

Port of Poulsbo, Decision 12077-A (PORT, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 589

Involving certain employees of:

PORT OF POULSBO

CASE 26378-E-14-3857

DECISION 12077-A - PORT

ORDER DETERMINING
ELIBILITY ISSUES

Reid, McCarthy, Ballew & Leahy, L.L.P., by *Thomas A. Leahy*, Attorney at Law,
for Teamsters Local 589.

Chmelik, Sitkin & Davis, P.S., by *Richard A. Davis III*, Attorney at Law, for the
employer.

On April 1, 2014, Teamsters Local 589 (union) filed a petition seeking to represent a bargaining unit of all of the employees employed by the Port of Poulsbo (employer), with the exception of the Port Manager. The employer opposed including the employer's Accountant/Auditor in the bargaining unit, claiming that the position is "administrative personnel" as described in RCW 53.18.010 and therefore precluded from exercising collective bargaining rights under Chapter 53.18 RCW and Chapter 41.56 RCW. The employer also claimed the position should be excluded from the proposed non-supervisory bargaining unit as either a confidential or supervisory employee. The union disagreed that the Accountant position qualified as administrative personnel and also disagreed the position qualifies as a confidential employee. The union argued that even if the position is proven to be supervisory, the Accountant/Auditor should still be included in the bargaining unit in order to avoid stranding her and depriving her of collective bargaining rights.

The eligibility of the Accountant position was reserved until after the election. Agency staff conducted a representation election which demonstrated the union had the support of the employees. An interim certification was issued and the matter was remanded to take evidence

and testimony regarding the eligibility of the Accountant/Auditor position. Hearing Officer Lisa A. Hartrich conducted a hearing on September 24, 2014, and the parties submitted post-hearing written arguments in support of their positions on December 2, 2014.

The employer's Accountant/Auditor position is an administrative personnel position under RCW 53.18.010. The position, which reports directly to the Board of Commissioners (Board), is responsible for the overall financial operation of the Port. Because the position is an administrative personnel position, it is excluded from exercising collective bargaining rights and cannot be included in any bargaining unit.

BACKGROUND

The employer operates a marina for both recreational and commercial vessels. It also operates a seaplane base and public parking lot. The port operations are funded by permanent and guest moorage fees, tax dollars, and revenues from a fuel dock. The elected three-member Board is responsible for hiring the Port Manager, the Port Accountant/Auditor, and the Recording Secretary. These three employees report directly to the Board. The other port employees, including two maintenance workers, three guest moorage personnel, and one accounting assistant, report to the Port Manager. During the summer, the port hires one or two part-time seasonal employees who also report to the Port Manager.

Carol Tripp occupies the Accountant/Auditor position. Tripp's job description states that her official job title is "Staff Accountant/Auditor." She has been employed in the position since 1998. Tripp is paid a salary based on a 35-hour work week, and earns all of the benefits provided to full-time employees, including health insurance, sick leave, vacation time, and retirement.

Tripp has a bachelor's degree in Finance from Montana State University. However, she is not a certified public accountant nor does she have any licenses related to her work. She has a computer information systems certification of completion from Olympic College. She reports directly to the Board, and the Board performs her evaluations.

In her role as Accountant/Auditor, Tripp oversees and administers the Port's overall financial operations. Tripp attends the Board meetings, including executive sessions, where she makes recommendations regarding the long-term financial viability of the Port. She consults with the Board and provides advice regarding the purchase of real estate and capital improvements. She is also responsible for the management and investment of Port funds. Tripp prepares the Port's annual budget, which is about \$1.25 million dollars. She provides monthly accounting reports and more detailed quarterly reports to the Board and independently drafts financial resolutions, creates financial policies and procedures, and writes grant applications.

Tripp is also the employer's auditor. She testified that her job is "to look over the entire financial operation of this Port and make sure that there's no . . . chance for fraud to be happening, that everything's being recorded properly in the proper accounts . . ." Tripp verifies that entries are correct, watches for instances of fraud, and ensures expenses are being properly reported.

In 2013, Brad Miller became the Port Manager after working for the port since 2007. In that role, he oversees the operations of the marina, hires and evaluates the staff, and works on special projects as directed by the Board. The only employee who is not hired or supervised by Miller (other than Tripp and the Board recording secretary) is the accounting assistant, Melanie Winnett. Winnett was hired by Tripp, and works primarily for Tripp. Only Tripp has the authority to evaluate, discipline, or terminate Winnett.

Tripp serves as the acting Port Manager when Miller is not available. On occasion she has been temporarily appointed Port Manager by formal resolution of the Board. Tripp directs the staff when Miller is not available. She does not report to or take direction from Miller. Miller does not supervise Tripp. Tripp and Miller collaborate to make long-term decisions for the port.

DISCUSSION

Applicable Legal Standard

Chapter 53.18 RCW grants employees at port districts the ability to organize and collectively

bargain with their employer, similar to other public employees within the state of Washington. When originally adopted, the port statute lacked many of the features of other state collective bargaining laws, such as unfair labor practice provisions. This gap was filled in 1983, when the Legislature enacted RCW 53.18.015 to apply the Public Employees' Collective Bargaining Act (PECBA), Chapter 41.56 RCW, to port districts and their employees. Where differences occur between the two statutes, Chapter 53.18 will prevail.

One difference between the two statutes is that the port statute excludes managerial, professional, and administrative personnel from the definition of employee, while PECBA does not exclude these types of employees. See RCW 53.18.010; RCW 41.56.030(11). Because managerial, professional, and administrative personnel are specifically excluded from the definition of employee in the port statute, these positions are not eligible to exercise collective bargaining rights.

Chapter 53.18 RCW does not specifically define the term “administrative personnel” and, until recently, this agency had not had an opportunity to interpret the term. In *Port of Seattle*, Decision 12190 (PORT, 2014), *aff'd*, *Port of Seattle*, Decision 12190-A (PORT, 2015), the ordinary definition of “administrative” was applied and, for purpose of the statute, “administrative personnel” were defined as those employees “who are responsible for the management and direction of the department or program at the port district.”¹ *Id.*

The Port Accountant is Excluded from the Bargaining Unit as Administrative Personnel

Tripp's Accountant/Auditor position should be excluded from the bargaining unit under the RCW 53.18.010 administrative personnel exemption. Tripp's Accountant/Auditor position is responsible for the financial operations of the employer. She is also responsible for all of the accounting and auditing functions of the employer's operation. Tripp prepares the employer's budget and drafts financial policies and procedures. Tripp is also the employer's auditor and

¹ In its brief, the employer cites to Washington's Minimum Wage Act (MWA) definition of “administrative personnel” as being persuasive guidance for the definition of “administrative personnel” as used in RCW 53.18.010. In the recent *Port of Seattle* decision, the agency declined to adopt the MWA's definition of administrative personnel onto RCW 53.18.010. Because RCW 53.18.010 must be applied within the context of RCW 53.18.015 and RCW 41.56.905 and the requirement for a liberal construction to effectuate its purpose, the employer's request is denied.

works to protect the employer from instances of fraud. Tripp also formulates, in conjunction with the Board, all aspects of the employer's financial decisions.

In these capacities, Tripp is essentially the Port's chief financial officer who is responsible for management of an entire program within the port district. Therefore, she meets the criteria for "administrative personnel" as describe in RCW 53.18.010 and *Port of Seattle*, Decision 12190. While the overall size of this Port's operation is not particularly large, the scope of Tripp's authority over the Port's financial operation is expansive and permeates the entirety of the operation.

The factual situation in this case is markedly different from the factual situation in *Port of Seattle*, Decision 12190. In that case, the disputed employees were found to be mid-level supervisors who did not independently administer a program. Rather, those employees executed the decisions and directions that were formulated by higher level employees. Because those supervisors were not "responsible for administering a department or program of the employer's operation," they were not administrative personnel under RCW 53.18.010 and were not precluded from exercising collective bargaining rights.

Here, Tripp's Accountant/Auditor position is not only responsible for the entirety of a specific function but is also that program's chief decision maker. Aside from the Board itself, Tripp does not report to any other Port employee. No other employees in the employer's workforce perform accounting or auditing functions.

CONCLUSION

Because Tripp's is administrative personnel as defined by RCW 53.18.010, she is precluded from exercising collective bargaining rights in her current role and is therefore also precluded from being included in the union's bargaining unit. It is also unnecessary to rule upon Tripp's confidential or supervisory status, or whether her position would be unnecessarily stranded.

FINDINGS OF FACT

1. The Port of Poulsbo (employer) is a public employer within the meaning of RCW 53.18.010.
2. The Teamsters Local 589 (union) is a bargaining representative within the meaning of RCW 53.18.010.
3. On June 2, 2014, this agency issued an interim certification designating the union as the exclusive bargaining representative of a bargaining unit of non-supervisory employees of the employer.
4. Carol Tripp is the employer's Accountant/Auditor. She has been employed in the position since 1998. The employer opposed the inclusion of the Accountant/Auditor position in the bargaining unit described in paragraph 3.
5. Tripp administers the financial operations of the employer. Tripp attends the Board meetings, including executive sessions, where she makes recommendations regarding the long-term financial viability of the Port. She consults with the Board and provides advice regarding the purchase of real estate and capital improvements. Tripp prepares the employer's annual budget, provides accounting reports, and independently drafts financial resolutions, policies, and procedures.
6. Tripp is also the employer's auditor. In that capacity, her job is "to look over the entire financial operation of this Port and make sure that there's no . . . chance for fraud to be happening, that everything's being recorded properly in the proper accounts" Tripp verifies that entries are correct, watches for instances of fraud, and ensures expenses are being properly reported.
7. Tripp serves as the acting Port Manager when Brad Miller is not available. On occasion she has been temporarily appointed Port Manager by formal resolution of the Board.

Tripp directs the staff when Miller is not available. She does not report to or take direction from Miller. Miller does not supervise Tripp. Tripp and Miller collaborate to make long-term decisions for the port.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 53.18 RCW, Chapter 41.56 RCW, and Chapter 391-25 WAC.
2. Based upon Findings of Fact 4 through 7, the Accountant/Auditor position currently held by Carol Tripp is an administrative position within the meaning of RCW 53.18.010.

ORDER

The Accountant/Auditor position occupied by Carol Tripp shall be excluded from exercising collective bargaining rights as an administrative personnel defined by RCW 53.18.010.

Issued at Olympia, Washington, the 27th day of February, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, 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: /s/ ROBBIE DUFFIELD

CASE NUMBER: 26378-E-14-03857 FILED: 04/01/2014 FILED BY: PARTY 2
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DETAILS: -Teamsters, Local 589 certified.
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