

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| In the matter of the petition of: | ) |                      |
|                                   | ) |                      |
| PIERCE COUNTY                     | ) | CASE 9186-C-91-531   |
|                                   | ) |                      |
| For clarification of an existing  | ) | DECISION 3992 - PECB |
| bargaining unit of its employees  | ) |                      |
| represented by:                   | ) |                      |
|                                   | ) |                      |
| TEAMSTERS UNION, LOCAL 599        | ) | ORDER CLARIFYING     |
|                                   | ) | BARGAINING UNIT      |
|                                   | ) |                      |
|                                   | ) |                      |

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Douglas Sutherland, Prosecuting Attorney, by Richard Wooster, Deputy Prosecuting Attorney, appeared on behalf of the employer.

Robert C. Young, Business Representative, appeared on behalf of the union.

On May 30, 1991, Pierce County (employer) filed a petition for clarification of an existing bargaining unit of its employees represented by Teamsters Union, Local 599 (union). The employer sought removal of three employees from the bargaining unit represented by the union. A hearing was conducted on July 9, 1991, in Tacoma, Washington, before Hearing Officer Kenneth J. Latsch. At the outset of the hearing, the parties stipulated that one of the positions originally at issue should be excluded from the bargaining unit, and the hearing proceeded on the remaining two positions. The parties made closing statements, in lieu of filing post-hearing briefs. Authority to decide the "eligibility" issues raised in this case has been delegated by the Executive Director to the Hearing Officer, pursuant to WAC 391-35-190.<sup>1</sup>

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<sup>1</sup> That rule states, in pertinent part:

Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

BACKGROUND

Pierce County has collective bargaining relationships with a number of employee organizations, including Teamsters Local 599. The collective bargaining agreement in effect between the parties from January 1, 1991 through December 31, 1993 specifies that the union represents employees in various departments, as follows:

Area Agency on Aging, Assessor/Treasurer, Clerk, Medical Examiner/Coroner, Parks and Recreation, Veterans' Aid Bureau, Building Maintenance, and Building Mechanics.

The contract goes on to list the specific job classifications represented by the union within each department, in a general wage appendix. Of particular interest to the instant unit clarification proceedings, the union represents Parks and Recreation Department employees in the classifications of "facility maintenance technician" and "facilities maintenance supervisor".

The Parks and Recreation Department is under the overall direction of Parks, Recreation and Community Services Director Jan Wolcott. Superintendent of Recreation Mike Dobb and Superintendent of Facilities Skip Ferucci report to Wolcott. The instant unit clarification petition deals with operations under Ferucci's general administration.

This case involves the bargaining unit status of Al Casady and Richard Gamache. Both individuals hold the title of "facilities maintenance supervisor". Casady works at the Spanaway Golf Course, while Gamache works at the Lakewood Community Center.<sup>2</sup>

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The parties stipulated at the hearing that the "facility maintenance supervisor" position at Sprinker Community Center, held by Rick Hults, is supervisory within the meaning of Commission precedent, and should be excluded from the bargaining unit.

Casady works under the direct supervision of Golf Supervisor Earl Steen who, in turn, reports to Ferucci. Casady has held the "facilities maintenance supervisor" position since approximately 1980.<sup>3</sup> He is responsible for scheduling work for golf course employees, and he also assigns specific work projects. Casady evaluates seasonal personnel, and has helped Steen in the evaluation of full-time employees, but he is not expected to conduct independent evaluations of the full-time personnel. Casady does not take part in any hiring decisions, and he cannot independently order discipline. At most, Casady prepares information which Steen uses in determining what level of discipline is necessary for the particular incident in question. Steen prepares budget recommendations for the golf course operation without participation from Casady. The record indicates that Steen intends to involve Casady in more day-to-day supervisory decisions, but no such additional assignments had been made as of the date of hearing in this matter.

Richard Gamache has served as a "facilities maintenance supervisor" at the Lakewood Community Center since approximately 1979. He reports directly to Ferucci. The 40,000 square foot facility is primarily devoted to office space, and tenants pay rent to Pierce County for use of the building. Medical, probation, and drug and alcohol rehabilitation services use the building on a regular basis. Gamache directs the work of four employees at the center. The record indicates that several positions were vacant at the center when Gamache started employment there, but the vacancies have recently been filled. Gamache has participated in the hiring process, and the employer has followed his recommendations on specific hiring questions. The record further indicates that Gamache's personnel responsibilities increased with the addition of new employees. Gamache prepares information used for the center's

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<sup>3</sup> The record indicates that Casady originally worked for the contractor who built the golf course, and that he became a Pierce County employee when the county took over the operation.

budget proposal, and is directly responsible for expenditure control of budgeted funds. Gamache has training responsibilities for center employees, and regularly makes work assignments. He also monitors work performance and is responsible for remedial activities to improve deficiencies. Gamache can issue warnings to employees for minor rules infractions, and can recommend more severe personnel actions such as suspension and discharge. The record indicates that Gamache's recommendations have been followed. Gamache can schedule overtime and approves leave requests. The record is silent as to Gamache's ability to adjust employee grievances, but employees consult him if there are difficulties arising in the workplace. In addition, Gamache performs annual evaluations on center employees' work performance. Those evaluations affect employee wage levels, in that a poor evaluation can lead to the withholding of performance increments.

#### POSITIONS OF THE PARTIES

The employer argues that the positions at issue are supervisory, and should be excluded from the bargaining unit. The employer maintains that the disputed positions exercise the types of authority recognized by Commission precedent, and that a sufficient change in circumstances has occurred to require unit clarification.

The union argues that the positions at issue do not possess sufficient supervisory authority to be excluded from the bargaining unit. It contends that, at best, they should be considered to be "lead workers" properly kept in the existing bargaining unit.

#### DISCUSSION

The Public Employment Relations Commission has addressed the issue of "supervisor" exclusion in a number of cases. As a starting

point, it must be determined whether the petition is timely filed under the Commission's rules. If the procedural requirements are met, the precedents on supervisor exclusions are well established.

Timeliness of the Petition

WAC 391-35-020 specifies the time period for filing a unit clarification petition:

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 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. [Emphasis by **bold** supplied.]

In the instant case, the parties had a contract in effect at the time that the unit clarification petition was filed, and there is no claim or evidence that the employer fulfilled the "notify and file" requirements of WAC 391-35-020(2)(b). Accordingly, the employer must demonstrate that a sufficient change in circumstances has occurred to require the exclusion of the "facility maintenance

supervisor" employees from the bargaining unit. See: Mount Vernon School District, Decision 1629 (PECB, 1983).

Traditionally, neither of the disputed positions had supervisory authority. The facility maintenance supervisors could not make independent decisions concerning personnel matters, nor did they direct subordinate employees in the performance of routine duties. The employer claims that there has been a change of circumstances, and that both of the disputed individuals now possess supervisory authority. The employer's claim provides a sufficient basis for analysis of the "supervisor" issues in this case, satisfaction of the procedural requirement depends upon proof of that claim.

#### Existence of Supervisory Authority

It appears that the traditional absence of supervisory authority is still the case for Al Casady in his work at the golf course. The record clearly indicates that Casady cannot take independent action to deal with personnel problems, and that Casady's immediate supervisor, Earl Steen, is actually responsible for such activities. The claimed change of circumstances is prospective, at most. Casady's situation is similar to that presented in Central Kitsap School District, Decision 1296 (PECB, 1982), where the petitioning party did not adequately prove that a supervisory exclusion was required. The Central Kitsap decision stands for the proposition that a change of circumstances must be clearly and unequivocally proven to allow the removal of a supervisory position from an existing bargaining unit. The employer has not demonstrated any substantial change in Casady's responsibilities or authority that would require unit clarification.

The situation of Richard Gamache is markedly different from that of Casady. With the addition of several employees at the Lakewood Community Center, Gamache's supervisory responsibilities have increased. The employer presented credible evidence that Gamache

participates in hiring activities, evaluates employee performance, directs work assignments, schedules overtime, and makes effective recommendations in the area of discipline. Taken together, it is evident that Gamache is a supervisor within the meaning of Commission precedent, and that he must be excluded from the existing bargaining unit to eliminate a potential for conflicts of interest within the bargaining unit. See, City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

#### FINDINGS OF FACT

1. Pierce County provides a number of municipal services to local residents, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 599, represents several bargaining units of employees of Pierce County, and is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. The parties to this proceeding are parties to a collective bargaining agreement in effect from January 1, 1991 through December 31, 1993. The petition in this proceeding was filed while that contract was in effect.
4. Employees of the Pierce County Parks and Recreation Department are among those represented by the union in an existing bargaining unit. That department is directed by Parks, Recreation, and Community Services Director Jan Wolcott. Superintendent of Facilities Skip Ferucci reports directly to Wolcott.
5. Facilities Maintenance Supervisor Al Casady works at the Spanaway Golf Course. Casady has been employed at that

facility since its opening, and performs a number of maintenance and groundskeeping duties. Casady's duties have not undergone any recent, substantial change. Casady reports to Golf Supervisor Earl Steen, who in turn reports to Superintendent Ferucci. Casady has not participated in hiring decisions, does not evaluate employees, and does not have independent authority to take other personnel actions involving the workforce. Casady does not participate in budget preparation for the golf course.

6. Facilities Maintenance Supervisor Richard Gamache works at the Lakewood Community Center. Gamache has worked at the center for over 10 years. Gamache reports directly to Superintendent Ferucci. Within the last year, several employees were added to the workforce at the facility. Gamache has participated in the hiring process, and his recommendations concerning new employees have been followed. Gamache is now responsible for directing the employees' work assignments, and he evaluates employee performance. Gamache schedules work and overtime, and has authority to make effective recommendations concerning disciplinary matters.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The "facilities maintenance supervisor" position at the golf course, as currently held by Al Casady, has not undergone a substantial change of circumstances during the term of the existing collective bargaining agreement, so that the petition for clarification filed in this matter is not timely as to that position under WAC 391-35-020.



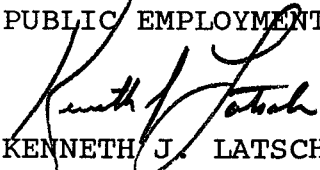
3. The "facilities maintenance supervisor" position at the Lakewood Community Center, as currently held by Richard Gamache, has undergone a substantial change of circumstances during the term of the existing collective bargaining agreement, so that the petition for clarification filed in this matter is timely as to that position under WAC 391-35-020.
4. As a result of the recent changes of circumstance, the "facilities maintenance supervisor" position at the Lakewood Community Center, as currently held by Richard Gamache, is now a supervisor, so that the continued inclusion of the position in the existing bargaining unit would create a potential for conflicts of interest, warranting exclusion of the position from the existing bargaining unit under RCW 41.56.060.

ORDER CLARIFYING BARGAINING UNIT

1. The "facility maintenance supervisor" position at the Spanaway Golf Course shall continue to be included in the existing bargaining unit of Pierce County employees represented by Teamsters Union, Local 599.
2. The "facility maintenance supervisor" position at the Lakewood Community Center is excluded from the existing bargaining unit of Pierce County employees represented by Teamsters Union, Local 599.

DATED at Olympia, Washington, this 7th day of February, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
KENNETH J. LATSCH, Hearing Officer

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