

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TEAMSTERS LOCAL UNION NO. 117)	CASE NO. 3942-C-82-187
)	DECISION NO. 1846 - PECB
For clarification of an existing bargaining unit of employees of:)	
CITY OF KENT)	ORDER CLARIFYING BARGAINING UNIT

Davies, Roberts, Reid, Anderson and Wacker, by Louis B. Reinwasser, Attorney at Law, appeared on behalf of the union.

Cabot Dow and Associates, by Cabot Dow, appeared on behalf of the employer.

On January 28, 1982, Teamsters Local Union No. 117 (union) filed a petition with the Public Employment Relations Commission (PERC) requesting clarification of an existing bargaining unit of employees of the City of Kent (employer). At issue is a position of "construction inspector". On January 28, 1982, the union and the employer jointly filed a petition for clarification of the same bargaining unit with respect to five maintenance supervisor positions, Case No. 3943-C-82-188. The matters were consolidated for hearing, which was held on April 7th, April 26th, and May 18, 1982, before Martha M. Nicoloff, Hearing Officer. The parties waived submission of post-hearing briefs. Although the two cases affect the same bargaining unit, they raise divergent factual and legal issues. A separate decision is being issued today in Case No. 3943-C-82-188.

FACTS

The City of Kent employs approximately 320 employees to serve a population of 23,400 residing in an area of about seventeen square miles. The city operates under the mayor-council form of government, with the city council retaining the final authority in matters of policy, including labor relations. The city employs an administrator, Richard Cushing, who supervises all department heads, carries out city policies within parameters set by the council, develops the city budget, and is generally responsible for day to day administration of city affairs, including labor relations. He is assisted in matters of personnel and labor relations by Michael Webby.

Those city employees who are represented by labor organizations are divided among four bargaining units: firefighters, police officers, police clerks, and operation and maintenance employees. The operations and maintenance unit is at issue in these proceedings.

In 1968, the Washington State Department of Labor and Industries (which then administered Chapter 41.56 RCW) certified Teamsters Union Local No. 910 to represent a unit of employees described as:

Employees of the Water Department, Street Department, Sewer Department, Garbage Department, and Park Department, excluding foremen of the Water Department, Street Department, Sewer Department, and Garbage Department.

The record does not disclose by what means Teamsters Local 117 came to represent the unit, but the status of Local 117 is not contested. By the time of hearing, the city and Local 117 had been parties to a series of collective bargaining agreements covering the operations and maintenance unit. The 1982 collective bargaining agreement between the parties, executed on February 9, 1982, recognizes the union as the exclusive bargaining representative for full-time employees of the parks, equipment rental, street, and utilities departments, and excludes temporary, part-time, office-clerical, supervisory, professional and protection employees of those departments from the unit. The 1980-81 labor agreement between the parties contains almost precisely the same recognition language but reflects a different department structure in effect at that time.

In the time period germane to these proceedings, the major functions of the city's public works department have included street maintenance, equipment maintenance, water and sewer operation and maintenance, and engineering services.^{1/} Shortly after Cushing became city administrator in 1979, he involved himself in analysis of the operation of the public works department, out of concern with the capability of the department as structured at that time to handle the flow of work arising out of a substantial increase in construction within the city. Don Wickstrom was appointed acting public works director in October, 1979, and became permanent director in February 1980. Cushing and Wickstrom determined that an in-depth review of public works management practices was necessary and, with city council approval, contracted with a consulting firm (Matrix) to evaluate department functions and structure. The Matrix study was completed in the fall of 1980. During 1980, another consulting firm (Salik) was engaged in a review of the city personnel classification and compensation structure.

^{1/} Although those functions are all part of the public works "department", each of those functions is denoted by the city as a "department" as well.

Until August of 1980, the engineering department included traffic, property management, survey, design, and construction sections. At least in part as a result of the Matrix study, certain changes were made in the functions and personnel in that department. The maintenance responsibilities of the traffic section were transferred to the street department. The traffic engineer was moved to the street department as well, leaving a traffic section in engineering with responsibilities limited to transportation planning and design. The two persons remaining in the traffic section in engineering then worked under a revised classification specification. The inspection functions of the engineering department were also modified, such that all inspections of the new facilities came under the purview of the engineering department. Glenn Caron, a construction inspector who had been working in the sewer department, was transferred, effective May, 1981, to the engineering department. All of Caron's duties were transferred with him.

In his position in the sewer department, Caron had reviewed applications for side sewer permits to ensure use of proper materials and adherence to codes; had performed on-site inspections and conducted tests on pipes after installation; had inspected manholes for proper installation and adherence to various codes; processed the paper work involved with permits, inspection reports, and "as-built" drawings; processed requests for certain meter and billing adjustments; performed liaison work between the city and various parties in the field; researched engineering drawings and reports on a variety of matters; and checked field complaints. In the sewer department, Caron reported to a maintenance supervisor, Nelden Hewitt.

The responsibilities of a construction inspector in the engineering department historically have included inspection of all new public works improvements, such as water mains, sewer mains, street improvements, and storm drainage facilities, to ensure installation in accordance with plans and specifications; issuance of permits for and inspection of installation of utilities, and maintaining construction records and "as-built" plans. The responsibilities now include all of the responsibilities which Caron had as an inspector in the sewer department, as well as those historically performed by the engineering department. By the time of hearing, Caron was continuing to perform his former functions and was beginning to inspect other public works projects as well. The inspectors who had historically been assigned to engineering were continuing to perform their former duties, and were undergoing training to enable them to assume the types of duties which Caron had historically performed. Caron currently reports to a construction engineer.

Employees represented by the Teamsters and nonrepresented city employees received the same percentage wage increase in 1982. They share the same life insurance, vacation, sick leave, and medical plans, although differing formulas are used to calculate payment of medical benefits for employee dependents. Longevity and holiday benefits are different.

POSITIONS OF THE PARTIES

The union believes that the construction inspector position at issue has been and continues to be in the bargaining unit. Although it made no formal position statement at hearing, the record discloses that the union asserts that no change of responsibilities has occurred sufficient to justify exclusion from a unit in which the position has been included over a period of many years.

The city claims that the position of construction inspector has already been excluded from the unit and should remain so. It claims the position is not involved in any maintenance and operations functions of the public works department, nor is it any longer in the same section of the department as any of the employees in the bargaining unit. It claims, finally, that the scope of the responsibilities of the position has changed since the time of its transfer into the department's engineering function.

DISCUSSION

The bargaining unit involved in these proceedings was organized along lines of the employer's table of organization as it existed in 1968. It evidently includes most of the "blue collar" occupations found among employees of the city, and has come to be referred to as the "operation and maintenance" unit. As noted in King County, Decision 1480 (PECB, 1984) and in Cowlitz County, Decision 1652-A (PECB, 1984), bargaining units structured along departmental lines can be appropriate bargaining units under RCW 41.56.060. As also noted in those cases, however, such units can be a source of "second generation" unit determination problems and/or bargaining obligations and unfair labor practice disputes where the employer finds it necessary or desirable to alter its table of organization. The employer may well have had an obligation to bargain with the union before transferring the work from the bargaining unit to a department outside of the bargaining unit, but that is beyond the scope of this proceeding. In this unit clarification proceeding, the Commission must take the parties where it finds them, and must allocate the disputed position to an appropriate bargaining unit, taking into consideration both the history of bargaining and the present and future community of interest of the employee(s) involved.

It is uncontroverted that all of the duties which had been historically performed by the construction inspector position at issue in these proceedings continued to be performed at the time of hearing. Although additional inspection duties were contemplated at that time, the changes being made were not of sufficient significance for the city to require different skills and abilities of the position incumbent. The city claims to the contrary, there is little evidence upon which a finding could be made that position duties and skills have changed significantly.

In the transfer from sewers to engineering, the construction inspector moved, however, from a section in which virtually all employees were represented, to one in which none were. Work locations for the two sections are some distance apart, work schedules are different, and although employees of the two sections report to the same director, they do so through entirely different lines of supervision. Maintenance employees wear uniforms, while engineering employees do not. On the other hand, wage increases and most benefits for the two sections have been quite similar, as they apparently are between this unit and all nonrepresented city employees.

In both King County, supra, and in Clark County, Decision 290, 290-A (PECB 1978), it has been pointed out that there is a community of interest among persons performing "inspector" work to be found in their current commonality as inspectors, rather than in their training or previous craft or occupational backgrounds. Caron now works side by side with the other inspection and engineering personnel of the city, and the similarity of his present duties, skills and working conditions with those employees is clear. Were this an attempt to organize the engineering department employees, it would be difficult or impossible to draft a sensible unit description which excluded Caron's position from such a unit, and any unit which did exclude the position would inherently be fragmentary. The glue which held Caron's position in the bargaining unit represented by Local 117 prior to his transfer was the commonality of work and supervision with the employees in the sewer department. Those ties have been severed by the employer's reorganization of functions. The unit structure urged by the union would extend the bargaining unit beyond the "departmental" lines of its origins, and would at the same time fragment the workforce of the engineering department. It is inappropriate on both grounds.

FINDINGS OF FACT

1. The City of Kent is a municipal corporation and a political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).
2. Teamsters Local Union No. 117, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of operation and maintenance employees of the utilities, parks, streets, and equipment rental departments of the City of Kent.
3. The Teamsters Local 117 and the City of Kent have been parties to a series of collective bargaining agreements covering the bargaining unit described in paragraph 2 of these findings of fact, including an agreement executed on February 9, 1982 for the period of January 1, 1982 through December 31, 1982.

4. Until May, 1981, the utilities department included a bargaining unit position of construction inspector. At that time, the incumbent of the position in utilities was transferred to the engineering department, and all of his duties were transferred with him. Employees of the engineering department have historically not been organized for the purposes of collective bargaining. Their wages, and those of other nonrepresented employees of the city, increased by the same percentage as did those of employees of the concerned bargaining unit. Most benefits are similar among the two groups.
5. Upon his transfer, the construction inspector moved to a different work location, worked a different time schedule, and reported through a different line of supervision.

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 construction inspector in the engineering department no longer has a community of interest through a common supervisory structure with the employees in the bargaining unit described in paragraph 2 of the findings of fact, and continued inclusion of that position in the bargaining unit is not appropriate under RCW 41.56.060.

ORDER

The construction inspector in the engineering department is excluded from the bargaining unit described in paragraph 2 of the findings of fact.

DATED at Olympia, Washington, this 22nd day of February, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director