805-E-11-3631

DECISION 11127 - PECB

DIRECTION OF CROSS-CHECK

Reid, Pedersen, McCarthy & Ballew, by *Thomas A. Leahy*, Attorney at Law, for the union.

James T. Mitchell, Assistant City Attorney, for the employer.

On February 14, 2011, Teamsters Local 760 (union) filed a representation petition with the Public Employment Relations Commission seeking certification as the exclusive bargaining representative of a new bargaining unit of 14 office administrative employees in the Human Resources and Finance divisions of the City of Yakima (employer). On April 19, 2011, Representation Coordinator Sally J. Iverson held an investigation conference and issued an Investigation Statement pursuant to WAC 10-08-130. During the investigation conference, the employer questioned the propriety of the petitioned-for unit, stating there were other clerical positions within the city that had a community of interest. Because of the question on the propriety of the bargaining unit, the parties did not stipulate to the appropriate eligibility list.

The Commission assigned the matter to Hearing Officer Stephen W. Irvin, who scheduled a hearing for May 18, 2011. On the day of the hearing, the parties were unable to agree to a bargaining unit description in light of the fact that the Washington State Council of County and City Employees (WSCCCE) represents a group of employees within the employer's Finance and Public Works divisions, which also includes employees in the petitioned-for unit. The Hearing Officer rescheduled the hearing for June 9, 2011, at which time the parties agreed to the following description for a 15-employee bargaining unit:

Employees in Human Resources, Finance and Public Works positions in the following classifications: Accountant, Payroll Officer, Financial Services Officer, Treasury Services Officer, Financial Services Tech, Utility and Finance Assistant, Human Resources Assistant, Human Resources Specialist, and Public Works Office Assistant.

The union filed its post-hearing brief on June 30, 2011. On July 1, 2011, the employer sent a letter to the Commission stating its agreement with the union's assertion that the proposed bargaining unit was appropriate.

ISSUE

Is the petitioned-for unit appropriate?

Based upon the record, the Executive Director finds the bargaining unit proposed by the union is an appropriate unit for the purposes of collective bargaining.

APPLICABLE LEGAL PRINCIPLES

The determination of appropriate bargaining units is a function delegated by the Legislature to this agency. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). When making unit determinations under Chapter 41.56 RCW, the agency's goal is to group together employees with sufficient similarities (community of interest) to indicate they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993); *King County*, Decision 5910-A (PECB, 1997). The statute does not require the determination of the most appropriate bargaining unit; it is only necessary that the petitioned-for unit be an appropriate unit. *City of Winslow*, Decision 3520-A (PECB, 1990).

When determining whether a bargaining unit is appropriate, the Commission considers: (1) the duties, skills, and working conditions of the employees, (2) the history of collective bargaining, (3) the extent of organization, and (4) the desire of the employees. RCW 41.56.060(1). The criteria provided in RCW 41.56.060 have varying weight based on the facts of a particular case, and none

of the criteria predominates to the exclusion of others. *City of Centralia*, Decision 2940 (PECB, 1988). It is not necessary that all four factors are present in each and every case; rather, the Commission applies the statutory criteria collectively to determine the existence of a community of interest among the employees. *Benton County*, Decision 7651-A (PECB, 2003). The Commission seeks to avoid stranding employees, proliferation of multiple bargaining structures, and conflicting work jurisdiction claims.

ANALYSIS

Of the aforementioned statutory criteria the Commission uses to determine community of interest, only the duties, skills, and working conditions of the employees, history of collective bargaining, and the extent of organization are applicable to this case. The exclusive method of determining the desire of the employees in a representation case is by election.

Extent of Organization/History of Bargaining

Extent of organization analyzes the extent to which the employer's workforce is organized and compares the petitioned-for employees with the employer's overall workforce. The Commission is cautious of establishing multiple bargaining units among employees who perform similar functions because of the potential for work jurisdiction disputes.

While testimony indicated the employees in the employer's Human Resources Division are unrepresented and have never been represented, WSCCCE currently represents some employees in the Finance and Public Works divisions as part of a bargaining unit of municipal employees. At one point, the Accountant position was part of the bargaining unit currently represented by WSCCCE, but that position was removed from the unit.

The current collective bargaining agreement between WSCCCE and the employer, effective January 1, 2010 through December 31, 2011, provides detail on the WSCCCE bargaining unit that existed before this petition was filed. The agreement excludes a number of positions from representation, including all of the positions in the petitioned-for bargaining unit:

ARTICLE 1 – RECOGNITION OF UNION BARGAINING UNIT

The City recognizes the Union as the exclusive bargaining representative of the bargaining unit consisting of all permanent City employees except the following:¹

All employees of the Human Resources Division
Payroll Officer
Accountant
Financial Services Officer
Treasury Services Officer
Financial Services Technician – Payroll
Utility and Finance Assistant
Public Works Office Assistant

There is no dispute that the petitioned-for positions are currently excluded from the WSCCCE bargaining unit.

Duties, Skills, and Working Conditions

Duties and Skills: Finance Division Employees: The petitioned-for employees work in the job classifications of Accountant, Payroll Officer, Financial Services Officer, Treasury Services Officer, Financial Services Tech, and Utility and Finance Assistant. These positions are responsible for the higher-level accounting work in the division. The Accountant, Financial Services Officer, Treasury Services Officer and Payroll Officer positions require a bachelor's degree and/or equivalent experience. The Utility and Finance Assistant and Financial Services Tech positions require a minimum of two years of progressively responsible experience.

Payroll Officer Diane Schmitt testified the petitioned-for employees perform specialized duties that require a higher level of knowledge than the employees in the WSCCCE unit. She testified the WSCCCE employees' duties are more clerical in nature, and the employees in those positions do not have the education or experience required for the petitioned-for classifications.

Human Resources Manager Colleen Chapin also testified that the petitioned-for employees occupy more specialized positions with higher minimum qualifications for recruitment, in addition

¹ This is a partial list of excluded employees contained in WSCCCE's 2010-2011 collective bargaining agreement with the employer. Only the applicable petitioned-for job classifications are included here.

to having a greater scope of responsibilities with more specialized skills and duties. Chapin testified that the WSCCCE positions do not provide a promotional path to the petitioned-for classifications, and WSCCCE-represented employees do not perform the higher-level duties of the petitioned-for employees if the petitioned-for employees are absent from work.

Financial Services Specialist Judy Leavitt, a member of the WSCCCE bargaining unit, testified that the work she and her colleagues in the Finance Division perform is different from that of the petitioned-for employees in that division. She stated that she does not work collaboratively with the petitioned-for employees on job duties, and she could not fill in for them if they were absent from work. Leavitt testified that if she wanted to promote into a position within her division in the petitioned-for unit, she would need to obtain an accounting degree.

Duties and Skills: Public Works Office Assistant: The petitioned-for employee in Public Works, Melynn Skovald, is a Public Works Office Assistant. She works as the confidential assistant to Director of Public Works Chris Waarvick and makes administrative decisions when needed. Her work is differentiated from those Public Works employees in the WSCCCE unit because her work is personnel related, she has a greater scope of responsibility and she has a close working relationship with the director. WSCCCE-represented employees are supervised by other division leads and do not cover her duties when she is not in the office.

Skovald testified that she performs tasks that bring her into frequent contact with Human Resources, such as FMLA paperwork and disciplinary investigations. The disciplinary investigations involve confidential information regarding other Public Works employees that are in the WSCCCE bargaining unit. She interacts with Finance Division employees in the petitioned-for unit on payroll and time cards approximately once per week.

Duties and Skills: Human Resources Division Employees: The petitioned-for employees in Human Resources work in the job classifications of Human Resources Assistant and Human Resources Specialist. Duties include general office duties, recruitments and pre-employment paperwork. Human Resources Assistant Michele Wiltsey testified that Human Resources employees work with the petitioned-for employees in the Finance Division on a daily basis for a

variety of tasks and work with the Public Works Office Assistant routinely regarding temporary employees.

Working Conditions: All 15 petitioned-for employees work in city hall, except for the Public Works Office Assistant, who works in the Kary Annex. Regular working hours are from 8 a.m. until 5 p.m., although all employees are allowed to flex their starting and ending work times. The employees represented by WSCCCE also work in city hall and the Kary Annex. The different work units are split by a hallway in city hall, with payroll employees grouped together because of frequent traffic, and accountants grouped together to provide a quieter work environment. Skovald testified that her work area in Public Works is separate from the work area of the WSCCCE-represented employees.

The petitioned-for employees currently have the same wage and benefits package as other non-represented city employees. Their fringe benefits are significantly different than those employees in the WSCCCE bargaining unit, who receive wages and benefits negotiated under their collective bargaining agreement. The petitioned-for employees are part of the group that is called the “management group” in the municipal code. For these non-represented employees, the city’s municipal code provides a formula to determine cost-of-living increases. Although they don’t get bargained-for raises, they do get an average of all of the bargaining group’s increases. The employees in the petitioned-for unit are also different than the WSCCCE bargaining unit employees in terms of medical contributions, contributions to deferred compensation, leave calculations, and payoff for sick leave at retirement or when they leave service.

CONCLUSION

Based upon the record, the Executive Director finds the bargaining unit proposed by the union is an appropriate unit for the purposes of collective bargaining. The duties, skills, and working conditions for the employees in the petitioned-for unit are substantially similar, while the differences between the duties, skills, and working conditions of these employees and those of the WSCCCE-represented employees make it unlikely that work jurisdiction issues will arise.

FINDINGS OF FACT

1. The City of Yakima is a public employer within the meaning of RCW 41.56.030(13).
2. Teamsters Local 760 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The Washington State Council of County and City Employees (WSCCCE), a bargaining representative within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of a bargaining unit of the employer's municipal employees.
4. On February 14, 2011, Teamsters Local 760 filed a representation petition seeking certification as the exclusive bargaining representative of a new bargaining unit of 14 office administrative employees in the employer's Human Resources and Finance divisions.
5. On April 19, 2011, Representation Coordinator Sally J. Iverson held an investigation conference and issued an Investigation Statement pursuant to WAC 10-08-130. During the investigation conference, the employer questioned the propriety of the petitioned-for unit, stating there were other clerical positions within the city that had a community of interest. Because of the question on the propriety of the bargaining unit, the parties did not stipulate to an eligibility list.
6. On June 9, 2011, the employer and Teamsters Local 760 agreed to the following description for a 15-employee bargaining unit:

Employees in Human Resources, Finance and Public Works positions in the following classifications: Accountant, Payroll Officer, Financial Services Officer, Treasury Services Officer, Financial Services Tech, Utility and Finance Assistant, Human Resources Assistant, Human Resources Specialist, and Public Works Office Assistant.
7. The current collective bargaining agreement between the employer and WSCCCE specifically excludes all of the petitioned-for positions from the WSCCCE bargaining unit.

8. The duties, skills, and working conditions for the employees in the petitioned-for unit are substantially similar, while the differences between the duties, skills, and working conditions of these employees and those of the WSCCCE-represented employees make it unlikely that work jurisdiction issues will arise.

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 following constitutes an appropriate bargaining unit:

All full-time and regular part-time employees of the City of Yakima in Human Resources, Finance and Public Works positions in the following classifications: Accountant, Payroll Officer, Financial Services Officer, Treasury Services Officer, Financial Services Technician, Utility and Finance Assistant, Human Resources Assistant, Human Resources Specialist, and Public Works Office Assistant, excluding supervisors, confidential employees, and all other employees.

DIRECTION OF CROSS-CHECK

A cross-check of records shall be made by the staff of the Public Employment Relations Commission to determine whether a majority of the employees in the bargaining unit described in paragraph 2 of the foregoing Conclusions of Law have authorized Teamsters Local 760 to represent them for purposes of collective bargaining.

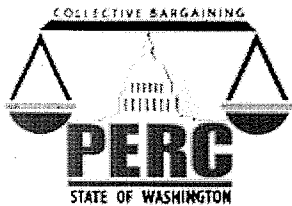
Issued at Olympia, Washington, this 22nd day of July, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

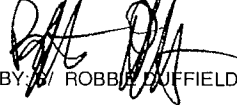
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: ROBBIE DUFFIELD

CASE NUMBER: 23805-E-11-03631 FILED: 02/14/2011 FILED BY: PARTY 2
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