

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
RENTON SCHOOL DISTRICT NO. 403)	CASE 7384-C-88-392
)	
For clarification of an existing bargaining unit of its employees represented by:)	DECISION 3287 - PECB
)	
UNITED CLASSIFIED WORKERS UNION OF WASHINGTON)	ORDER CLARIFYING BARGAINING UNIT
)	
)	
)	

Roberta S. Walker, Director of Employee Relations, appeared on behalf of the employer.

John Peterson, Attorney at Law, appeared on behalf of the union.

On April 29, 1988, Renton School District No. 403 filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit of its classified employees represented by the United Classified Workers Union. Specifically, the employer seeks to exclude a bus dispatcher and shop foreman from the bargaining unit, on the grounds that they are supervisors. A hearing was conducted on January 31, 1989, at Renton, Washington, before Hearing Officer J. Martin Smith. Briefs were filed to complete the record. On August 22, 1989, the Executive Director delegated authority to the Hearing Officer to render the initial decision in the case, pursuant to WAC 391-35-190.

BACKGROUND

The Renton School District provides basic K-12 educational opportunities for approximately 12,000 students in an area contiguous

to the southern boundary of the City of Seattle. Serving one of Seattle's largest suburban communities, the employer maintains 3 high schools, 1 alternative high school, 2 middle schools, 13 elementary schools, and 1 special education school. Superintendent Gary Kohlwes is the chief executive officer. Barbara Wright is director of personnel, and Roberta S. Walker is director of employee relations.

The employer provides school bus transportation to many of its students, and maintains a fleet of 62 buses for that purpose. A bus storage and maintenance facility located in downtown Renton also houses a "motor pool" operation. From that location, buses are dispatched on daily routes and for special events. In addition to bus drivers, the "bus barn" is staffed by a complement of seven mechanics and service personnel, who work in two shifts. Director of Transportation Walter Ballard reports to the employer's director of facilities and operations.

The employer has bargained with several organizations representing various bargaining units of its classified employees. With respect to the particular bargaining unit involved here, several events are noteworthy:

* An affiliate of Public School Employees of Washington (PSE) became the exclusive bargaining representative of the employer's transportation, maintenance and food service employees prior to the creation of the Public Employment Relations Commission.¹ The supervisor of transportation and the supervisor of maintenance were excluded from the bargaining unit.

* Proceedings initiated with the Public Employment Relations Commission in 1976 resulted in a March, 1977, ruling by a member of the Commission staff which included the bus dispatcher

¹ The Commission commenced operations in 1976. Records transferred to the Commission by the Department of Labor and Industries (L&I) indicate that the unit originated with a voluntary recognition in 1968 in L&I case O-332.

and shop foreman positions, as then constituted, in the bargaining unit.² The letter opinion observed that the positions had some supervisory responsibilities, but rejected their removal from the bargaining unit under unit determination policies then in effect.

* Since 1982, that bargaining unit, in substantially the same composition, has been represented by the United Classified Workers Union (UCWU).³

* The bargaining unit was described in a recent collective bargaining agreement between the parties as:

[A]ll classified employees in the following general job classifications: transportation, garage mechanics, building maintenance, audio/visual maintenance, food service, truck drivers and warehouse persons, swimming pool maintenance and print shop personnel; EXCLUDING secretaries and the supervisor(s) of transportation, maintenance, audio/visual, food service, purchasing department, swimming pool and print shop; and one group leader warehouse, one group leader supply and one group leader print shop.

Currently, the parties again have a dispute concerning the bus dispatcher position, now held by Mary Deems, and the shop foreman position, now held by Marlin Otto. The issue was discussed at the bargaining table, and was filed with the Commission after the parties failed to agree on the matter.

² Renton School District, Decision 195 (PECB, 1977). The case was processed under procedures agreed for that case, wherein the parties accepted the decision of a Commission staff member as final and binding upon them.

³ The change of exclusive bargaining representatives was accomplished in representation proceedings before the Commission. The decision in Renton School District, Decision 1535 (PECB, 1982), indicates that the parties had no dispute concerning the description of the bargaining unit. Certification followed in Renton School District, Decision 1535-A (PECB, 1982).

POSITIONS OF THE PARTIES

The employer contends that the bus dispatcher and shop foreman are both supervisors who should be removed from the bargaining unit. It is contended that the two incumbents of the bus dispatcher position since a 1986 update of the job description have both evaluated drivers' skills, scheduled drivers' routes, recommended discipline, and exercised other supervisory authority. It is asserted that Shop Foreman Marlin Otto has consistently exercised independent authority and control in screening and interviewing candidates for garage positions, that he authorizes overtime, that he adjusts time cards and approves leaves. The job description for the shop foreman position was rewritten in 1984.

The union argues that neither of the disputed employees is a supervisor. It relies on the history of bargaining, and on the fact that all supervisory exclusions have been negotiated as part of the recognition clause of the parties' collective bargaining agreement, as favoring the continued inclusion of the disputed employees in the bargaining unit. It is also contended that each alleged "supervisor" works in the same shop as the employees, and that each is supervised and evaluated, in turn, by the maintenance director.

DISCUSSIONCompliance with the "Toppenish" Rule

The Commission enunciated policies on the filing of unit clarification petitions in Toppenish School District, Decision 1143-A (PECB, 1981). Those policies have since been codified in WAC 391-35-020.

There was a good deal of discussion at the hearing, and in the parties' briefs, with respect to whether the petition in this case

was timely filed. The union concedes, however, that the employer has met the guidelines of WAC 391-35-020(2)(b). The attention given to the issue notwithstanding, the Hearing Officer sees no basis to dispose of this petition on procedural grounds.⁴

The Standards for Determining "Supervisor" Issues

As noted by this Hearing Officer in the decision in Benton County, Decision 2719-B (PECB, 1989), the passage of time has not brought new criteria for the exclusion of supervisors from bargaining units under Chapter 41.56 RCW. Supervisors are public employees within the meaning and coverage of the statute. City of Tacoma, Decision 95-A (PECB, 1977); METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977).⁵ Supervisors are generally excluded under RCW 41.56.060 from bargaining units which contain their rank-and-file subordinates, City of Richland, Decision 279-A (PECB 1978); aff. 29 Wn.App 599 (Division III, 1981); pet. rev. den. 96 Wn.2d 1004 (1981). The indicia of supervisory status found in Section 2(11) of the National Labor Relations Act have been used as guideposts for determining who is a "supervisor" under Chapter 41.56 RCW. Thus, the impact of an individual's actual authority to hire,

⁴ The Hearing Officer does not entirely adopt the employer's interpretation of the duty to bargain as set forth at page 3 of its brief. While it is true that the scope of the bargaining unit -- and hence discussion of these bargaining unit exclusions -- was a permissive subject for bargaining, and while it would be an unfair labor practice for a party to insist upon such items to the point of impasse, the fact of being in mediation does not necessarily equate with a prohibition on discussion of unit determination issues. There may be opportunities for trade-offs in mediation which reflect the nature of that process as a continuation of bilateral negotiations, so long as there is no breakdown of the negotiations.

⁵ Tacoma was decided by the Commission in April of 1977, just a month after Renton School District, Decision 195. See footnote 2, supra. METRO, which was based in part upon the shift of administrative interpretation set forth in Tacoma, was issued in August of 1977.

discharge, discipline, lay off, transfer, assign, direct the work of other employees or adjust their grievances is well known to the Commission and its staff. The numerous decisions of the Commission in this subject area have emphasized the potential for conflicts of interest where supervisors and their subordinates are included in the same bargaining unit.⁶

The Bus Dispatcher Position

The latest job description for the dispatcher position indicates that, as an assistant to the transportation supervisor, the incumbent dispatches all buses, evaluates driving skills of the drivers and conducts driver briefings.

Bus drivers in Renton were paid \$9.73 per hour under the parties' latest contract, while the dispatcher was paid \$13.01 per hour. The differences of total compensation can be even wider, however, because of variances in the numbers of hours worked by the drivers. Constant alterations of bus routes for special education students and bus operations for special activities are dependent upon the number of children available for each program, which changes daily. This infers a direct relationship with the amount of time for each route and the level of total compensation for each driver.

Mary Deems was a bus driver who drove a regular route for 15 years, and was an assistant dispatcher for 1 year, before being promoted recently to the dispatcher position. Deems now directs the work of an assistant dispatcher, Marilyn Schmit. Deems testified that she helps train drivers, including familiarizing them with dif-

⁶ The creation of a separate bargaining unit of supervisory employees, as in both Tacoma and METRO, is the commonly-accepted solution to the "conflict of interest" problem. The record in this case makes reference to a separate unit of supervisory "professional-technical" employees already in existence at the Renton School District.

ferent bus equipment. She does all of the evaluation of the employer's bus drivers, and is responsible for dispatching 46 regular routes using the 62 available vehicles. The dispatcher calls in substitute drivers when there are absences for regular drivers, and approves bereavement and short-term sick leave (e.g., for doctors' appointments). Deems also interviews prospective candidates for driving positions, and her input is necessary before a new person is hired for a specific position (e.g., estimating how a person would handle a route with wheelchair equipment on the bus). The dispatcher has increasingly been involved with new testing requirements set down for bus drivers by state and federal agencies.

From the perspective of the employer's Personnel Department, Deems has authority to increase or decrease the length of time that bus driver's operate, and to determine staffing levels for the transit operation. The dispatcher is also empowered to authorize overtime, and would be involved in handling grievances, along with Ballard.

It is helpful to compare the facts of this case to those presented in Montesano School District, Decision 2155-A (PECB, 1985), where a "transportation coordinator" was excluded from the bargaining unit composed of that employer's bus drivers. The "coordinator" drove a regular route at the standard hourly rate of pay for bus drivers, and then was paid separately for working the remaining six hours a day at a desk job where she reviewed the route bids made by the drivers, assigned routes by seniority, modified bus routes, assigned extra runs, approved time sheets, issued written reprimands, and interviewed and selected finalists for bus driving positions. The Commission excluded that "coordinator" from the unit as a supervisor, based upon her evaluation authority and other supervisory duties, even though she performed substantial work in the bargaining unit she supervised. Deference was given in that case to the "wide range" of supervisory authority, and the higher pay offered for the position. An equally persuasive body of

evidence is presented here, where Deems' authority in training and administering the workforce affects all aspects of the bus operation. There is a clearer separation from the workforce she supervises here than existed in Montesano.

Deems' supervisory status is also confirmed by the testimony of bus drivers, who said that she replaces absent drivers, talks to them on the radio system, replaces Ballard during his absences from the transportation office, and can train and discipline bus drivers. Mary Deems should be excluded from the unit as a supervisor.

The Shop Foreman Position

Written in 1984, the current job description for the shop foreman position mentions instruction, supervision and inspection of the work of other mechanics, evaluation of new parts and supplies, and participation in the selection process for new garage personnel. The original position description, written in 1975, outlined a number of requirements, including:

- (8) make recommendations concerning the hiring of qualified personnel and promotion of staff mechanics . . .
- (9) Supervise preventative maintenance program to assure a high standard of fleet safety. . . .

The shop foreman was "subject to the general direction of the Transportation Specialist" in 1975, which was then the title for the position now held by Transportation Supervisor Walter Ballard. The table of organization remained generally the same when the job description for the shop foreman position was altered in 1984, when the duties of the disputed position were described as:

- (2) instruct, supervise and inspect the work of all garage personnel.
- (3) maintain records and reports associated with garage personnel . . .

* * *

(9) participate in the selection process of new hires for garage personnel . . .

(10) assist the Transportation Supervisor in evaluation and promotion of garage personnel

The current job description also notes that "the Shop Foreman is directly responsible for the supervision of all garage personnel."

A conforming job description for mechanics, dated 1986, states:

[S]ubject to the general direction of a Shop Foreman . . . the mechanic is accountable to the shop foreman for interpreting and executing the above responsibilities that are assigned by the Transportation Supervisor or the Director of Plant Operation.

The job description for the "mechanic" positions mentions duties involving bus repairs which are similar to those in the shop foreman's job description, but does not specify any of the supervisory duties delegated to the shop foreman. Mechanics are paid \$11.93 per hour, while the foreman is paid \$13.01 per hour.

Shop Foreman Marlin Otto has held that position since January 2, 1985. The union was not persuasive with its argument that Mr. Otto was selected to be the "supervisor" merely because he had been the most senior mechanic at Renton School District, or with its argument that his "promotion" was required by the collective bargaining agreement then in effect between the parties. While the record is clear that Mr. Otto was the most senior mechanic, it is by no means clear that he was given the shop foreman position on that basis, or that the promotion of the "most senior" mechanic was somehow required by the collective bargaining agreement.

Ballard testified that Otto reviews the work of all bus garage employees and signs their evaluations, and that Otto imposes

warnings, reprimands and assigns work. Ballard believed that Otto could effectively recommend termination for just cause, and could send a person home from work as a disciplinary measure, and that he is the first step in the grievance procedure. Indeed, Ballard alone signed the evaluation of Mechanic Chet Munro for 1983-84, but Otto also signed the evaluations completed on the same employee in 1985, 1986 and 1987. Otto's name appears alone on the evaluation form completed on Munro in 1988, with Ballard signing the form only to acknowledge review of its contents.⁷

Otto's testimony presents a somewhat mixed picture. Otto indicated he only monitors the work of others if there's a particular reason; but he acknowledged that he has authority to call in a mechanic on weekends to ensure that a bus could operate on the following week. He testified that he would not, in all probability, issue warning letters without prior approval from Ballard or the personnel office. Otto has attended union (UCWU) meetings, but testified that he felt like he is "between a rock and a hard place" regarding his relationship between employees and management. He wears a uniform similar to that worn by the mechanics, and he does work with the tools of the mechanic trade,⁸ but his mechanic work is generally limited to situations where the shop is short-handed or a bus breaks down on its route. Otto indicated in testimony that his work day involves buying parts, dealing with salesmen, stocking parts, and dealing with personnel-related concerns. From time to time he has delegated "special" repair orders in order to prioritize garage work.

⁷ Ballard signed "School Bus Driver Training Record" forms for drivers and mechanics through 1986. There is no evidence that Otto signed them in 1987 or 1988.

⁸ Different from the mechanics, Otto uses tools from "the shop box" rather than keeping his own set of tools at the garage.

Personnel Director Barbara Wright testified that disciplinary actions and lay-offs go through her office. First step grievances are filed with Ballard, and grievance adjustment is handled through the employee relations office headed by Roberta Walker. Otto is not involved in management meetings, but he schedules hours of work, adjusts time cards, and schedules vacations.

Mechanic Jack Farden, a seven-year employee of the Renton School District, testified that Mr. Otto was his supervisor but that "there really isn't [any] supervision down there, if you ask me." Repair jobs are written on work orders, and the mechanics select jobs from an open file holder. Farden testified that he has not noticed Otto inspecting any repair work, and that Ballard actually approved overtime. His "lack of supervision" statement aside, Farden testified that Otto closely monitored the work of employee Scott Sloan, and from time to time reviewed work orders to see that all repair orders were performed in a reasonably timely manner.

Even if Mr. Otto does not closely supervise the work of shop employees who may be regarded as "journeymen" in their trade, the evidence predominantly indicates that he has authority to act on behalf of the management in matters of discipline, evaluation and assignment of work. The testimony of one mechanic that there "is no supervision whatever" cannot, standing alone, overcome the testimony that another employee is closely supervised. Ballard is not always available in the "bus barn" area, and it is clear that the union did not rebut the clear evidence that authority to evaluate employees has been passed down to Otto from Ballard. On the record made, it is concluded that the shop foreman is a supervisor.

FINDINGS OF FACT

1. Renton School District is a public employer within the meaning of RCW 41.56.030(1).

2. United Classified Workers Union of Washington is a bargaining representative within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative of a bargaining unit of food service, building maintenance, bus driver, and mechanic employees of the Renton School District.
3. A "bus driver dispatcher" position and a "shop foreman" position in the transportation division of the employer's maintenance operation have been included in the bargaining unit for a number of years. Currently, the bus dispatcher is Mary Deems and the shop foreman is Marlin Otto.
4. As bus dispatcher, Mary Deems is involved in the training of bus driver employees, approves overtime and extra hours, alters work shifts and evaluates bus driver employees. Deems is paid at a higher rate of pay than the bus drivers and shares little community of interest with the employees in the existing bargaining unit.
5. As shop foreman, Marlin Otto exercises independent judgment in evaluating employees, reviewing their work and assigning work duties to mechanics and service personnel in the bus garage. He is vested with authority to begin corrective discipline involving the employees he supervises.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and 391-35 WAC.
2. The bus dispatcher is a public employee within the meaning of RCW 41.56.030(2), and is not a confidential employee excluded by RCW 41.56.030(2)(c), but is a supervisor of employees in the bargaining unit involved in these proceedings, such that

her continued inclusion in the bargaining unit would present an ongoing potential for conflicts of interest which warrants her exclusion from the bargaining unit pursuant to RCW 41.56.060.

3. The shop foreman is a public employee within the meaning of RCW 41.56.030(2), and is not a confidential employee excluded by RCW 41.56.030(2)(c), but is a supervisor of employees in the bargaining unit involved in these proceedings, such that his continued inclusion in the bargaining unit would present an ongoing potential for conflicts of interest which warrants his exclusion from that bargaining unit pursuant to RCW 41.56.060.

ORDER

1. The position of bus dispatcher, as presently constituted, shall be, and hereby is, excluded from the bargaining unit involved in these proceedings.
2. The position of shop foreman, as presently constituted, shall be, and hereby is, excluded from the bargaining unit involved in these proceedings.

DATED AT Spokane, Washington, this 15 day of SEPT., 1989.
ISSUED at Olympia, Washington, this 21st day of September, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


J. MARTIN SMITH, Hearing Officer

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-590.