

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
TEAMSTERS LOCAL UNION NO. 117	)	CASE NO. 3943-C-82-188
For clarification of an existing bargaining unit of employees of:	)	DECISION NO. 1857 - PECB
CITY OF KENT	)	ORDER CLARIFYING BARGAINING UNIT

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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 and the City of Kent filed a joint petition with the Public Employment Relations Commission (PERC), requesting clarification of an existing bargaining unit. At issue are five "maintenance supervisor" positions. On the same date, Teamsters Local 117 filed a unit clarification petition regarding inclusion of a "construction inspector" position in the same bargaining unit. (Case No. 3942-C-82-187). The matters were consolidated for hearing, which was held on April 7, April 26, 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 (Decision No. 1846 PECB) is being issued today in Case No. 3942-C-82-187.

BACKGROUND

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 operations 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 parties have bargained for some time with the understanding that the "maintenance supervisor" positions at issue in these proceedings were included in the bargaining unit.

Shortly after he became city administrator in 1979, Cushing involved himself in analysis of the operation of the public works department,<sup>1/</sup> 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 sewer and water functions of the public works department were operated separately until about April 1, 1980, after which time the water and sewer functions were merged into one utilities department within public works. The Matrix study was completed in the fall of 1980. As of January 1, 1981, utilities was re-organized functionally into two areas: facilities and collection/transmission.

The 1982 collective bargaining agreement between the parties was executed on February 9, 1982, just twelve days following the filing of the joint petition to initiate this proceeding. In that agreement, the city recognizes the

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<sup>1/</sup> In the time period germane to these proceedings, the major functions of the public works "department" have included street maintenance, equipment maintenance, operations and maintenance of water and sewer functions, and engineering services. The units are themselves referred to as "departments".

union as the exclusive bargaining representative of full-time employees of the parks, equipment rental, street, and utilities departments. The recognition clause of the agreement 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 contained almost precisely the same recognition language, but reflected the different department structure in effect at that time.

#### POSITIONS OF THE PARTIES

The city claims that inclusion of the maintenance supervisors in the bargaining unit is no longer appropriate. It claims that an inherent conflict of interest exists in the event that these individuals are included in the same bargaining unit with those whom they supervise. It further alleges that changes in the city's management style which occurred when Cushing assumed the city administrator position altered the functions and the nature of the maintenance supervisor positions.

The union believes that the five maintenance supervisor positions should remain in the bargaining unit. Although it made no formal position statement at the hearing, the record discloses that the union asserts that none of the positions has had a change of responsibilities sufficient to justify their exclusion from a unit in which they have been included over a period of many years.

#### DISCUSSION

The parties present two relatively distinct issues for decision: whether the positions are supervisory, and whether, given the history of their inclusion in the bargaining unit, the facts now warrant their exclusion.

Supervisors are public employees within the meaning of Chapter 41.56 RCW, who may be appropriately included in separate bargaining units of supervisors. METRO, 88 Wn.2d 925 (1977); City of Tacoma, Decision 95-A (PECB, 1977). The Commission's general policy regarding inclusion of supervisors in rank and file bargaining units was set forth in City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wn. App. 599 (Division III, 1981); cert. den., 96 Wn. 2d 1004 (1981). Supervisors will be excluded from such units by application of the unit determination criteria set forth in RCW 41.56.060, due to the potential for conflict of interest with their subordinates in a mixed unit. The Commission's decision in City of Toppenish, Decision 1143-A (PECB, 1981), outlines the circumstances under which a unit clarification petition will be processed. A party which seeks to disturb a bargaining unit during

the life of a collective bargaining agreement must demonstrate a change of circumstances sufficient to warrant immediate exclusion. However, petitions to exclude supervisors from a rank and file unit in which they have been historically placed may also be filed after placing the other party on notice during negotiations and prior to signing a new collective bargaining agreement. The petition to initiate this proceeding was jointly filed by the parties just prior to the signing of their 1982 collective bargaining agreement, leaving no doubt that both parties were on notice of the dispute during negotiations and prior to signing the new contract. The procedural requirements enunciated in Toppenish have been met in this case. If the disputed employees are found to be supervisors, they will be excluded from the unit regardless of their historical inclusion in that unit. Mason County, Decision 1649 (PECB, 1983). The analysis thus turns to the facts and circumstances of the disputed positions.

Nelden Hewitt has worked as a foreman or maintenance supervisor since the spring of 1974. Prior to the January 1, 1981 re-organization, he worked in the sewers division, where his responsibilities included operation and maintenance of sanitary sewers, storm lines, and sewer and storm pump stations. He had authority with respect to scheduling of crews and equipment, determining priorities for work, inspecting and evaluating work in progress, training and providing assistance to his subordinates, and requisitioning necessary materials. For the bulk of the time period between 1974 and 1981, nine employees reported to him. He often acted as sewer superintendent prior to 1981. Since the reorganization in 1981, Hewitt's areas of responsibility have changed to include all water and sewer facilities operated by the city, such as reservoirs, pump stations, pressure reducing stations, and transmission mains. He is no longer responsible for all sewer functions, but has acquired certain responsibilities in the water area which were not his previous to the re-organization. His authority did not change appreciably as a result of the reorganization. At the time of hearing, he supervised seven employees. He continues to be responsible for scheduling employees, assigning and reassigning them, recommending on policy and procedural matters, and assisting in budget preparation. He counsels and disciplines personnel, interviews and recommends applicants for employment. He now reports to the utilities superintendent. In the absence of that official, he has frequently acted as utilities superintendent and exercised the authority of that office, including hiring of new personnel. Since November, 1980, he has been authorized to approve all types of employee leaves of absence.

Charles Lindberg became a maintenance supervisor with the water department in 1975. From that time until the department was reorganized, he was responsible for the cleaning, maintenance and repair of all water mains and other lines being built for or already connected with the city water system. He then had 13 subordinates engaged in new construction, connection of water lines, and pressure and purity testing. After the reorganization, Lindberg

was placed in charge of the collection and transmission functions and was assigned a leadworker for the first time. At the time of hearing, he was responsible for the scheduling and coordination of 13 subordinates performing service repairs, manhole and sewer line repairs, purity testing, pressure testing, and regular cleaning and maintenance of gravity sewers, storm drains, catch basins, water mains and valves. Lindberg has authority for assigning and scheduling work, counseling employees as necessary, and interviewing and recommending individuals for hire. Since approximately January, 1981, he has been authorized to approve all types of leaves of absence. He provides input on personnel actions, policy and procedural changes, and budgetary matters. He does not have the authority to terminate employees, and testified that the superintendent has not always followed his hiring recommendations, but the testimony of both Lindberg and his current supervisor would indicate that he now has even more supervisory authority than he had prior to the re-organization.

Norman Lamb has been a maintenance supervisor in the street department since 1973. The street department is responsible for maintenance and repair of bridges, streets, and storm drains; street sweeping; snow and ice removal; brush removal; and maintenance of certain sidewalks, special purpose paths, and guardrails. The structure and responsibility of that department did not change appreciably as a result of the Matrix study. Since 1973, that department has been headed by Robert Hughes, a street superintendent, who reports to Wickstrom. Hughes is assisted by Lamb, who has approximately ten subordinates. Lamb is responsible for scheduling and assigning crews and equipment; inspecting streets and structures to determine the necessity for repairs or the quality of completed maintenance or repair work; scheduling snow and ice removal activities; scheduling street sweeping and other routine cleaning work; and deploying crews on an emergency basis as needed. Lamb approves all types of leaves of absence, makes effective recommendations to Hughes regarding promotion of employees, and assists Hughes in budget preparation. He has participated with Hughes and other supervisors in the interview and selection of applicants for employment. He has provided input to Hughes in matters of discipline and employee performance evaluation; however, Hughes retains final authority in those matters. Lamb has the authority to resolve grievances, but has had no grievances in the time period in which he has been maintenance supervisor. Lamb has frequently acted as superintendent in Hughes' absence. At the time of the hearing, 90% of his time was devoted to administrative (as opposed to "hands-on") matters.

Jack Spencer has worked in the equipment rental function since about October, 1980, when he was a shop foreman. He has been classified as a maintenance supervisor since March of 1981, as a result of a personnel classification and compensation study conducted for the city by an outside consultant (the Salik

study). Spencer supervises three mechanics and is responsible for the maintenance and repair of all city vehicular equipment, excluding fire department emergency equipment. At the time of hearing, Spencer spent about 10% to 15% of his time in "hands-on" work on equipment, and the remainder of the time on administrative matters. He assigns all work, authorizes all types of leaves of absence for the mechanics under his direction, has served on interview panels and effectively recommended selection of an applicant for employment, has informally counseled his subordinates regarding their performance, and has assisted in budget preparation. He reports to Hughes, but has apparently never acted as superintendent of the street department in Hughes' absence. He is authorized to approve purchases of equipment. He has not had the occasion to recommend an employee for promotion, nor has he ever had a formal grievance or a discipline problem which went beyond the informal level. Prior to his classification as a maintenance supervisor, Spencer did not have the authority to approve leave requests, nor did he provide budgetary input to Hughes.

Leo Richter has been a maintenance supervisor in the parks and recreation department since 1975. The parks and recreation department is completely separate from public works, and was not included in the Matrix study of public works management practices. Until two years prior to hearing, the maintenance division of the parks department was responsible for grounds maintenance only. By the time of hearing, the city had discontinued its practice of contracting out building maintenance work, and the maintenance division had become responsible for both building and grounds maintenance. Richter is responsible for the grounds maintenance function<sup>2/</sup>, and supervises approximately 13 full-time and regular part-time personnel. He also supervises a varying number of seasonal workers. Richter is responsible for inspecting the various parks, playing fields, playgrounds, etc., which the city owns (or uses) and maintains; scheduling employees to meet the maintenance requirements of those areas; scheduling tree planting and maintenance; inspecting and assigning workers to maintenance and repairs of the sprinkler systems, playground equipment, and other park equipment; and training and instructing workers in the proper care and maintenance of the grounds and the various types of equipment for which he is responsible. He has the authority to assign work, including overtime, to call out employees for emergency work, and to handle employee grievances at the first level. He provides input regarding budgetary matters. He effectively recommends action regarding employee leave time, and in the absence of the

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<sup>2/</sup> The testimony regarding Richter's responsibilities is somewhat contradictory. Some of the evidence appears to indicate that building maintenance was Richter's responsibility as well, but the bulk of the documentary evidence and testimony show Richter to be responsible for grounds only.

superintendent, has the authority to approve leaves. He provides input on evaluation of current employees. He participates in the final selection process and hiring of new employees. Richter has reprimanded employees, and has made effective recommendations on formal discipline and discharge. Both Richter and his supervisor testified that the type of work performed by Richter has not changed significantly over time. However, the city has added a golf course and additional parks in recent years. Consequently Richter has had less time to spend in field instruction and assistance, and has had to spend somewhat more time in planning of work and supervision than he did prior to 1979.

The maintenance supervisors all have and exercise substantial authority over bargaining unit employees. All interview candidates for employment, and make recommendations for hire which are generally effective. All are consulted on policy and budgetary matters. They are all supervisory employees, whose exclusion is dictated by the principles established in City of Richland, supra.

#### FINDINGS OF FACT

1. The City of Kent is 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 operations and maintenance employees of the city, including employees of the utilities, parks, streets, and equipment rental departments.
3. 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, the latest of which was executed on February 9, 1982 for the period of January 1, 1982 through December 31, 1982.
4. A dispute has arisen concerning the continued inclusion of maintenance supervisors in the bargaining unit. A petition was jointly filed by the parties on January 28, 1982 to obtain a determination of that dispute under Chapter 391-35 WAC.
5. The maintenance supervisors in the utilities, parks, streets and equipment rental departments all have the authority on behalf of the employer to schedule and assign work, move employees between

assignments, independently approve or effectively recommend leaves of absence, and counsel personnel on matters of work performance or discipline. All interview candidates for employment, and make recommendations for hire which are generally effective. All are involved in policy and budgetary matters.

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 maintenance supervisors in the utilities, parks, streets, and equipment rental departments of the City of Kent are supervisors whose continued inclusion in the same bargaining unit with employees they supervise would create a potential for conflict of interest, such that their exclusion from that bargaining unit is appropriate under RCW 41.56.060.

ORDER

The maintenance supervisors in the utilities, parks, streets, and equipment rental departments are excluded from the bargaining unit described in paragraph 2 in findings of fact.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director