

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CITY OF BOTHELL)	CASE NO. 6503-C-86-337
)	
For clarification of an)	
existing bargaining unit of)	
its employees represented by:)	DECISION 2724 - PECB
)	
BOTHELL EMPLOYEES ASSOCIATION)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND ORDER
)	

Jerald L. Osterman, City Manager, appeared on behalf of the employer.

Kathy Riggs, Representative, appeared on behalf of the union.

On August 4, 1986, the City of Bothell (employer) filed a petition with the Public Employment Relations Commission (PERC), seeking clarification of an existing bargaining unit of its employees represented by the Bothell Employees Association (union). A hearing was conducted on January 21, 1987, before Jack T. Cowan, Hearing Officer. Both parties filed post-hearing briefs.

BACKGROUND

Bothell Employees Association was certified in City of Bothell, Decision 1566 (PECB, 1983) as exclusive bargaining representative of a bargaining unit consisting of:

All non-uniformed personnel of the City of Bothell.

Excluded from the unit at that time were department heads and confidential employees. The unit consists of approximately 25 classifications, ranging from Accounting Machine Operator to Civil Engineer. The parties had a collective bargaining agreement covering the period from January 1, 1985 through December 31, 1986, which did not alter the scope of the bargaining unit.

The petition in this case seeks a ruling concerning the position of park superintendent. The employer's organization chart lists the position under the Department of Community Development, which appears as one of several departments reporting to the city manager. Other sections within the Department of Community Development deal with planning, project and grant administration, zoning and recreation.

The position of park superintendent was created in 1978. Gene Howell occupied the position from 1978 until 1981, after which the position remained unfilled through the period when the existing bargaining unit came into existence and until Clark Meek was appointed in May, 1986. Meek was originally hired by the employer in April, 1979 as park leadperson. Meek was familiar with the duties and responsibilities of the previous park superintendent, and he indicated in testimony that the responsibilities of the current position have been expanded and changed from those performed prior to 1981.

The park superintendent reports to the director of the Department of Community Development. The park superintendent's class specification states as follows:

GENERAL STATEMENT

The employee in this class performs professional, administrative, supervisory and maintenance work pertaining to all

municipal park activities. This is a combination working supervisor and administrative position. The Park Superintendent will independently initiate, schedule and carry out all park maintenance programs, instruct and supervise all personnel assigned to the park department in implementing these programs.

CONTROLS OVER THE WORK

The Park Superintendent will be responsible to the Director of Community Development for all park programs. This person will also be responsible for providing staff support and making recommendations to the Park Board, in addition to attending the necessary Park Board meetings.

The park superintendent is in charge of developing the employer's park maintenance program, as well as implementing such program.

As park superintendent, Meek is responsible for the work efforts of two permanent employees (leadperson, groundskeeper I) and one seasonal employee. An additional position, classified as Groundskeeper III, was to be added to the workforce in March, 1987, based upon Meek's recommendation to the department head as to the need for additional personnel. Meek has the authority to effectively recommend hiring or termination of employees. He prepares the preliminary budget for the parks section, and has responsibility for day-to-day purchasing of maintenance items. He also attends park board meetings and makes recommendations to that board as to park programs. Meek is responsible for the handling of grievances at step 1 of the grievance procedure, as contained in Article V of the parties collective bargaining agreement. If a grievance is not resolved at his level, the union grievance committee may refer the matter to the department head.

POSITIONS OF THE PARTIES

The employer contends the position is supervisory in nature and should be excluded from the bargaining unit.

The union argues that the position does not possess independent supervisory authority, is not a department head and should be included in the bargaining unit.

DISCUSSION

Supervisors are public employees within the meaning of RCW 41.56. METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1976). But as a general rule, the Public Employment Relations Commission has excluded supervisors from bargaining units containing their subordinates, in order to avoid a potential for conflict of interest within the bargaining unit. City of Richland, Decision 279-A (PECB, 1978), aff'd, 29 Wn.App. 599 (Division III, 1981), cert. den., 96 Wn.2d 1004 (1981). While Chapter 41.56 RCW does not contain a definition of "supervisor", the Commission has, in making bargaining unit determinations under Richland, considered the types of management authority cited in the definition of "supervisor" found in RCW 41.59.020(4)(d), which states:

. . . supervisor . . . means any employee having authority, in the interest of the employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment. . . .

That definition is consistent with the definition of "supervisor" in Section 2(11) of the National Labor Relations Act.

The park superintendent in Bothell clearly exercises independent judgment in personnel matters including hiring, firing and assignment of work. Meek thus appears to have the type of supervisory responsibilities, and exercises the types of authority, which are necessary to justify his exclusion from the bargaining unit which contains his subordinates. See, Mason County, Decision 1649 (PECB, 1983), where positions which had historically been included in a bargaining unit were nevertheless excluded from that unit upon a showing of the exercise of substantial authority, in the name and interest of the employer, over subordinate employees; Whitman County, Decision 1697 (PECB, 1983), where working foremen who exercised authority including responding for management at first step of grievance procedure were excluded from the unit; and City of Mukilteo, Decision 2202-A (PECB, 1986), where a public works foreman who adjusted grievances at first step and took disciplinary action against employees was excluded from a unit.

The employer's petition here was filed mid-term in a collective bargaining agreement, but is deemed to be timely under Toppenish School District, Decision 1143-A (PECB, 1981), as it was filed shortly following the filling of a position that had been vacant since prior to the certification of the union as the exclusive bargaining representative. See, also, Timberland Regional Library, Decision 1168 (PECB, 1981).

FINDINGS OF FACT

1. City of Bothell, a political subdivision of the state of Washington, is a public employer within the meaning of RCW 41.56.030(1).

2. Bothell Employees Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of non-uniformed personnel of the City of Bothell, excluding department heads and confidential employees.
3. The employer and the union were parties to a collective bargaining agreement covering the bargaining unit described in paragraph 2 of these findings of fact, for the period from January 1, 1985 through December 31, 1986. A dispute has arisen with respect to a position entitled "park superintendent" which was filled in May, 1986 after being vacant or non-existent since prior to the certification of the union as exclusive bargaining representative of the existing bargaining unit.
4. The park superintendent schedules and assigns work, effectively recommends hiring and firing, acts as the representative of the employer at the first step of the grievance procedure, prepares budget materials, performs purchasing, makes recommendations to the park board and effectively recommends or exercises independent judgment and supervisory authority.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over the matter pursuant to Chapter 391-35 WAC and no question concerning representation presently exists in the bargaining unit described in paragraph 2 of the foregoing findings of fact.
2. The park superintendent exercises supervisory authority over employees in the bargaining unit described in

paragraph 2 of the foregoing findings of fact, so as to create a potential for conflicts of interest and warrant his exclusion from the bargaining unit pursuant to RCW 41.56.060.

ORDER

The bargaining unit described in paragraph 2 of the foregoing findings of fact is clarified to exclude the position of park superintendent.

DATED at Olympia, Washington, this 16th day of July, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Hearing Officer

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.