

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
CITY OF YAKIMA) CASE 10654-C-93-626
and)
WASHINGTON STATE COUNCIL OF) DECISION 5387 - PECB
CITY AND COUNTY EMPLOYEES)
For clarification of an existing) ORDER CLARIFYING
bargaining unit.) BARGAINING UNIT
_____)

Menke, Jackson and Beyer, by Anthony F. Menke, Attorney at Law, appeared for the employer.

John F. Cole, Deputy Director, appeared on behalf of the union.

On August 31, 1993, the City of Yakima (employer) and the Washington State Council of County and City Employees (WSCCCE) jointly filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The dispute concerns whether three employees working in the employer's transit division are supervisors who should be excluded, as such, from a bargaining unit represented by the WSCCCE. A hearing was held on May 3, 1995, before Hearing Officer J. Martin Smith. The parties filed memoranda of legal authorities.

BACKGROUND

The employer and the WSCCCE have a collective bargaining relationship under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. For many years, essentially all of the employer's non-supervisory employees (other than police officers and employees in

the employer's fire department) were in one "wall-to-wall non-uniformed" bargaining unit represented by the union.¹

Within its Public Works Department, the employer has historically operated a public passenger transportation system serving the urban area of the upper Yakima Valley.² Under the latest table of organization, the transit division is headed by Transit Manager William Schultz, who reports to Director of Public Works Jerry Copeland. Operations Supervisor Richard Lyons reports to Schultz. The bus operators, vehicle mechanics and other employees working in the transit operation have historically been included in "wall-to-wall non-uniformed" bargaining unit represented by the WSCCCE.

In its 1993 session, the Legislature enacted Chapter 473, Laws of 1993, which made "interest arbitration" procedures available to resolve bargaining impasses involving employees of public passenger transportation systems operated by cities. RCW 41.56.492 took effect on July 25, 1993. In August of 1993, the employer and the WSCCCE agreed to segregate the transit employees into a separate bargaining unit.³ The new bargaining unit included transit

¹ The parties' 1992-1994 collective bargaining agreement covers all employees of the city except for police department and fire department employees. The employer initiated a unit clarification proceeding in 1990 (Case 8382-C-90-474) to determine the status of claimed supervisors and confidential employees, but that case was withdrawn after the dispute was resolved by the parties.

² While city ownership of a public passenger transportation system is not unique, many such systems are operated by a regional entity such as a "public transit benefit area" (e.g., Spokane Transit Authority in the area surrounding Spokane, Washington, and Ben-Franklin Transit in the so-called Tri-Cities area of Washington).

³ Longstanding Commission precedent, including City of Yakima, Decision 837 (PECB, 1980), requires that employees eligible for interest arbitration not be included in the same bargaining unit with employees who are not eligible for that extra dispute resolution procedure.

dispatchers, transit service workers, and transit operators. Managers and supervisors were generally excluded, but the parties were unable to agree about the eligibility of three positions which were claimed to be supervisory: "Senior project planner",⁴ "customer relations coordinator", and "transit route supervisor".

POSITIONS OF THE PARTIES

The employer contends that all three of the disputed positions are supervisory, and that these positions are responsible for direction of the workforce when the manager is absent. The employer argues that their presence in the bargaining unit now creates a potential for conflict of interest arising out of the need for bargaining unit employees to impose discipline upon other bargaining unit employees. The employer points out that all three are paid at higher levels than the staff of the transit division.

The union argues that the senior project planner and the transit route supervisor lack the independent authority to schedule, assign or evaluate employees that would be necessary to exclude them as supervisors. The union contends that the customer relations coordinator is paid at the same level as other employees, and shares common supervision with the remainder of the unit, so that exclusion of that position as a supervisor is not warranted.

DISCUSSION

Supervisors have collective bargaining rights under Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of

⁴ This position was denominated as "associate planner" in the original petition. The parties agreed that the new title covers a transit employee whose supervisory status is in dispute in this case.

Labor and Industries, 88 Wn.2d 925 (1977). At the same time, supervisors are generally excluded from the bargaining units containing their subordinates, in order to avoid the potential for conflicts of interest which would otherwise exist. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). One critical factor to keep in mind in discussing these three positions is that the Commission must focus on the job duties which are presently being utilized. Speculation about duties which the employer may desire to assign in the future is not controlling.

Senior Project Planner (Transit)

John Haddix has held this position since 1994. He was previously the "associate planner" for 15 years. According to a supplemental request for 1993, this position "is responsible for the development and implementation of short and long range transit plans and special projects". The position is funded by the transit division operating fund, and reports to the transit manager.

Haddix receives "Section 9" reports, Washington State Department of Transportation (WSDOT) reports, and raw data that is relied upon for future planning and funding. Haddix is an important player in the planning and engineering of capital projects,⁵ usually guiding "teams" of personnel from various departments including transit, public works, engineering, and legal. It appears that Haddix does not have any regularly-assigned subordinates, and that he does not exercise supervisory authority on a day-to-day basis.⁶ The fact that the employer places great confidence in Haddix, and that the

⁵ Examples given were a "#364 project" and a "downtown transit center project".

⁶ There is no evidence that Haddix would have authority to evaluate, approve leave requests or discipline employees in other departments or divisions of the employer's organization.

transit director seldom intervenes in the flow of decisions that result from his team efforts, does not justify a supervisory exclusion.

Transit Manager Schultz testified that Haddix has acted as the manager when Schultz was away at conferences or on annual leave. This includes approving vacation leave, sick leave, and compensatory time off. Schultz stated that Haddix can administer "minimal" discipline when the transit manager is unavailable, and may also be involved in changing work assignments and handling grievances for management in the absence of the transit manager.

Essentially, the union attacks the employer's claim of supervisory status for Haddix on the basis that no specific examples of the exercise of supervisory authority (e.g., granting sick leave or vacations) were proven by the employer. The union contends that the activities of Haddix as a substitute for the manager are too occasional to be supervisory, but having and exercising supervisory authority are not necessarily the same thing. A potential for intra-unit conflicts will exist even if a person who has authority to make effective recommendations on, or to impose, discipline of subordinates does not exercise that authority very often.

Haddix had performed in the "acting manager" role during the nine months prior to the hearing, and became aware of several disciplinary controversies in the transit division as the result of substituting for Schultz during that 1994-95 period. While Haddix has not disciplined any employee or effectively recommended discipline in his capacity as senior transit planner, it is clear that he has that authority over bargaining unit employees when he moves up to the acting manager role. This places him equal to or above the operations manager, who is excluded from the bargaining unit as supervisor. His situation resembles that of the "community services director" in City of Deer Park, Decision 4373-C (PECB, 1993), where a ruling was made on a person who made executive

decisions and to supervise employees in the absence of a city manager or part-time mayor. The senior projects planner is properly excluded from the bargaining unit as a supervisor.

Customer Relations Coordinator

Karen Allen currently holds this position. Her principal duties are to sell advertising space on the employer's bus fleet, and to act as public information officer for Yakima Transit. Her background is in public relations and broadcasting. Allen works in the administrative area of the employer's public works facilities, some distance from the transit operation. In her class specification, however, 50% of the job involves "design and implement advertising and customer service materials" She reviews community complaints, makes presentations to community groups, distributes brochures and route maps in the community, talks to personnel from radio, television and the print media, and often briefs the city council about transit-related activities and plans. Allen also speaks at the drivers' general meetings twice a month.

There is no evidence that Allen exercises supervisory authority over any subordinate employees. A mere change of title or a redefinition of an employee's job specification does not automatically make that person excludable as a supervisor under Richland, supra. See, City of Spokane, Decision 4956 (PECB 1994); City of Goldendale, Decision 4604 (PECB, 1994). The "supervisor" claim originally advanced by the employer is without merit.

The employer argued at the hearing that this position should be excluded from the bargaining unit on "community of interest" grounds, and it moved to conform the pleadings to the proof offered at the hearing. The Hearing Officer properly admitted the evidence offered by the employer, inasmuch as the union was given notice of the employer's added theory and had an opportunity to present evidence with respect to the community of interest argument. See,

generally, Lake Washington Technical College, Decision 4721 (PECB, 1994). When the facts are fully explored, however, the employer's community of interest argument is without merit.

Re-designating an employee as a specialist does not necessarily constitute a basis for a change of bargaining unit status. See, Puget Sound Educational Service District, Decision 5126 (PECB, 1995). A desegregation specialist was included in a bargaining unit in Pasco School District, Decision 3796 (PECB, 1991), notwithstanding that employer's claim that the employee had unique duties running a school program receiving federal funds. It was noted there:

[M]any public employees perform critical governmental functions, but nevertheless have a "community of interest" for purposes of bargaining with their employers.

The record here indicates that Allen primarily deals with the local community served by the transit operation, acts as spokesperson for the transit operation with the media, and interacts on behalf of the transit operation with other elements of the city government. Indeed, the only group of employees that Allen has consistent contact with is the coach operators, with whom she meets twice a month.

Allen is clearly an "employee of a public passenger transportation system", within the scope of RCW 41.56.492. To exclude this one position from the bargaining unit containing all other non-supervisory employees of the transit operation would have the effect of stranding her in a one-person unit that would be inappropriate under Town of Fircrest, Decision 248-A (PECB, 1977). The Commission will not order a unit configuration that would leave Allen without any way to implement her statutory right to collective bargaining and interest arbitration.

Transit Route Supervisor

Shirley Keith holds this position, which was described by Schultz as a "field support person". She assists an interview team when new drivers are hired. She monitors driver progress and provides advice to drivers in the areas of safety and proficiency. She is responsible for connecting routes together, and she maps out which timetables and charts are to be prepared. Keith may be involved in the investigation of accidents and in the handling of bus driver grievances. Daily logs are prepared in her office, and she works with dispatch personnel from time to time, to see that services are being rendered responsibly.

The issue for determination with regard to Keith's position is whether her "supervisor" title relates to the **bus routes** or to the **bus drivers**. The focus of the class specification for this position is on duties related to evaluating routes, schedules and driving conditions. The other evidence in this record shows that most of her work is concerned with the routes and operations, rather than with the employees.

Much was made of an instance where Keith reportedly recommended the discharge of a driver. Her testimony was, however, that she had reviewed several suspensions recorded in that driver's file -- none of which she had herself recommended -- and suggested to Operations Manager Richard Lyons that the driver "... should be terminated".⁷ As it developed, Keith's recommendation was not effective, and the employee was not discharged. It is clear that Lyons retains the authority to determine discipline, and that he made an independent evaluation of the cited situation.⁸ The following exchange between

⁷ Transcript at page 99.

⁸ Indeed, Keith refused to characterize her own memos as letters of reprimand, and all oral and written reprimands were issued by Lyons. Transcript at 87.

Keith and the employer's counsel at the hearing outlines the problem:

- Q. [By Mr. Menke] ... are there not circumstances where you're called upon to approve or disapprove anything from sick leave to overtime to comp time to shift changes? Do any of these things come to mind; are you involved in that?
- A. [By Ms. Keith] I get involved with that. But like Mr. Schultz said about the overtime, that's sort of an ongoing thing. That's not an approval thing that I would have to do. Dispatch, if they don't have the drivers and they need the routes covered, they would call overtime.

Subsequent cross-examination of Operations Supervisor Lyons disclosed that dispatchers have at least an equal role in sick leave administration, and that Lyons retains the supervisory authority. For an employee to be excluded as a supervisor, they must have the authority to affect subordinate employees in areas such as hiring, assignment, promotion, transfer, layoff, recall, suspension, discipline, discharge or grievance adjustment, or must be able to make effective recommendations in such areas. In this case, the existence of such supervisory authority is by no means clear.⁹ The record does not support exclusion of the transit route supervisor from the bargaining unit.

FINDINGS OF FACT

1. The City of Yakima is a municipal corporation of the state of Washington, within the meaning of RCW 41.56.020.

⁹ Keith later admitted that, as to discipline, "I don't think I get too much -- I'm involved to a certain point, but I don't really give the discipline. I might recommend it, but I don't give it." Transcript at 93.

2. The Washington State Council of City and County Employees, a bargaining representative within the meaning of RCW 41.56.030-(3), has historically been the exclusive bargaining representative of a bargaining unit consisting of essentially all non-uniformed employees of the City of Yakima.
3. Yakima Transit is a public passenger transportation system operated by the City of Yakima as a separate division within the employer's public works department.
4. Following the enactment of legislation making interest arbitration procedures applicable to public passenger transportation systems operated by cities, the employer and union agreed to segregate the non-supervisory employees of the Yakima Transit operation into a separate bargaining unit. The parties were unable to agree about whether three positions should be included in that bargaining unit.
5. The **senior project planner** reports only to the transit manager, and primarily provides staff services such as developing departmental budgets and leading multi-divisional teams for special projects. This employee assumes the role and authority of the transit manager in his absence and, at such times, has authority to approve leaves, to assign work, and to impose discipline, for bargaining unit employees.
6. The **customer relations coordinator** is essentially the public relations director for Yakima Transit. This employee sells advertising space on the employer's city bus fleet, conducts "rider surveys" of transit customers, makes presentations to community groups concerning the transit operation, and talks to media representatives concerning transit programs, special events and operations. There are no subordinate employees to this position.

7. The **transit route supervisor** is responsible for field support of the coach operators, and serves as a back-up coach operator. The employee observes and advises bus drivers concerning a proficiency and safety check each year. This person is responsible for evaluating the safety of established bus routes and detours, and participates in periodic meetings with bus drivers.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.060.
2. A separate bargaining unit consisting of all full-time and regular part-time non-supervisory employees of the public passenger transportation operation of the City of Yakima is an appropriate bargaining unit under RCW 41.56.060 and Commission precedent requiring separate units of employees eligible for interest arbitration.
3. The senior project planner is a supervisor whose inclusion in the bargaining unit described in paragraph 2 of these conclusions of law would present a potential for conflicts of interest, so that exclusion of the position from that bargaining unit is warranted under RCW 41.56.060.
4. The customer relations coordinator is a non-supervisory employee of the public passenger transportation operation of the City of Yakima, whose exclusion from the bargaining unit described in paragraph 2 of these conclusions of law would strand that employee in a one-person bargaining unit, and would prejudice the collective bargaining and interest arbitration rights of that employee under Chapter 41.56 RCW, so that such a unit configuration would be inappropriate under RCW 41.56.060.

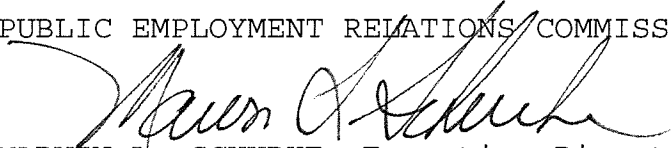
5. The transit route supervisor is a non-supervisory employee who is properly included, under RCW 41.56.060, in the bargaining unit described in paragraph 2 of these conclusions of law.

ORDER

1. The senior project planner at Yakima Transit is excluded from the bargaining unit.
2. The customer relations coordinator and transit route supervisor are included in the bargaining unit.

Entered at Olympia, Washington, on the 8th day of December, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.