

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
MASON COUNTY)	CASE NO. 3976-C-82-191
For clarification of an existing bargaining unit of its employees represented by:)	DECISION NO. 1649 - PECB
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 378, AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 302)	ORDER CLARIFYING BARGAINING UNIT

L. Frank Johnson, Deputy Prosecuting Attorney, appeared on behalf of Mason County.

Hafer, Cassidy & Price, by Thomas K. Cassidy, Attorney at Law, appeared on behalf of the union.

On March 22, 1982, Mason County filed a petition with the Public Employment Relations Commission, for clarification of an existing bargaining unit. The employer seeks a ruling as to whether certain individuals are supervisors who should be excluded from the bargaining unit which includes their subordinates. A hearing was held on May 5, 1982, before J. T. Cowan, Hearing Officer. Both parties filed post-hearing briefs.

BACKGROUND:

Teamsters Local 378 and Operating Engineers Local 302 have formed a joint council for the purpose of representing certain employees of Mason County, and that council is recognized by Mason County as the exclusive bargaining representative of certain operations and maintenance employees in the county's road and public works departments. The collective bargaining relationship between these parties pre-dates the enactment of Chapter 41.56 RCW, and a copy of their collective bargaining agreement of calendar year 1964 is in evidence in this proceeding. The parties had a collective bargaining agreement entered into on March 19, 1981, which contained the following provision pertinent hereto:

25. This Agreement shall be in full force and effect from January 1, 1981, through December 31, 1981, and shall be renewed automatically for a period of one year unless notices as required in Paragraph 24 (a) have been given by either party to the other party requesting contract changes. It is further agreed by the parties signatory hereto that they will meet no later than June 1, of the current contract year for the purpose of preliminary discussion for future contract changes.

The parties were in negotiations for a successor agreement at the time the petition was filed in the instant matter. The docket records of the Commission disclose a request for mediation filed on January 12, 1982 (Case No. 3920-M-82-1699). That mediation case was not closed until June, 1982.

There are a total of four positions in question in this proceeding. Three positions (one of which was vacant at the time of the hearing) are in the road department. The fourth position is in the Equipment Rental & Revolving (ER&R) shop. All of the claimed supervisors have heretofore been hourly-paid employees included in the bargaining unit, with the same rights and benefits as other bargaining unit employees. The 1981 agreement made specific provisions for "supervisor" wages.

Each of the road department supervisors is responsible for department operations within a specified geographical area within the county. Those supervisors report to the maintenance engineer, who in turn reports to the "Director of Public Works/County Engineer". The director reports directly to the Board of Mason County Commissioners. There is evidence in the record concerning the existence of supervisors in the road department since at least 1961. Throughout that period, they have been responsible for inspecting county roads and identifying needed maintenance. They select "weigh" or stockpile sites, and make recommendations on right-of-way utilization. The authority to make needed repairs has been vested in the supervisors for the past five to six years, although they discuss most projects with the maintenance engineer before starting work. The supervisors have authority to move a crew to a different activity, or to respond to an emergency, without contacting either the maintenance engineer or the director. For the past four to five years, the supervisors have had authority to authorize overtime work for the completion of a project or for a night call-out. They have authority, on an incident-by-incident basis, to authorize payment for meals at county expense for employees held overtime into a normal meal time. They have authority to make purchases of materials necessary to complete a given project if normal sources of supply have been exhausted. The supervisors schedule work and assign employees to projects. They approve vacation and leave requests, subject to review by the director. The supervisors maintain time sheets for the employees under their direction. Although approval of hazard pay occurs at the level of the maintenance engineer, the supervisors make recommendation on hazard pay. The supervisors have the authority to take immediate disciplinary action against

employees and to recommend more severe forms of discipline. Only the director has authority to discharge employees.

The ER&R unit is an industrial funding system, under which the unit owns and maintains all of the county's vehicular equipment. Equipment is then "rented" to other county departments by internal transactions on the county's books. The unit does all of the purchasing of bulk road materials and supplies, maintains an inventory and "sells" needed items to the road fund or to other governmental agencies within the county. The unit is headed by an equipment manager who also serves as "Deputy Director of Public Works/Assistant County Engineer". The equipment manager reports directly to the Board of Mason County Commissioners. The ER&R employee in dispute is the shop supervisor, who reports directly to the equipment manager. The shop supervisor schedules work in the shop, prioritizing which vehicles are to be worked on and assigning work to employees. The shop supervisor directs the work of three mechanics, a parts manager and a parts clerk. He has the authority to authorize overtime, to take immediate disciplinary action and to recommend more severe disciplinary actions. He has the authority to make purchases up to \$250.00 without other authorization, whereas the parts personnel are limited to purchases up to \$100.00.

As bargaining unit employees, none of the disputed supervisors have ever been included in the formulation of the county's labor relations policies. They have participated in the budgetary process to the extent of attending meetings at which the funds available and the allocation of funds to projects were discussed. The road supervisors meet with the maintenance engineer weekly to discuss and monitor a "two week" maintenance budget, and input is received from the supervisors at those times.

POSITIONS OF THE PARTIES:

The county alleges that the four supervisors in question have separate and distinct duties, and a separate community of interest, from the employees they supervise. The county particularly points to the authority of the supervisors concerning overtime, work, purchases, leave requests, vacation requests, scheduling, time records, inspection, discipline and budget. The county contends that the supervisors are more closely aligned with the management, and that they should not be included in the same bargaining unit as the employees they supervise.

Starting from the premise that the disputed supervisors are "public employees" within the meaning of RCW 41.56.030(2), the union contends that they have been voluntarily included in the bargaining unit since 1964, that the supervisors continue to perform duties they have performed throughout the period of their inclusion in the bargaining unit, and that they should

remain in the bargaining unit. The union appears to acknowledge that there has been some gradual increase of the authority of the supervisors, and bases its argument on PERC decisions holding that minor changes of circumstances are insufficient to warrant a change of bargaining unit status.

DISCUSSION:

The question at hand is entirely one of bargaining unit determination under RCW 41.56.060. Both parties acknowledge that the disputed supervisors are public employees within the meaning of the Act. The general policy adopted by the Commission and affirmed by the courts is that supervisors will be excluded from the bargaining unit which includes their subordinates due to the potential for a conflict of interest within a mixed unit. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App. 599 (Division III, 1981), cert. den., 96 Wa2d 1004 (1981). That general policy is applied subject to safeguards designed to assure that the rights of parties and of employees will not be abused. Toppenish School District, Decision 1143-A (PECB, 1981).

The county has conformed to the procedural requirements in this case. The 1981 collective bargaining agreement between the parties had expired, and the parties were in a hiatus between contracts, when the petition was filed. There is indication that the parties were actively engaged in negotiations for a successor contract, from which it can be inferred that there was never any attempt to allow the contract to continue in effect. Even if there were indication of a lack of bargaining, RCW 41.56.070 would preclude honoring the "automatic renewal clause" as a bar to this proceeding. The employer's petition has caused issues to be joined in litigation before the Commission, conforming to the directive of RCW 41.56.050 and 41.56.060 that disputes concerning unit determination or representation be submitted to the Commission for determination.

The individuals at issue in this proceeding clearly exercise substantial independent judgment on numerous matters, including the making of effective recommendations on personnel actions including assignment, transfer, discipline and discharge. When one of them is absent or on vacation, the work is taken over by another of the supervisors or by a higher official rather than by temporary promotion from a subordinate position. The evidence thus supports the conclusion that they should be excluded from the bargaining unit which includes their subordinates.

FINDINGS OF FACT

1. Mason County, Washington, is a political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).

2. International Brotherhood of Teamsters, Local 378, and International Union of Operating Engineers, Local 302, both of which are "bargaining representatives" within the meaning of RCW 41.56.030(3) have formed a council for the purposes of representing employees of Mason County and have been recognized by Mason County as exclusive bargaining representative of operations and maintenance employees of the county in its road, public works and ER&R departments.
3. The employer and the unions were parties to a collective bargaining agreement effective for the period from January 1, 1981 through December 30, 1981. Supervisors in the county's road department and ER&R shop were included in the bargaining unit covered by that agreement.
4. The road supervisors and shop supervisor exercise substantial authority, for and on behalf of the employer, as supervisors of bargaining unit employees, including the authority to act or to recommend effectively concerning assignment, transfer, scheduling of overtime work, discipline, discharge, authorization of hazard pay, scheduling of time off and inspection of work performed.

CONCLUSIONS OF LAW

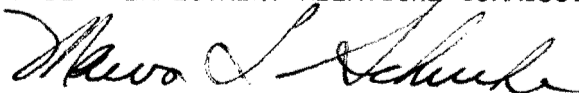
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW, and no question concerning representation presently exists.
2. The road supervisors in the maintenance division of the Mason County Road Department and the shop supervisor in the Mason County Equipment Rental and Revolving unit are supervisors whose continued inclusion in the same bargaining unit with the employees they supervise would create a potential for conflicts of interest, such that their exclusion from that bargaining unit is appropriate under RCW 41.56.060.

ORDER

The road supervisors and the shop supervisor are excluded from the bargaining unit referred to in paragraph 2 of the foregoing findings of fact.

DATED at Olympia, Washington, this 6th day of June, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director