

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL FEDERATION OF) CASE NO. 6406-C-86-326
PROFESSIONAL AND TECHNICAL)
ENGINEERS, LOCAL 17) DECISION 3049 - PECB
)
For clarification of an existing)
bargaining unit of employees of:)
)
KING COUNTY) ORDER CLARIFYING
) BARGAINING UNIT
)
)
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)

Wayman N. Alston, Jr., Business Representative, appeared on behalf of the union.

Stephen W. Robinson, Labor Relations Specialist, appeared on behalf of the employer.

On May 23, 1986, International Federation of Professional and Technical Engineers, Local 17, filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit. Local 17 initially sought an order allocating King County employees in eight classifications to an existing bargaining unit of full-time and part-time King County employees represented by the union. Additional positions were added to the scope of the case during its processing. A hearing was conducted on June 2, 1987, before Jack T. Cowan, Hearing Officer. Both parties filed post-hearing briefs.

BACKGROUND

King County has collective bargaining relationships with a number of employee organizations, covering a variety of unit

configurations and employee types. While the parties have not provided detailed evidence concerning the history of their particular bargaining relationship, it is clear that King County and Local 17 have a bargaining history which pre-dates the creation of the Public Employment Relations Commission.¹ Petitions by Local 17 seeking certification for units of specific "planner" and "inspector" classifications in the Building and Land Development Division of the Department of Planning and Community Development were dismissed in January, 1978, upon a conclusion that the units sought were inappropriate. King County, Decisions 341 and 342 (PECB, 1978).² A renewed dispute concerning Building and Land Development Division inspection functions which were involved in King County, Decision 342 (PECB, 1978) was decided in King County, Decision 1480 (PECB, 1984), by allocation of the position in dispute to a bargaining unit represented by another labor

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- ¹ Records transferred to the Commission by the Washington State Department of Labor and Industries (L&I) pursuant to RCW 41.58.801 indicate:
- * Local 17 was certified on December 9, 1969, as exclusive bargaining representative of approximately 13 "clerical" employees in the "building department" in Case No. 0-546;
 - * L&I provided mediation services for a unit of approximately 120 "engineering" employees in 1972 in Case No. 0-1099;
 - * Local 17 was certified on June 22, 1973 for a unit of approximately 55 employees in mixed classes in Case No. 0-1375; on June 26, 1973, for a unit of approximately 152 "technical" employees in Case No. 0-1375-B, as well as for a unit of approximately 178 "clerical" employees in Case No. 0-1375-D, and on August 16, 1973, for a unit of approximately 246 "professional" employees in Case No. 0-1375-A; and
 - * Local 17 was decertified with respect to certain "clerical and technical" employees on September 26, 1975, in Case No. 0-1907.
- ² The decisions were issued by an authorized agent of the Commission under procedures which have since been changed. Local 17 did not appeal those dismissals to the Commission.

organization.³ On August 1, 1985, Local 17 was certified as exclusive bargaining representative of a unit of "Project Administrators in the Capital Improvement Planning Section of King County Division of Parks and Recreation, Department of Planning and Community Development".⁴

During or about 1981, King County conducted a study of its engineering positions. That exercise resulted in some reorganization of functions and reclassification of positions.

The present dispute involves at least two separate departments of King County government: Public Works, and Planning and Community Development. The organization chart of the Department of Public Works is currently divided into six major branches: Surface Water Management, Solid Waste, Airport, Roads and Engineering, Fleet Administration and Personnel/Community/Records/Facilities. Some of those divisions are subdivided into several sections. The Department of Planning and Community Development is also divided into divisions, among which is the Building and Land Development Division.

Exhibit 12 in evidence in the instant proceedings is an excerpt from a current collective bargaining agreement between the parties which is in effect for the period January 1, 1986 through December 31, 1988.⁵ It is inferred that contract was signed some time prior to May 20, 1986, as the unit clarifica-

3 The decision in that case discloses an intervening voluntary recognition of Local 17 by the employer for some of the positions involved in Decision 342.

4 King County, Decision 2277 (PECB, 1985).

5 The document offered in evidence contains only the front cover, page 2, and pages 40 through 42 of the collective bargaining agreement. It indicates the term of the contract, but does not indicate the date the contract was signed.

tion petition signed on that date makes reference to the 1986-1988 contract as if it were an existing document. The recognition clause of the agreement states:

ARTICLE II - UNION RECOGNITION AND MEMBERSHIP

Section 1. The County recognizes the International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, as the exclusive bargaining representative of all employees whose job classifications are listed in the attached Addendum "A".
... (emphasis supplied)

The addendum lists wage rates for 15 specific titles in the Department of Public Works, including Supervising Engineer and Earth Scientist. The addendum also lists wage rates for 38 specific titles in the Building & Land Development Division, including Supervising Engineer and Earth Scientist.

As of the time of the hearing in this matter, and for some time previously, the employer had been involved in a "comparable worth" study, for which it had contracted with a private consultant for services. While employees in various positions and classifications, including some of those involved in this proceeding, completed questionnaires concerning their jobs, it does not appear that any of that information had been acted upon by the employer as of the time of the hearing.

POSITIONS OF THE PARTIES

The union initially sought inclusion in its bargaining unit of: One employee in the "Program Analyst IV" classification, one in the "Program Coordinator" classification, one in the "Managing Engineer" classification, three in the "CE IV" classification, and one employee in the "Retention and

Detention Manager" classification. The union asserted that the duties of those positions were comparable to the duties of certain bargaining unit employees classified as supervising engineers, so that the disputed positions were appropriately included in the existing bargaining unit. The union later questioned the status of a newly created "Planning Support Technician II" position in the Department of Planning and Community Development, and the classifications of "Capital Projects Administrator" and "Facilities Maintenance Manager". The union also seeks to include the classification of "Earth Scientist", whether used in Public Works Department or the Building and Land Development Division. It is the contention of the union that the employer has systematically set about to create managerial positions outside of the bargaining unit, to accommodate selected individuals. According to the union, those positions have been created as the employer reorganizes or as resignations are tendered, without requiring job descriptions. With respect to the titles of "managing engineer", "facilities maintenance manager", and "program analyst", the union contends the employer has created positions for four incumbents which allow them to perform at the same level as bargaining unit positions occupied by supervising engineers, but at three different pay ranges according to salaries negotiated with the individuals at the time the new positions were created.

The employer contends that the "Program Coordinator" and "CE IV" classifications have been abolished. It also alleges that the "Planning Support Technician" classification was outside the scope of Local 17's bargaining unit, and has since been eliminated. It points out that the "Capital Project Administrator" classification was the subject of separate representation proceedings before the Commission. As to the other positions at issue, the employer contends that many of

them are supervisors who are properly excluded from the unit containing their subordinates. The employer is concerned that the union is attempting to draw what has been variously called the "bottom echelon of management" or the "second level supervisors" into the bargaining unit by means of unit clarification proceedings, and it questions whether the union is utilizing the correct forum for such an action.

FACTS AND ANALYSIS

The Legal Environment

The Commission is required by RCW 41.56.060 to consider the duties, skills and working conditions of employees, the history of bargaining, the extent of organization and the desires of employees in creating or modifying bargaining units. Since concluding, in City of Tacoma, Decision 95-A (PECB, 1977), that public employees who would fall within the definition of "supervisor" contained in Section 2(11) of the National Labor Relations Act if they worked in the private sector are nevertheless "employees" within the coverage of Chapter 41.56 RCW, the Commission has had to deal with issues under RCW 41.56.060 concerning the proper unit placement of supervisors.

In making unit determinations concerning "supervisors", the Commission has operated in the context of the decision in METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977), where the Supreme Court rejected the existence of a class of "managerial" employees excluded from the coverage of the Public Employees' Collective Bargaining Act. In other words, having a high degree of responsibility or accountability is not necessarily incompatible with membership in a bargaining unit under Chapter 41.56 RCW.

Certain of the problems appearing in this case may be attributed to the employer's ongoing reorganization of its operations, often entailing new positions and job titles. The employer contends such change is necessary to accommodate the varied, transitional aspects of county government. Change can put a strain on relations between an employer and union,⁶ but is not precluded by the collective bargaining statute. Indeed, adaptation is common in both the private and public sectors, and is needed to assure continuation as a cost-effective entity. The employer's right to change must thus be harmonized with the collective bargaining rights of its employees.

In making unit determinations, the Commission is not bound by rank or position titles, or other labels, conferred upon

⁶ The personnel department typically responds by performing job evaluation, analyzing the revised organization from a position of overview. Job classifications, titles and wages are then assigned on a best-fit basis. Positions are filled by some type of recruitment, whether by new employees or promotion or by simply assigning additional duties to an incumbent who had previously performed some portion of the revised job duties. Without having access to the information which prompts or effectuates this process of change, it is not surprising that a union comes to find persons in positions which didn't earlier exist, working under titles which are unfamiliar and performing what may appear to be bargaining unit work or work comparable to that being performed by bargaining unit employees. Lacking whatever communication network is necessary to keep the union apprised of the employer's intent in implementing revisions, the revision itself becomes suspect. The union views the change as some sort of purposeful action by the employer which is intended to circumvent or void the normal process, and which allows the employer to covertly remove positions from the bargaining unit. Without some leveling or quantifying device which will allow the parties to properly identify and categorize new or revised positions, short of debating each position as it occurs, the parties appear destined to wander in a wilderness of titles and classification terminology.

employees by employers. City of Seattle, Decision 2286 (PECB, 1986). An employer's "excluded" label on a new classification or title created to perform work which is either previously performed by bargaining unit employees or properly accreted to an existing bargaining unit will not bind the Commission to rule that the position is outside of that existing unit. As was observed in King County, Decision 1480, supra, the unit structure in King County presents an ongoing potential for "second generation" unit determination disputes, due to a historical reliance on specific job titles in defining the bargaining units. This case presents such a situation with respect to several of the positions at issue.

Supervisors (i.e., persons who exercise authority, on behalf of the employer, over other employees) have frequently been assigned by the Commission to separate bargaining units, as in City of Seattle, Decision 629-C (PECB, 1981), or at least excluded from the bargaining units composed of their rank-and-file subordinates, as in City of Richland, Decision 279, 279-A (PECB, 1978); aff. 29 Wn.App 599 (Division III, 1981), based upon a conclusion that their separate duties, skills and working conditions as supervisors present a potential for conflicts of interest if they were to be included in the same bargaining unit with their subordinates. Where the facts concerning actual duties, skills and working conditions have so indicated, the Commission has even split classifications, with some of the incumbents included in a unit while others are excluded. See, City of Sunnyside, Decision 1178 (PECB, 1981), where police sergeants commanding shifts were excluded from a bargaining unit as "supervisors" while a detective sergeant paid at the same level but having no authority over other employees was left in the bargaining unit with other police officers. It must thus be observed that the union's focus in this case on levels of the employer's organization chart may

have the effect of obscuring the "authority over subordinates" facts that are key to a determination of their unit placement under Commission precedent.

The record in this case is replete with references to a class of "supervising" engineers who are included in the existing bargaining unit. It is inferred that King County has not taken steps under City of Richland and its progeny to obtain a general exclusion of its supervisors from the bargaining unit(s) containing its non-supervisory employees. Indeed, the employer seems content with the inclusion of what it describes as "first level supervisors" in the bargaining unit. At the same time, it is clear that the union has not attempted to organize a separate unit of supervisors, such as that involved in City of Seattle, Decision 689-C, supra, which includes the positions at issue among a full range of supervisors.

Where supervisors have been left within a bargaining unit, the employer has a duty to give notice and bargain concerning both the decision and effects of any transfer of supervisory duties to new positions created outside of the bargaining unit. See, City of Mercer Island, Decision 1026-A (PECB, 1981). Unfair labor practice proceedings are, however, the proper vehicle for such "skimming of unit work" issues. Unit clarification cases take the facts as they are found and determine what is, rather than what might or should have been.⁷ The union has not filed

⁷ This is not unfamiliar to Local 17, which filed both types of proceedings to secure rulings on the full range of issues in City of Seattle, Decision 2286 (PECB, 1986). The unfair labor practice charges in that situation were untimely under RCW 41.56.160 as to the original transfer of unit work, and so were held pending the outcome of the unit clarification proceedings. Only if positions were included in the bargaining unit would a cause of action have existed for an ongoing "refusal to bargain".

"skimming" unfair labor practice charges regarding the positions at issue in this case. As to most, if not all, of them, it must be observed that the creation of the new position, whether systematic or otherwise, occurred far more than six months prior to the filing of this case with the Commission, so that unfair labor practice charges would have been, and now are, time-barred under RCW 41.56.160.

Procedural Considerations

Unit clarification proceedings cannot be used to obtain the inclusion of positions which have existed outside of the bargaining unit for a substantial time. A question concerning representation exists as to such positions. City of Dayton, Decision 1432 (PECB, 1982).

In Toppenish School District, Decision 1143-A (PECB, 1981), the Commission adopted a policy concerning the filing of unit clarification petitions which was recently codified by the Commission in WAC 391-35-020:

WAC 391-35-020 PETITION--TIME FOR FILING. (1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Except as provided in subsection (1) of this section, where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering

the position or class at issue in the unit clarification proceedings, (i) it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure, and (ii) it filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

There is no claim or evidence here that the union has complied with the "notify and file" requirements of the foregoing.

The Roads and Engineering Positions

The "managing engineer" positions at issue are found within the engineering services section of the Roads and Engineering Division of the Department of Public Works. The disputed positions are two steps removed on the organization chart from the department head, Louis Haff. Other positions two steps removed from the department head, but in other sections of the division, are included in the bargaining unit represented by Local 17.

George Wannamaker -

Holding the title of: "Design Engineer, Engineering Services, Road Division", Wannamaker reports to Manager of Engineering Services Rex Knight, who in turn reports to Haff. The position has existed for "several years". Wannamaker supervises a total of 35 full-time subordinates, including two supervising engineers, and five to ten part-time employees. He manages a budget of approximately \$25,000,000, and is deeply involved with preparation of that budget.

Wannamaker testified that he performs many of the same duties as the bargaining unit employees in supervising engineer posi-

tions, but he claimed to perform those duties on a higher level. The focus of the employer's witnesses was clearly on a "managerial" theory for exclusion, with Haff testifying that Wannamaker:

... manages a multitude of programs ... manages the design teams. He's responsible for implementing and expressing the plan and schedules for achievement of a six-year ... program of capital improvement. He develops and implements such management techniques as manpower analyses and seasonal distribution analyses for those programs. He's responsible for administering the team that writes the requests for proposals, interviewing consultants, selecting consultants and administering the consultant liaison process which involves in the order of, approximately, 25 consultants per year. He is responsible for the achievement of the road improvement district process. He is responsible for the map counter, which is a quasi-commercial function that we provide, selling maps to the public. He is responsible for another statutory obligation of mine, which is the maintenance of the official records of King County, using the King County vault. He is responsible for seeing that the engineering functions of our division comply with the certification acceptance which is the contractual agreement that we have with the federal government in the administration of highways. In a general sense, he's responsible for the development of management systems to provide for and achieve the things that I've mentioned and a variety of others that I haven't thought of immediately.

While the authority to manage functions and oversight of independent contractors is not a basis for exclusion from a bargaining unit as a "supervisor", the evidence of the number of employees under Wannamaker's direction provides a basis to infer substantial exercise of personnel authority.

Jerry Adair -

Like Wannamaker, Adair reports to Rex Knight. Adair was not in attendance at the hearing, and his precise title was not established by the evidence, but it appears that he is in charge of construction engineering. Referring to Adair, Haff stated:

... similarly to [Wannamaker], he is also responsible for a variety of programs, uniquely different from George's, but a variety of programs, nevertheless. He is responsible for approximately fifty, full-time employees, plus as many as twenty, part-time employees from time to time. He is responsible for implementing the quality control feature, or the construction management, of that twenty-five million dollar capital improvement program. That also includes quality control as well as construction management per the certification acceptance contract that we have with the federal government. He is responsible for the survey crews, seeing that their work schedule complies with the needs of the capital improvement program for roads as well as other divisions of the department. He is responsible for all the employees that work in the lab. He is ultimately responsible, then, for each of the individual contractors who are actually constructing these twenty-five or so, capital improvement programs. He is likewise responsible for actually implementing and achieving the completion of the work that we agree to do for other agencies.

There is indication that the position has existed in approximately its present form since about 1983.

Comparison to Other Positions -

Called as a witness for the union, Tom Henry testified concerning his duties in the bargaining unit job classification of "supervising engineer" with a working title of "Manager, Utility Inspection Unit" in the Roads and Engineering Division.

Henry has only eight subordinates, but occupies one of the positions which the union compares to the positions held by Wannamaker and Adair (i.e., appearing at the same level on the employer's organization chart). Henry even indicated some difficulty in comparing positions, declining to characterize himself as "performing at the same level", and noting that Wannamaker dealt with functions performed within the employer's organization, while he dealt with outside firms.

Another bargaining unit employee in the "supervising engineer" classification, Mark Madden, testified concerning his duties within the traffic and operations section of the Road and Engineering Division. Madden reports to John Logan, a section head that is likened to Rex Knight in the management structure of the Road and Engineering Division. Accordingly, the union sees Madden as being parallel to Wannamaker and Adair. The evidence indicates, however, that Madden has only six subordinates, and has a budget of only approximately \$3,500,000.

In defining distinctions between the positions of Wannamaker and Adair, as compared to those occupied by Henry and Madden, Haff spoke in terms of:

... the order of magnitude of their responsibility and accountability, also in the accountability for performance or achievement of their particular mission or goals.

Regarding Henry's program, Haff characterized the responsibilities as being limited, confined to utility inspection and quality control, with narrow responsibilities when compared to those of the managing engineers. Concerning Madden's budget responsibilities, Haff opined, "Madden has no budget, he contributes to one of (Haff's) sectional budgets. The person responsible for that section budget is John Logan".

Conclusions Regarding "Managing Engineers" -

It is of substantial concern that there is virtually no evidence of any change of circumstances since the signing of the parties' current collective bargaining agreement. Both disputed positions pre-date that contract by several years, leading to a conclusion that the petition is untimely under Toppenish School District, supra. Even if the present petition were not time-barred, it appears that the positions might aptly be excluded, as supervisors, from the unit containing rank-and-file employees. The union's focus on upward reporting relationships produces a different view than a focus on their authority over subordinates. All sections are not created equal under the employer's table of organization, and it is apparent that Wannamaker and Adair both head operations which are substantially larger than those headed by the bargaining unit supervising engineers who testified. Adair and Wannamaker will remain outside of the bargaining unit.

The Surface Water Management Positions

The Surface Water Management Division is described in the public works department's 1986 annual report as being:

... responsible for implementing a variety of policies and programs related to the control, flow, and quality of surface water runoff, and the protection and enhancement of water resources.

The same report indicates that two major sections of the division were transferred, at the end of 1986, to the Building and Land Development Division of the Department of Planning and Community Development, as part of a plan to consolidate permit review into one agency. Another section completed its work and was replaced by a finance and billing section to deal with collection of service charges.

Jerry Creek -

As the head of the division's facilities maintenance section, Creek's job classification is: "Retention / Detention Manager". He reports directly to the division manager. Three other individuals, one of whom is in dispute here, appear at the same level on the employer's organization chart, while an assistant manager heads a separate branch of the operation with its own set of sub-functions. Creek oversees supervising engineers Edward Andrusky and Ken Krank, as well as five engineering technicians, one office technician and one secretary.

Creek assumed the position in 1980. The job has remained essentially the same, although responsibility for two additional programs was added later. The position is primarily administrative, involving oversight of a maintenance program encompassing a number of projects, and does not call for the incumbent to perform substantial amounts of technical engineering work. Andrusky and Krank are more involved with the details of individual design or construction of specific projects. The budget for this operation is approximately \$2,000,000 per year.

Dave Clark -

Clark has held his present Program Analyst IV position in the surface water management area since June, 1985, having promoted to the position from the planning division. He has a total of nine subordinates, including five engineers and four program analysts, and indirectly supervises ten additional persons. He reviews the work of the engineers and gives them direction, but his duties primarily consist of program development and policy analysis, including revisions of county ordinances, plan reviews and other regulatory aspects of the department. His annual operating budget is approximately \$1,800,000. Clark's initial program involvement activity was coordinating an

effluent transfer project for King County. This included developing the county surface water management division's basic planning program and coordinating county involvement in the Green River management agreement. As section manager, Clark was responsible for the individuals who were reviewing the inspection phase of the work, and assured their conformity with county code requirements, an engineering program management function. This included review of the project design plans, erosion control plans and drainage plans. Additionally, he had the task of negotiating the implementation of a mitigation program with the Municipality of Metropolitan Seattle (METRO). More recently, program development has centered on water quality, in response to the Puget Sound clean-up plan, and a flood control comprehensive plan amendment process.

Comparison with other positions -

Creek had previously worked as a supervising engineer, and distinguished that role in terms of a greater degree of accountability in his present assignment.

In comparing his position with that of the supervising engineers, Clark conceded some similarity of duties, but claimed a broader program responsibility in terms of content and for new programs. In addition to the two programs added since he started with surface water management, two more programs were being planned for 1988. He saw his own role, and that of his section, as being very broad based, dealing with a multiplicity of water resource issues in both program development and policy formulation.

Edward Andrusky appeared as a witness for the union. He supervises another engineer. Andrusky reports to Jerry Creek. Approximately 80% of his working time is spent on preparing requests for proposals.

William Davies, the manager of the drainage investigation section of the surface water management division, is in a bargaining unit supervising engineer position. Like Jerry Creek and Dave Clark, however, he reports directly to the division manager, Joseph Simmler. Davies defines comparability of these sections:

... each one of these jobs is a section within the division of surface water management. Each one reports to Joe Simmler. Each one of the positions have an engineering function attached to it, and basically, they operate and cover a different range of duties, but basically, as a section within the division.

He sees the jobs as being comparable in levels of responsibility within the organization.

Division Manager Simmler offered a different explanation in comparing the supervising engineer position with the positions held by Creek and Clark. From his perspective, the key distinction was an:

... ability for the person in that capacity to independently develop a program, from a concept or an idea; to develop that into the point of washing it out into a full program, doing all the hiring, doing all the conceptualization for the job descriptions, interfacing that program with the main mission and consultation and fitting that in with the major program and goals of the executive and the director. I feel there is a significant difference in level of visibility, political accountability and program development and responsibility.

Again, the focus of employer witnesses on "accountability" almost, but not completely, obscures the authority of the disputed individuals over other employees.

Conclusions Regarding Surface Water Management positions -

The union's reliance on "delegation of authority" is misplaced. It produced a November 21, 1983 letter to Simmler from the director of the King County Department of Public Works, delegating authority to Davies to sign enforcement action letters on behalf of the Director. Creek is similarly authorized. Concerning the delegation of authority, Simmler commented:

The delegation of signature authority is largely an administrative procedure in order to expedite the process and make sure that we're getting timely review and follow-up on enforcement activities. It is not a standard process, by any means, it does not give any one of those individuals clear authority to sign on a broad range of issues for the executive director or myself. And I see that as an administrative process to expedite the process of enforcement activities.

Again, the possession or exercise of professional skills and discretion is not, in and of itself, a consistent indicator of appropriate unit placement. Following the union's logic to its extreme, Simmler and any other official below the director would be subject to inclusion in the unit on the basis of their delegated authority to sign on behalf of the director, yet the union does not claim Simmler's position. Conversely, if delegation were a basis for exclusion, then bargaining unit members that the employer has not sought to exclude would be called into question.

As with the roads positions discussed above, it appears that both of the positions at issue pre-date the current contract in their present forms, and that there has been no action by the union to implement the "notify and file" requirements of the Toppenish decision.

It appears that the budget administered by Jerry Creek may be smaller than that handled by at least one individual who is included in the bargaining unit, and that the number of subordinates reporting to Creek is no greater than that of others who are in the bargaining unit. Accordingly, were this a representation case or a timely filed unit clarification, it would be difficult to distinguish Creek's situation from those of other section heads. But, time works against the union's position here, and one cannot ignore the facts. Creek's position has not changed substantially since 1980, and he has been outside of the bargaining unit for all of that time.

The most difficult exclusion to justify on the merits, apart from the lack of compliance with the "notify and file" requirements of Toppenish, is the position held by Clark. We have only a fleeting reference to "hiring" in Simmler's testimony, amid a focus on program responsibilities and innovation. Further, in the absence of oversight of persons in the "supervising engineer" classification, the position does not fit the "second level of supervision" argument advanced by the employer. The position was filled for the first time in 1985, and was to continue to evolve throughout the life of the 1986-88 collective bargaining agreement. While the position will not be included in the bargaining unit in this proceeding, continued changes of circumstances may give rise to a basis for discussion at the bargaining table in the current round of negotiations, and for compliance with the "notify and file" requirements of WAC 391-35-020 if a dispute continues on the current facts.

Earth Scientist

The union has historically represented the "earth scientist" classification in the Department of Public Works, but not in

the Building and Land Development Division. As the result of a reorganization, an employee in the earth scientist classification was transferred, together with the body of work historically performed, to the Building and Land Development Division. The incumbent has been allowed to remain a member of the union, but a dispute ensued about whether the position would continue to be within the bargaining unit.

Although the title appears under both departments in the wage appendices to the collective bargaining agreement, the employer took the position (and the union acknowledged) that the reference under the Building and Land Development Division in the current agreement was in error.

The parties have not described a typical "skimming of unit work" situation here. Rather than work having been transferred to an employee outside of the bargaining unit, the employer would evidently have the employee transferred outside of the unit merely because of a change in the employer's organizational structure. It is the body of work which is of greatest importance in evaluating both the unit determination question and the existence of a duty to bargain. The union's claim to the unchanged body of work stems from the "horizontal" nature of its bargaining relationships covering "professional", "technical" and "engineering" occupations in a variety of King County departments. The position historically within the bargaining unit remains in that unit, notwithstanding the limiting language of the collective bargaining agreement or any error in that agreement.

The union does not thereby gain jurisdiction over other "earth scientist" positions in the Building and Land Development Division merely because of the transfer of one bargaining unit employee of that title into that organization. As noted above,

titles assigned to employees are not controlling, and classes will be split when that result is warranted by community of interest considerations.

Planning Support Technician II

The union claimed that a position advertised under this job title had duties which fell within the types performed by bargaining unit employees, so that the position should be included in the bargaining unit. The employer gave assurances at the hearing that the position had not been filled. There thus appears to be no dispute to be resolved herein.

Capital Projects Administrators

The union's post-hearing brief makes no reference to this class, which was the subject of a separate representation proceeding, as noted above.

FINDINGS OF FACT

1. King County 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 Federation of Professional and Technical Engineers Local 17, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of King County.
3. Since during or about 1980, King County has created and filled four managerial positions which Local 17 now claims

to be comparable with bargaining unit positions appearing at the same level on the employer's table of organization. The union seeks in this proceeding to have the positions held by George Wannamaker, Jerry Adair, Jerry Creek, and Dave Clark included in the existing bargaining unit.

4. A collective bargaining agreement is in effect between the parties for the period January 1, 1986 through December 31, 1988. Said agreement does not cover the positions now held by Wannamaker, Adair, Creek and/or Clark. There is no evidence that Local 17 raised issues in bargaining for the current agreement regarding the status of those positions, or that it filed the unit clarification petition to initiate these proceedings prior to signing the current collective bargaining agreement.
5. The authority and responsibility of the positions held by Wannamaker, Adair, Creek and Clark generally exceeds that of other section head positions within their respective divisions. It can be inferred that at least Wannamaker, Adair and Creek exercise substantial authority, on behalf of the employer, over subordinate employees, including persons who are themselves supervisors of employees.
6. The position of earth scientist in the Public Works Department has historically been included in the bargaining unit represented by Local 17. As the result of a reorganization which is not directly challenged by the union, the earth scientist position was transferred to the Building and Land Development Division of the Planning and Community Development Department.
7. The position of earth scientist has previously existed in the Building and Land Development Division of the Planning

and Community Development Department, but has not been included in the bargaining unit represented by Local 17.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. With respect to the positions held by George Wannamaker, Jerry Adair and Jerry Creek, the petition in this matter is untimely and raises a question concerning representation which precludes its processing under Chapter 391-35 WAC.
3. With respect to the position held by Dave Clark, the petition in this matter is untimely so as to preclude its processing under Chapter 391-35 WAC.
4. Local 17 has an ongoing claim to the bargaining unit work performed by the earth scientist position transferred from the Department of Public Works to the Department of Planning and Community Development, but does not thereby obtain representation rights under RCW 41.56.060 concerning other work and positions in the Department of Planning and Community Development which have been historically excluded from the bargaining unit.

ORDER

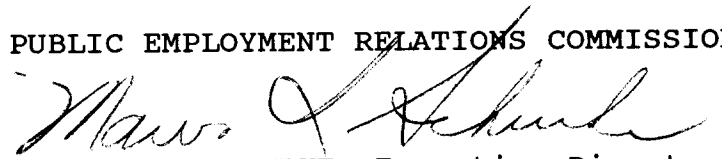
1. The positions held by George Wannamaker, Jerry Adair, Jerry Creek and Dave Clark shall not, as a result of these

proceedings, be included in the existing bargaining unit of King County employees represented by Local 17.

2. The position of earth scientist described in paragraph 6 of the foregoing Findings of Fact shall continue to be included in the existing bargaining unit of King County employees represented by Local 17.

DATED at Olympia, Washington, this 30th day of November, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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