

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
CITY OF GOLDENDALE) CASE 10676-C-93-0632
For clarification of an existing)
bargaining unit of its employees) DECISION 4604 - PECB
represented by:)
WASHINGTON STATE COUNCIL OF COUNTY)
AND CITY EMPLOYEES, LOCAL 1553G) ORDER CLARIFYING UNIT
_____)
)

Brian Altman, City Attorney, and Ehman J. Sheldon, City Manager, appeared on behalf of the employer.

Ron Gray, Field Representative, and David Griffin, Local President, appeared on behalf of the union.

On September 21, 1993, the City of Goldendale filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking to exclude the position titled "field maintenance supervisor" from a bargaining unit of Maintenance Department employees represented by the Washington State Council of County and City Employees (WSCCCE).¹ A hearing was held at Goldendale, Washington, on September 28, 1993, before Hearing Officer William A. Lang. The union waived an insufficiency of time notice under WAC 10-08-40, and agreed to consolidate the hearing on this unit clarification petition with the hearing on issues arising out of a supplemental agreement previously filed by the parties under WAC 391-25-270, in connection with representation proceedings concerning another bargaining unit of City of Golden-

¹ The petition appeared to be filed in conformity with the procedural requirements of WAC 391-35-030(2). Attached to the petition was a copy of the parties' 1990-1992 contract; the petition indicated the parties were in negotiations for a successor contract.

dale employees represented by the WSCCCE.² The union submitted a post-hearing brief.³

BACKGROUND

The City of Goldendale is a municipal corporation governed by an elected city council who, in turn, elects a mayor and appoints a city manager. Ehman J. Sheldon is the City Manager. The employer's workforce consists of 15 employees in the police department and city hall, plus eight employees in its Maintenance Department. The maintenance employees have been represented by the WSCCCE for an unspecified time.

POSITIONS OF THE PARTIES

The employer argues that the maintenance supervisor should be excluded from the bargaining unit as a supervisor, and/or should be regarded as a "confidential" employee under RCW 41.56.030(2).

² On June 14, 1993, the WSCCCE had filed a petition for investigation of a question concerning representation with the Commission, seeking certification as exclusive bargaining representative of "all" of the employees of the City of Goldendale. Case 10519-E-93-1739. The WSCCCE subsequently amended that petition to exclude maintenance employees who were already represented by Local 1553G. The parties signed a supplemental agreement, reserving eligibility issues concerning positions titled, "administrative assistant", "building official", "police chief" and "lieutenant" or "assistant police chief". The Commission conducted a cross-check on July 7, 1993, the results of which favored the union. An interim certification issued on July 15, 1993 designated the WSCCCE as the exclusive bargaining representative of all full-time and regular part-time employees of the employer, excluding regular employees in Maintenance, supervisors, confidential employees and elected officials.

³ The employer did not file a post-hearing brief.

The union argues that the disputed individual shares a community of interest with the rest of the employees in a small city such as Goldendale, and should be included in the bargaining unit.

DISCUSSION

Standards for Unit Exclusions

Supervisory employees have collective bargaining rights under the Public Employees' collective bargaining Act, Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Generally, supervisory employees will, however, be excluded from the bargaining unit which includes the employees they supervise. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App 599 (Division III, 1981), rev. denied 96 Wn 2d 1004 (1981). The policy enunciated in Richland is an exercise of unit determination authority by the Commission under RCW 41.56.060, based on the potential for conflicts of interest that might otherwise occur within a bargaining unit that includes both supervisors and their subordinates. See King County Fire District 16, Decision 2279 (PECB, 1986).

Chapter 41.56 RCW does not define the term "supervisor", but the statute was enacted at a time when "supervisor" was a term of art with a definite meaning and acquired history under the National Labor Relations Act, as follows:

... any employee having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them or adjust grievances or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Employees are not excluded from bargaining units for each and every exercise of supervisory authority, however. Working foremen, who merely oversee and assist other employees, are included in the bargaining unit with subordinates. City of Bellingham, Decision 2823 (PECB, 1987).

Under well-established precedent, the exclusion of "confidential employees" under RCW 41.56.030(2)(c) is limited to those having a "labor nexus" (i.e., those privy to confidential information concerning the labor relations policies of the employer). IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978).

Application of Precedent

Field Maintenance Supervisor Michael E. Herin was promoted to his present position at Goldendale two years ago, after working in the department for 13 years as the waste water treatment plant operator. Herin believes that the city manager functions as the Director of Public Works, and Herin reports to him. Herin heads a five member crew of employees in the classifications of "waste water treatment operator", "mechanic", "street specialist", "utility technician journeyman" and "utility generalist". Herin estimates that 50 percent of his work time is devoted to working alongside other crew members. For the balance of his work time, Herin "tells them they got such and such job, get them lined out and they do it. After they are done I review it."⁴ Herin also orders supplies, handles paperwork and public relations.

On a recent job evaluation form Herin noted that he performs, plans, coordinates, supervises, reviews and inspects work of the employees in water/sewer maintenance. Herin wrote that he maintains knowledge of and observes safety rules and trains the

⁴ Response by Herin to a question from Hearing Officer Lang. Transcript, page 63.

crews in safety. Herin assigns and supervises the allocation and operation of personnel, vehicles, supplies and equipment. Herin attends bi-weekly department head meetings, to get information to pass along to the employees. Herin considers that the meetings are involved in "minor decision making". Herin does not have independent authority, but can make recommendations on discipline, promotion and hiring. As the immediate supervisor, Herin is the first informal step of the grievance procedure. He approves ordinary leave requests, forwarding the unusual to the city manager for approval. Herin prepares the department budget, by adding new equipment purchases to the previous year's budget after talking it over with the city manager. Herin testified that he presents justification on new equipment to the city council, but has nothing to do on pay rates or benefits. He signs purchase orders and is responsible for expenditures and the inventory.

Herin is subject to the personnel rules, is paid hourly and receives extra compensation for overtime work. He has been subject to the parties' collective bargaining agreement while holding his current position, but the record does not disclose any instances of conflict of interest having arisen.

The actual responsibilities of the position of "field maintenance supervisor" have not changed, and there is no indication of a substantial change of circumstances. This case is thus distinguished from the situation described in City of Deer Park, Decision 4237-C (PERC, 1993), where the disputed was given broad-based authority to discipline, hire, fire, establish pay rates and direct the work force on an independent basis. See also Pierce County, Decision 3992 (PECB, 1992). Unlike the positions in Deer Park and Pierce County, Herin has not yet been given the authority to effectively hire or fire employees, to set salary rates, or even to formally evaluate the performance of his subordinates. His role in budget matters is limited to recommending purchases of new

equipment which are approved by the city manager before they are ever submitted or presented to the city council.

Conclusions

It is concluded that the real locus of supervisory authority in Goldendale is with the city manager, and that Herin is merely a working foreman who shares a strong community of interest with his subordinates. Herin enjoys no special privileges as a supervisor, and his liaison role with the city manager falls short of functioning as a department head. There is nothing in the record which indicates that Herin is privy to confidential information concerning the labor relations policies of the employer, as would be needed to qualify him for exclusion as a "confidential" employee under IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978).

FINDINGS OF FACT

1. The City of Goldendale is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).
2. The Washington State Council of County and City Employees, a bargaining representative within the meaning of RCW 41.56.-030(3), is the exclusive bargaining representative of a bargaining unit of maintenance employees of the City of Goldendale.
3. The employer and union were parties to a collective bargaining agreement which expired on December 31, 1992, and were engaged in negotiations for a successor contract when the petition in this matter was filed.

4. As "field maintenance supervisor", Michael Herin is a working foreman who directs the work and monitors the progress of five other employees. Herin works alongside his subordinates about 50 percent of his work time, and the remainder of his time is devoted to ordering supplies, other paperwork and public relations. Herin has not been given authority to act in the interests of the employer or to make effective recommendations concerning the hiring, discipline, discharge or evaluation of subordinate employees. To the extent that Herin makes recommendations on such matters, they are subject to independent review and decisions by the city manager. In the absence of a director of public works, Herin attends bi-weekly department head meetings to get information to pass along to subordinates. There has been no recent change of circumstances, and there is no evidence of any actual conflicts of interest within the bargaining unit, arising out of Herin's present and historical role.
5. Herin has had no involvement in setting salaries for the maintenance employees, and there is no evidence that he is privy to confidential information concerning the labor relations policies of the employer.

CONCLUSIONS OF LAW

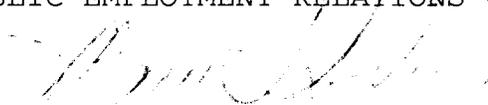
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The position of "field maintenance supervisor" has historically had, and continues to have a community of interest with, and is properly included under RCW 41.56.060 in the same bargaining unit with, other maintenance employees of the City of Goldendale.

ORDER

The position of field maintenance supervisor shall continue to be included in the bargaining unit of maintenance employees represented by the Washington State Council of County and City Employees.

Issued at Olympia, Washington, on the 11th day of February, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed
by filing timely objections
with the Commission pursuant
to WAC 391-35-210.