

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHAUFFEURS, TEAMSTERS AND)	
HELPERS UNION, LOCAL 252,)	
)	
Complainant,)	CASE 7393-U-88-1533
)	
vs.)	DECISION 3232 - PECB
)	
CITY OF CENTRALIA,)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
)	

Davies, Roberts and Reid, by Kenneth J. Pedersen, Attorney at Law, appeared on behalf of the complainant.

Lewis Lynn Ellsworth, Management Consultant, appeared on behalf of the respondent.

On May 9, 1988, Chauffeurs, Teamsters and Helpers Union, Local 252, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Centralia had violated RCW 41.56.140(1) and (4), by refusing to bargain in good faith with regard to the positions of chief court clerk and deputy court clerk. A hearing was held on February 9, 1989, before Frederick J. Rosenberry, Examiner. The parties submitted post-hearing briefs.

BACKGROUND

The City of Centralia and Chauffeurs, Teamsters and Helpers Union, Local 252, have had a formal collective bargaining relationship since December 18, 1987, when the union was certified by the Public Employment Relations Commission as the exclusive bargaining

representative for a bargaining unit described as:

All full-time and regular part-time office clerical and support staff employees, including cashiers, landfill attendants and city accountants, who are employed by the City of Centralia; excluding all department secretaries, professional and supervisory employees, and all other employees.

City of Centralia, Decision 2832 (PECB, 1987).

Subsequently, the employer and union engaged in collective bargaining for the purpose of negotiating a labor agreement. In the course of those negotiations, the employer declined to bargain with the union regarding non-economic matters for two members of the bargaining unit who are assigned to the Centralia Municipal Court.

The Centralia Municipal Court was established by city ordinance on January 9, 1962. That ordinance cited "Chapter 299, Laws of 1961 (Chapter 6) of the State of Washington" as authority for creating the municipal court.¹ The ordinance states in relevant part:

¹ Chapter 299, Section 6 was codified as RCW 3.30.060, which addresses district court recesses and has no apparent relevance to the formulation of a municipal court. Portions of Chapter 299, Laws of 1961, were codified in Chapter 3.30 RCW [relating to "District Courts"], Chapter 3.34 RCW [relating to "District Judges"], Chapter 3.38 RCW [relating to "District Court Districts"], Chapter 3.42 RCW [relating to "District Court Commissioners"], Chapter 3.46 RCW [relating to "Municipal Departments (of the District Court)"] and Chapter 3.50 RCW [relating to "Municipal Departments - Alternate Provision"], Chapter 3.54 RCW [relating to "Clerks and Deputy Clerks (of district courts)"], Chapter 3.58 RCW [relating to "Salaries and Expenses (of district court personnel)"], Chapter 3.62 RCW [relating to district court income], and Chapter 3.66 RCW [relating to district court jurisdiction and venue], Chapter 3.70 RCW [relating to a magistrates' association], and Chapter 3.74 RCW [miscellaneous provisions]. Thus, the sixth RCW chapter affected by the 1961 law was Chapter 3.50 RCW.

Vehicle Code) as city ordinances. The court has not enforced county ordinances.

In January, 1986, Joseph M. Mano, Jr., a local attorney in private practice was appointed by the city to serve as judge for a term of four years. Judge Mano testified that he does not serve as judge in any other court, that his salary is paid by the city, and that the position offers no retirement benefits.

Although the judge works only part-time, the court maintains a regular schedule which he may modify. The judge maintains daily contact with the court to issue warrants, review files on new arrests, arraign defendants at the Lewis County jail located at Chehalis, Washington, and attend to any other business that may come before him.

The court room and office are located in the city's municipal building adjacent to the city clerk's office. It is regularly staffed by the chief court clerk and deputy court clerk. Clerical employees from other city departments have been occasionally assigned by the city clerk to work temporarily at the court.

Job descriptions for the court clerk positions were first drafted in about May, 1987, at the request of the city clerk. Chief Court Clerk Sacia Graver and a former court clerk drafted the original job descriptions, which were then passed on to the city clerk.

The chief court clerk's job description identifies the court as a department of the City of Centralia, and states that the employee filling the position reports to the city clerk/personnel officer. Under "general functions" it states that the employee:

Performs technical clerical work in the administrative support office of the court. Prepares and monitors calendar activities for all cases before the court.

Graver was hired by the city in May of 1984, to serve as an accounts receivable clerk in the finance department. In September of 1984, Graver was informed by the city clerk that she was being reassigned to the position of court clerk. The transfer was imposed on Graver by the employer and she was not interviewed for the position by the judge in office at that time. There was one court clerk position at that time.

The deputy court clerk's job description also identifies the court as a department of the City of Centralia, and also states that the employee filling the position reports to the city clerk/personnel officer. Under "general functions" it states that the employee:

Performs general clerical work in the administrative support office of the court.

Deputy Court Clerk Vesta Rockey was hired to replace an employee who had resigned. Rockey learned of the position as a result of a newspaper advertisement. She obtained an employment application from the city clerk's office, filled it out and returned it there. Rockey was notified that applicants for the position would be required to take a written test administered on a scheduled evening at a local college. Rockey took the test, which was administered by the city clerk. She was notified within a few days that she was among the top 10 applicants, and she was interviewed for the position by the city clerk and Judge Mano. By letter dated February 19, 1988, signed by City Clerk/Personnel Officer Carol Lee Neely, Rockey was notified that she had been selected for employment, the letter stated in relevant part:

The City Manager has approved the recommendation of Judge Joe Mano and myself to offer you the position of Deputy Court Clerk with the Centralia Municipal Court.

Rocky commenced work in the position on February 23, 1988.

The court clerk's rates of pay are established by the city council. Personnel and administrative matters affecting them are controlled by Judge Mano and the city clerk/personnel officer. In the event of illness, the deputy clerk is to report her absence to the chief court clerk, who has been instructed by Judge Mano to communicate with the city clerk regarding days off and personnel matters. To avoid schedule conflicts, proposed court clerk leaves are reviewed with the judge prior to finalization, and then scheduled with the city clerk. Any overtime work would be authorized by the judge. Judge Mano oversees the work product of the clerks. The city clerk observes the court clerks on a daily basis, and provides logistic support for them.

Judge Mano thought that he might have participated in the drafting of the court clerk job descriptions based on the terminology used, however, he could not recall specific details. He also thought that he may have been involved in the discharge of a court employee at about the time that he was appointed to the position. Again, however, he could not recall specific details of what transpired. The judge was not involved on behalf of the management in the representation proceedings that led to the union's certification as exclusive bargaining representative, and he has not been formally involved in or consulted by the management regarding the labor agreement negotiations.

POSITION OF THE PARTIES

The union maintains that the employer has unlawfully placed limitations on the scope of collective bargaining, by refusing to bargain with it regarding non-economic terms and conditions of employment for the municipal court clerks. The union contends that, pursuant to Chapter 3.50 RCW, the municipal court employees are employees of the city exclusively, and therefore are subject to the provisions of Chapter 41.56 RCW, without limitation.

The employer maintains that the municipal court operates in much the same manner as a district court and, pursuant to Chapter 3.50 RCW and other statutes, the municipal court clerks have dual status as municipal employees and as employees of the state judicial branch. Therefore, it contends that all non-economic matters affecting their employment are subject to the court's exclusive discretion (and not subject to collective bargaining), and that they are "public employees" under Chapter 41.56 RCW only as to their wages and wage-related matters. It is the employer's position that it has met its bargaining obligation in this regard.

DISCUSSION

Constitutional and Statutory Provisions

Judicial authority within the state of Washington is assigned by Article IV of the state constitution which states:

1. JUDICIAL POWER, WHERE VESTED. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace,² and such inferior courts as the legislature may provide.

The constitution also addresses inferior courts, stating:

12. INFERIOR COURTS. The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

Pursuant to the constitution's delegation of authority to the Legislature, it has enacted laws which assign to cities and towns the authority to operate a municipal court.

²

The Court Improvement Act of 1984 changed all references to justice courts to "district courts".

Legal Precedents

In Zylstra v. Piva, 85 Wn.2d 743 (1975), the Supreme Court held that juvenile court probation counselors and detention staff at a juvenile court facility operated by Pierce County were actually employees of two separate employers. While the labor organization involved there had maintained that Chapter 41.56 RCW applied in all respects, it was held that the disputed employees were outside the coverage of that statute to the extent that they were employees of the superior court, a branch of the state judiciary, and therefore were employees of the state.³ The supreme court concluded that "control" was the determinative factor for the purposes of applicability of the collective bargaining statute. It found that the juvenile court employees had dual employment status as employees of the county for purposes of negotiating matters relating to wages, including benefits relating directly to wages, such as medical insurance because such matters were under the control of the county. For the purposes of hiring, firing, working conditions, and other matters within the statutory responsibility of the superior court, the court found that the employees were a part of the state's judicial branch, therefore they were state employees and did not fall within the purview of the PECBA.

The employer's arguments in the case at hand fail to recognize the distinct differences between Chapter 13.04 RCW, which was the

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At the time that Zylstra arose, Chapter 13.04 RCW designated juvenile courts as a division of the state superior court system, and specified that detention services would be administered by the superior court. RCW 13.04.040 assigned responsibility for fixing and paying the employees compensation to the county and assigned responsibility for the hiring, control and discharge of the employees to the superior court.

determinative authority in Zylstra, and Chapter 3.50 RCW, which is applicable here.

In Grant County, Decision 2233-A (PECB, 1986), the dispute centered around a district court organized pursuant to Chapter 3.30 RCW. The Commission concluded that the district court was a part of the state judicial system, and that the dual employment principles applied in Zylstra were equally applicable there. The Commission stated:

Because the elements found controlling in Zylstra, are present here, we hold, under the doctrine of stare decisis, that district court employees are "state employees" for purposes of employment matters other than wages and wage-related benefits.

It is apparent that the matter of "control" remained the determinative criteria for establishing the employment status of court employees.⁴

The employer argues here that Grant County is also factually indistinguishable from the case at hand, and that the results should therefore be the same. The employer fails to acknowledge, however, that the statutes applicable in Grant County with respect to "control" of employees and employment conditions, such as Chapter 3.34 RCW, Chapter 3.42 RCW, Chapter 3.52 RCW and Chapter 3.58 RCW, are different from those applicable to municipal courts and their employees.

⁴

The Examiner notes that the Legislature amended Chapter 41.56 RCW during its 1989 session to codify the dual employment status of district court employees and to obligate district court judges to bargain matters within their control. Chapter 275, Laws of 1989. House Bill 1020 originally covered municipal court employees as well as district court employees, but the bill was amended to delete reference to municipal courts prior to final passage.

Municipal Court Employee Relations

Employee relations in municipal courts are addressed in both Chapter 3.46 RCW and Chapter 3.50 RCW, both of which originated with Chapter 299, Laws of 1961.

Chapter 3.46 RCW, which can be utilized by "any city" addresses the matter of court personnel relations in RCW 3.46.140, as follows:

All such personnel shall be deemed employees of the city, shall be compensated wholly by the city, and shall be appointed under and subject to any applicable civil service laws and regulations. (emphasis supplied)

The statute thus assigns to cities control over the entire scope of employment of its municipal court personnel, extending from determination of salaries to such traditional areas of civil service imposition as in hiring, personnel reduction, discipline and discharge. Many or all of those are mandatory subjects of collective bargaining under Chapter 41.56 RCW. Rose v. Erickson, 106 Wn.2d 420 (1986); City of Walla Walla, Decision 1999 (PECB, 1984). The reference to civil service laws and regulations in RCW 3.46.140 also signifies that the Legislature intended for the originating municipality to have exclusive control over the terms and conditions of employment of municipal court employees. There can be little doubt that such control places the employees under the jurisdiction of Chapter 41.56 RCW in all respects, and does not contemplate the concept of dual employment status.

Chapter 3.50 RCW, which can be utilized only by cities with a population of 400,000 or less, addresses the matter of court personnel relations in RCW 3.50.080, as follows:

Salaries of municipal court judges shall be fixed by ordinance. All costs of operating the municipal court, including but not limited to salaries of judges and court employees,

dockets, books of records, forms, furnishings, and supplies, shall be paid wholly out of the funds of the city or town. The city shall provide a suitable place for holding court and pay all expenses of maintaining it.

All employees of the municipal court shall, for all purposes, be deemed employees of the city or town. They shall be appointed by and serve at the pleasure of the court. (emphasis supplied)

Title 3 RCW does not define the term "court" in this usage, and the term must be applied in the context of the situation at hand.

The employer argues that the portion of RCW 3.50.080, which states that municipal court employees "serve at the pleasure of the court" should be narrowly construed to mean that the employees serve at the pleasure of the presiding judge. The employer claims that its judge is a member of the state judicial branch, and that, because of such an alleged relationship, the other court employees are state employees for purposes other than wages and wage-related matters. It follows, according to the employer, that the employees in dispute here are not subject to the traditional scope of collective bargaining under Chapter 41.56 RCW.

The Examiner does not find the employer's arguments to be persuasive. Unlike district court and superior court judges who are elected directly by the people, the municipal court judge in Centralia is merely an appointee of other City of Centralia officials. The statute designates the City of Centralia as the employer of court employees "for all purposes". The term "court" cannot be personified, limiting it to the presiding judge exclusively. Rather, it must be construed in a broad sense that views the court as a division or department of the city which is its source of authority. Therefore, the operative effect of employees serving "at the pleasure of the court" vests authority over all employment related matters with the city's legislative body, the mayor and city council.

Further, the record reflects that the judge, the city clerk and even the city manager have actually shared administrative authority over the operation of the court, and have distributed supervisory authority over the clerks assigned to the court. It is not at all clear that city has relinquished control over the court or its employees.

Other Arguments Advanced by the Employer

The employer argues that district courts and municipal courts operate in a similar manner, pointing out that jurisdiction for subpoenas and process are the same, that they function in the same manner with respect to Title 9A RCW and Title 46 RCW, that both types of courts operate under the same court rules, and that fines and assessments are split the same. While that is true, there are also substantial differences. Thus, while RCW 3.74.010 requires that district court judges be members of the state retirement system, the employer offered no explanation why Judge Mano is not so enrolled.

The employer further asserts a kinship between district courts and municipal court by reason that governance of court matters not specifically addressed in Chapter 3.50 RCW is assigned to the laws which govern district courts. RCW 3.50.450 states:

Pleadings, practices and procedure in cases not governed by statutes or rules specifically applicable to municipal courts shall, insofar as applicable, be governed by the statutes and rules now existing or hereafter adopted governing pleadings, practice and procedure applicable to district courts.

The Examiner's evaluation of the operative effect of RCW 3.50.450 is different than the employer's. The substance of the statute addresses standards for cases that come before the court. It does not address the day-to-day administration of the court, or of its

personnel. Such a broad interpretation takes the statute out of its proper context. There are generic similarities among all courts. The Legislature has, however, by virtue of its enactment of specific and unambiguous personnel provisions in Chapters 3.46 and 3.50 RCW, imposed different personnel standards on municipal courts than are established for district courts and other courts. In particular, it has made municipal court employees the city's employees "for all purposes", and has so vested exclusive operational control of the Centralia Municipal Court with the city's legislative body.

The Centralia Municipal Court operates at the discretion and pleasure of the City of Centralia. Its jurisdiction is limited, its hours of operation are controlled by the city,⁵ the judge is appointed by the city's legislative body, the costs of operating the court (including salaries of judges and other employees) are borne by the city, and all employees are deemed, by statute, to be employees of the city. The "control" factor that was key to arriving at the determinations of dual employment status in Zylstra and Grant County are missing here. The statutory provisions for employee control are different for municipal courts than for district and superior courts.⁶ Accordingly, the collective bargaining obligations arising from Chapter 41.56 RCW are applicable in all respects to the court clerks. The Examiner concludes that the employer has committed an unfair labor practice by refusing to bargain non-economic matters concerning the court clerks.

⁵ RCW 3.50.110 assigns in relevant part to the legislative body of the sponsoring city or town the authority to schedule the court's hours of operation.

⁶ The "separation of powers" of the judicial branch of the government is maintained in the context of this court of limited jurisdiction, because the municipal court judge exercises control over the court's product, the dispensation of justice.

FINDINGS OF FACT

1. The City of Centralia is a "public employer" within the meaning of RCW 41.56.030(1).
2. Chauffeurs, Teamsters and Helpers Union, Local 252, is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. On December 18, 1987, the union was certified as the exclusive bargaining representative of a bargaining unit of office-clerical and support employees of various departments of the City of Centralia, including the Centralia Municipal Court.
4. Subsequent to the union's certification as collective bargaining representative, the employer and the union engaged in collective bargaining for an initial labor agreement. In the course of said negotiations, the union requested to bargain matters concerning the municipal court clerical employees other than their wages and wage-related benefits. The employer declined to bargain on such matters.
5. The Centralia Municipal Court was created by city ordinance, pursuant to Chapter 3.50 RCW. The judge is appointed by the mayor, subject to confirmation by the city council. The costs of operating the court, including the salary of the judge and the court clerks, is borne by the city. At least one of the clerical employees currently assigned to the municipal court was transferred to that position without apparent involvement of the judge who was in office at the time of the transfer. Employees from other departments provide assistance from time to time to the municipal court. The hours of court operation are prescribed by the city's legislative body; and the city retains authority to control and/or terminate the court.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. Pursuant to RCW 3.50.080 RCW, the employees assigned to the Centralia Municipal Court are employees of the City of Centralia "for all purposes". The City of Centralia in fact retains control over such employees, and is their sole employer for the purposes of Chapter 41.56 RCW.
3. By its refusal to bargain with Teamsters Local 252 with respect to the matters other than wages and wage-related benefits for employees assigned to the Centralia Municipal Court, the City of Centralia has failed and refused to bargain in good faith, and has interfered with its employees in the exercise of their rights guaranteed by RCW 41.56.040, and so has engaged in unfair labor practices within the meaning of RCW 41.56.140(1) and (4).

ORDER

IT IS ORDERED that the employer, the City of Centralia, its officers and agents shall immediately:

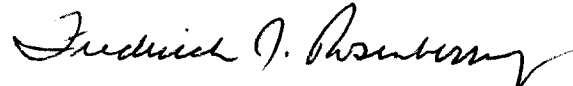
1. Cease and desist from:
 - A. Refusing to engage in collective bargaining with Teamsters Local 252 concerning all mandatory subjects of collective bargaining described in Chapter 41.56 RCW with respect to all of the employees in the bargaining unit described in these proceedings, including employees assigned to the Centralia Municipal Court.

- B. In any other manner interfering with, restraining or coercing its employees in the exercise of their right to engage in collective bargaining activities, as detailed in RCW 41.56.040.
2. Take the following affirmative action to effectuate the purposes and policies of Chapter 41.56 RCW.
- A. Upon request, bargain collectively in good faith with Teamsters Local 252, for the entire bargaining unit described in these proceedings, including employees assigned to the Centralia Municipal Court, and with respect to all mandatory subjects of bargaining described in Chapter 41.56 RCW.
- B. Post, in conspicuous places on the employer's premises where notices to the bargaining unit employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized representative of the City of Centralia, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the city of Centralia to ensure that said notices are not removed, altered, defaced or covered by other material.
- C. Notify Teamsters, Local 252, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide Teamsters, Local 252, with a signed copy of the notice required herein.
- D. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time

provide the Executive Director with a signed copy of the notice required herein.

DATED at Olympia, Washington, this 22nd day of June, 1989.

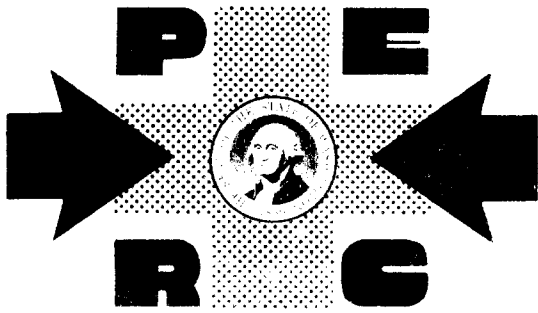
PUBLIC EMPLOYMENT RELATIONS COMMISSION



FREDERICK J. ROSENBERY, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

**NOTICE**

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AND IN ORDER TO EFFECTUATE THE POLICIES OF THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT, CHAPTER 41.56 RCW, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining.

WE WILL cease placing unlawful limitations on the subjects that we will collectively bargain regarding the Centralia municipal court employees, with Teamsters Local 252.

WE WILL, upon request, bargain collectively in good faith with Teamsters Local 252 with regard to employees assigned to the Centralia Municipal Court, and regarding all subjects of bargaining required by Chapter 41.56 RCW.

DATED: _____

CITY OF CENTRALIA

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza, FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.