

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES)	CASE 11445-C-94-684
)	
For clarification of an existing)	DECISION 5401 - PECB
bargaining unit of employees of:)	
)	
LAKEHAVEN UTILITY DISTRICT)	ORDER CLARIFYING
(FEDERAL WAY WATER AND SEWER)	BARGAINING UNIT
DISTRICT))	
)	
)	
)	

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

Stephen H. Pritchett, General Counsel, appeared on behalf of the employer.

On November 23, 1994, the Washington State Council of County and City Employees (union) filed a petition for clarification of an existing bargaining unit with Public Employment Relations Commission under Chapter 391-35 WAC, seeking a determination of the status of three positions. A hearing was held on February 14 and 15, 1995, before Hearing Officer Jack T. Cowan. The hearing was reopened on July 19, 1995, to take evidence on new information which was not available at the time of the earlier hearing. Both parties filed post-hearing briefs.

BACKGROUND

Lakehaven Utility District (formerly known as the Federal Way Water/Sewer District) is the largest special purpose water and sewer district in the State of Washington. The employer provides domestic water and wastewater service to a population of over

100,000 customers, covering an area of approximately 38 square miles in the southwest corner of King County. The employer has been in operation, under one name or another, for 39 years. On July 18, 1994, the King County Council approved an ordinance changing the employer's name to "Lakehaven Utility District".

In 1987, General Manager James Miller instituted an organization plan calling for four primary divisions which reported directly to the general manager: Finance and customer service; engineering and technical services; water operations; and sewer operations.

The employer's organizational structure was revised again in October of 1994, resulting in six departments: Administration; customer service; management services; planning; sewer operations; and water operations. Two of those departments are of concern in the instant case: The Customer Service Department, which is managed by Shirley Hilton; and the Management Services Department, which is managed by Peter Hupperten. Both Hilton and Hupperten report directly to the current general manager, Roger Brown, who reports directly to the district board. Brown oversees the employer's daily operations and its 103 employees.

The Washington State Council of County and City Employees (WSCCCE) is the exclusive bargaining representative of approximately 24 clerical and technical employees. The bargaining relationship between the employer and union dates back to an interim certification issued on June 29, 1993.¹ There is also another bargaining

¹ Case 10013-E-92-1641 was initiated by a representation petition filed by the union on September 18, 1992. The case was held open following the issuance of the interim certification, Federal Way Water/Sewer District, Decision 4429 (PECB, 1993), for determination of eligibility issues which had been framed by the parties. For a time, that case was consolidated with the instant case for processing. The parties later resolved their differences in that case, and it was closed by Lakehaven Utility District, Decision 4429-A (PECB, 1995).

unit within the employer's workforce, consisting of about 54 operations and maintenance employees represented by the International Union of Operating Engineers (IUOE).

The unit clarification petition filed by the union in this matter on November 23, 1994, sought rulings on the eligibility of seven positions for inclusion in the bargaining unit, as follows:

Engineer II - existing classification
Secretary II - existing classification
Legal and Administrative Assistant - new classification
Risk Manager/Manager Analyst - new classification
Supervisor Technical Services - new classification
Accounting Supervisor - existing classification
Supervisor of MIS - existing classification

Prior to the hearing, the parties agreed that the "secretary II" and "legal and administrative assistant" would be excluded from the bargaining unit as confidential employees, that the "risk manager/manager analyst" would be included in the unit, and that the "engineer II" position would be excluded from the unit on community of interest grounds.² The hearing was thus limited to the "supervisor of technical services", "accounting supervisor" and "supervisor of MIS" positions.

POSITIONS OF THE PARTIES

The union contends the disputed positions are not supervisory. It asserts that they provide technical assistance to other employees, and perform only limited oversight of their work. The union alleges that evaluations performed by the disputed employees are subject to independent review and approval by their superiors, and that the disputed employees have not independently exercised substantial supervisory authority over subordinates. The union

² This position requires a professional engineer's license.

contends they are subject to the employer's rules and policies, and do not have authority to interpret or apply those rules without review and consent by their superiors. The union also claims the accounting supervisor does not have the relationship necessary to be excluded from coverage under Chapter 41.56 RCW as a confidential employee.

The employer sees the disputed positions as supervisory and/or confidential. It contends they have been, and should continue to be, excluded from the bargaining unit. The employer contends that the record does not support changing the bargaining unit to include the disputed positions, based upon a limited reorganization of the management structure.

DISCUSSION

Applicable Legal Standards

The disposition of "supervisors" has been the subject of numerous decisions under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Supervisors are employees within the meaning and coverage of that statute. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). They are generally placed in separate bargaining units (and are excluded from the bargaining units containing their rank-and-file subordinates) in order to avoid conflicts of interest that would otherwise arise within a mixed bargaining unit. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

There is no definition of "supervisor" in Chapter 41.56 RCW, although the definitions found in the National Labor Relations Act and the Educational Employment Relations Act, Chapter 41.59 RCW,

have often been cited as indicating the types of authority that give rise to a potential for conflicts of interest:

[S]upervisor, ... means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for consistent exercise of independent judgement.

RCW 41.59.020(4)(d).

Supervisors are similar, yet different. Each position requires a separate analysis of function and responsibility.

The decision in Richland, supra, provides additional guidance for the determination of this dispute:

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. [Footnote omitted] Unit definition is not a subject for bargaining in the conventional "mandatory/permissive/illegal" sense, although parties may agree on units. [Footnote omitted] **Such agreement does not indicate that the unit is or will continue to be appropriate.**

...
Absent a change of circumstances of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed.

Decision 279-A [emphasis by **bold** supplied].

Changes of incumbency are not sufficient to warrant a change of unit status. These positions were neither questioned nor contested prior to this petition, so a question arises here as to whether changes of the organizational structure since the recent certifica-

tion are sufficient to justify change of their bargaining unit status.

Supervisor - Technical & Support Services

Shirley Hilton moved from the "supervisor of technical services" position to become the manager of the Customer Service Department in November of 1994, when technical services became a part of the Customer Service Department. Hilton's former position was re-titled as "supervisor of technical and support services". Mary Cossette has occupied the position since November of 1994, and reports to Hilton. The job description includes the following:

Basic Function:

Under general supervision, administers and directs the TSS division. Provides management with information related to the performance of TSS. Supervises, directs, assigns, coordinates and reviews the work of TSS personnel. Works on sub-professional engineering problems, in connection with maps, plans and drawings; maintains technical records and accounts. As needed, obtains engineering plan review through coordination with other departments and/or managing consulting engineers' contracts.

Essential Functions:

Supervises and evaluates performance of technical and support staff.

Develops policies and procedures for the TSS division.

Provides training to technical and support staff on technical issues and new procedures.

Maintains technical records.

Works sub-professional engineering problems.

Interprets TSS services procedures to the public, assists customers at the counter, answers inquiries both by telephone and by mail.

Reviews plans for sanitary sewer and water system improvements and extensions.

Coordinates sanitary sewer and water system extensions with developers, contractors, engi-

neers, inspectors, maintenance personnel, city, county and state officials.

Coordinates meetings between district and developers, contractors and other agencies.

Performs administrative tasks including planning, budget assistance, studies workload analysis, and inter-agency coordination as assigned.

The evidence concerning this position includes that Cossette has assumed responsibility for a group of five employees who were formerly within the project engineering (technical) group. Hilton testified that Cossette provides whatever training is necessary, assigns work, administers workload schedules, does performance evaluations, approves leaves, and approves compensatory time. She reviews and coordinates the work performed. Cossette would approve overtime and impose discipline, and has imposed discipline on at least one occasion. She meets with Hilton on a weekly basis and provides a progress report to advise as to what has happened in the section. She develops a budget for her area and reports on workload in that budget. Cossette works between 42 and 45 hours per week, receiving neither overtime nor compensatory time for the hours beyond the normal 40 hour week. The employees she supervises would receive additional compensation for any time worked over 40 hours. There have been no employees hired into her section since the 1994 change. An estimated 80% of her work time is spent on supervisory functions.

The union's contention that Cossette had not performed some of the supervisory activities claimed by the employer must be evaluated in light of the fact that she had been in the supervisory position for only four months at the time of the hearing. The union did not provide testimony controverting Hilton's steadfast assertion that Cossette has the authority to act, even though certain of these activities had admittedly not yet been performed.

The evidence clearly indicates that Cossette's focus is on the management of the section she heads. An office machine shop supervisor who could make effective personnel recommendations and who spent a majority of his time performing duties related to the management of the shop was excluded from the rank-and-file bargaining unit in Seattle School District, Decision 2830-A (PECB, 1988). Cossette spends 80% of her time on supervision, and only 20% of her time on non-supervisory duties.

The union's arguments about a lack of independent authority must be evaluated in the context in which the case arises. In the public sector setting, where final authority is often vested in an elected board or elected official, the power to make effective recommendations is often of key importance in cases of this type. Island County, Decision 5147 (PECB, 1994). The union alleged there was a need for secondary approval by managers, but the "reclassification" and "change of payroll" example it used is not within the usual criteria of supervision. For this employer, as for any other, there is a system of checks and balances which allows managers to maintain an overview of actions taken by line supervisors. Tasks and decisions which don't require management input or affirmation have been delegated to the supervisors. With delegation goes authority and responsibility. One of the performance evaluations which Cossette performed was appealed to Hilton, who determined that the evaluation would stand as given. Cossette clearly has the authority to make recommendations.

Accounting Supervisor

Judy Taylor has occupied this position since 1990. She reported to Roger Brown until his promotion to the general manager position. She now reports to Peter Hupperten, who took Brown's previous position. The job description includes the following:

Basic Function:

Responsible for all accounting functions including supervision of the accounting and payroll staff.

Essential Functions:

Supervises accounts receivable, accounts payable and payroll personnel.

Prepares the district's financial statements with assistance from consultants.

Collection of delinquent accounts receivable:
Other.

Supervises the administration of the petty cash, and paid out funds.

Supervises job cost accounting for developer extensions and CIP projects.

Oversees the assigning of vendor numbers and fixed asset and depreciation schedules.

Supervises all accounting for State and Federal grants and Public Works Trust Fund (PWTF) loans.

Supervises administration of King County transmittals, warrants, voucher certification, inter-district billing, and bank reconciliations.

Supervises administration of the contracts and accounts receivable procedures including the establishment of payment and interest schedules, adjusting journal entries and year-end closing procedures.

Performs account analysis.

Responsible for budget/CIP activity status reports.

User lead on BARS.

The evidence concerning this position includes that Taylor oversees three employees who handle the employer's financial and payroll functions. One of those is the "senior accountant".³ She assigns work, handles scheduling, approves leaves, has authority to approve overtime, performs evaluation, handles discipline matters and

³ The parties agreed to the confidential status of the "senior accountant" position.

employee problems, conducts employee meetings, conducts training, and prepares job descriptions. She works from 45 to 50 hours per week, but receives no additional pay or time off for hours worked in excess of 40 per week. She estimates her supervisory duties consume some 50 to 60% of her workload.

Taylor was questioned concerning her work in the labor relations area, and testified as follows:

Q [By Mr. Pritchett] There was testimony from Roger Brown yesterday that indicated that you have a roll in developing and analyzing wage proposals that are presented to the district and developed by the district. Is that correct?

A [By Ms. Taylor] That's correct.

Q Can you describe your role in that.

A What I do is I either -- I will be requested to perform certain projections, forecasting for perhaps during negotiation of perhaps offers that are intended to be made, or proposals that will be made on perhaps a union contract. By management, I will be requested to do these projections, dealing most often with wages. And either assign them to the Senior Accountant, who does the payroll, or I end up doing them myself.

Q Do you review the work of the Senior Accountant?

A Yes.

Q Now, did you do any of this work on the contract that was negotiated with the Operating Engineers?

A Quite a bit as a matter of fact, yes.

Q Did you have a role in the preparation of a wage proposal to them?

A Yes. I was presented with a proposed contract and I -- within that contract were the wage proposals. I took those particular articles in this contract and did all of the spreadsheets for projections for -- if this proposal was accepted, this is what our bottom line would be...

- Q Did you discuss --
- A (Interposing) For the wages.
- Q Did you discuss the alternatives?
- A Yes, there were -- this was -- there were several that we did.
- Q Who did you discuss them with?
- A Roger Brown.
- Q Was there ever a point where you were aware of a proposal on wages that was going to be offered to the union prior to its being offered to the union?
- A In the Operating Engineers, yes, I had a copy of a proposal.
- Q That was going to be presented?
- A That was going to be. It was not -- it had not been offered at that point.
- Q Is it your understanding that you might have that same function with respect to the current negotiations with the AFSCME bargaining unit?
- A Yes, I would expect that.
- Q Do you understand these types of things to be confidential?
- A Absolutely.
- Q Has anybody communicated that to you?
- A Yes.
- Q Who would you typically discuss this issue? You made mention the meeting with Roger.
- A Right. There would only be either -- in my accounting section, in the accounting section, Paula, the senior accountant, I would discuss it with her, because in most instances, if I was assigning the work, I would assign it to her. The other people that it would be discussed with would be either -- in most cases if it came directly from Mr. Brown, it would go back to Mr. Brown. But also it could be discussed with you or it could be discussed with Pete.
- ...
- Q Are you aware that Paula McColm -- also in your section, has been assigned a confidential status?

A Yes, I am aware of that.

Transcript, page 182.

Taylor's involvement with labor relations information is precisely the type of involvement which the Supreme Court of the State of Washington sought to protect when it stated:

We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978)
[emphasis by **bold** supplied].

While her responsibilities for preparing other financial statements and investment for the employer are largely irrelevant to her status under the collective bargaining law, her testimony warrants her exclusion here as a confidential employee.

Even if Taylor were not excludable on the basis of confidentiality, she would still be excludable as a supervisor. There is nothing in evidence to indicate any substantial change in her job functions or responsibilities since she assumed her present position in 1990, and thus certainly no showing of a change since the interim certification was issued in 1993. Moreover, Hupperten's testimony concerning Taylor's authority to supervise three employees confirmed the supervisory tone of her position description.

Supervisor of Management Systems

George Brown has held this position for approximately five years. He reported directly to Roger Brown until that individual became the employer's general manager, and now reports to Hupperten. The organizational change in 1994 did not change George Brown's responsibilities. The job description for the position includes the following:

Basic Function:

Supervise and manage the resources and personnel of the MIS section to insure accurate and cost effective utilization to the benefit of the district; as appropriate, provide MIS services (software development, hardware connectivity and system access) to other district users.

Essential Functions:

Responsible for the management and support of all information systems, including software and hardware.

Provide design, development and implementation of all authorized new applications and maintenance of existing applications.

Provides hardware maintenance including:

- Installation of hardware systems
- File system maintenance
- Hardware configuration

Provide software management and maintenance including:

- Configuring applications
- Diagnostics and troubleshooting
- System security
- Installing and configuring of operating systems
- System performance management

Propose annual district data processing comprehensive plan for management review and approval.

Develop MIS policies and procedures to insure compliance to the management approved MIS comprehensive plan guidelines and district objectives/goals.

Prepare and manage budget process for MIS section.

Prepare MIS capital budget to insure compliance with approved MIS comprehensive plan and established district objectives/goals.

Develop/implement training programs for MIS staff and other district users.

Supervise and evaluate performance for MIS personnel.

The evidence on this position includes that the number of employees overseen by George Brown has risen from two to the current five. The group maintains the employer's computer and software-based information systems.

George Brown has supervisory responsibilities somewhat similar to those of his counterparts in technical services and accounting. He assigns work, handles scheduling, approves leaves and overtime, performs evaluations, handles discipline and employee problems, conducts employee meetings, has authority to hire employees, develops the budget for his functional area, prepares job descriptions for his subordinates, and accesses the personnel files of the employees he supervises. He estimated that his supervisory duties consume between 40 and 60% of his work time.

Aside from the increased number of employees within his span of control, the supervisory activities performed by George Brown have remained relatively constant over the five year period when he had held his present position. He keeps Hupperten "informed" as to what he does, but does not need to get advance approval. On one occasion, he was advised of an error in policy interpretation concerning a work-out-of-class (temporary change in status) form which he had submitted,⁴ but the employee received the payment approved by George Brown once the form was properly re-submitted. George Brown has authority to determine the wage for a position in his work group, as well as to interview and hire for those

⁴ General Manager Roger Brown advised both Hupperten and George Brown of the correct interpretation of the policy.

positions. His decisions in this matter are made known to the manager, but do not require the manager's approval.

Conclusions

The responsibilities of the disputed positions as employer agents in dealings with subordinate employees would warrant their exclusion from the bargaining unit if this were a fresh look at the situation. Their inclusion in the unit would create an unacceptable potential for conflicts of interest. Additionally, none of them were claimed by the union during the original representation proceedings for this bargaining unit, and none of them suffered any demotion or visible downward movement in the subsequent change of management structure.

FINDINGS OF FACT

1. Lakehaven Utility District is a public employer within the meaning of RCW 41.56.030(1). The employer entity was formerly known as the Federal Way Water and Sewer District.
2. Washington State Council of County and City Employees, Local 21-FW, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of the clerical and technical employees of the Lakehaven Utility District.
3. The bargaining relationship between the parties originated with a certification issued by the Commission in 1993. The disputed positions or their direct predecessors were in existence at the time of the original representation proceedings in this bargaining unit, but were not claimed by the union as bargaining unit positions at that time.

4. In October and/or November of 1994, the employer changed its organizational structure to create six departments in place of the previous four departments. That reorganization did not reduce the status, rank, or compensation of any employer official theretofore excluded from the bargaining unit.
5. The supervisor of technical and support services position has been in existence since November of 1994, but is a direct outgrowth of a position which was excluded from the bargaining unit during the original representation proceedings. The incumbent of the predecessor position was promoted to a manager position. The supervisory nature of the position were not changed by the 1994 reorganization, and the current incumbent exercises supervisory authority over bargaining unit employees.
6. The accounting supervisor has held her position since 1990. Her duties were not changed by the 1994 organizational change. She exercises supervisory authority over bargaining unit employees. Additionally, she prepares confidential reports and information for use by the employer in the bargaining process with two bargaining units.
7. The supervisor of MIS has served in that position for a period of approximately five years. He exercises supervisory authority over bargaining unit employees in a unit that has more than doubled in size during the tenure of the present incumbent.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 391-35 WAC.

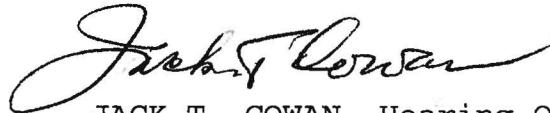
2. The supervisor of technical services, the accounting supervisor, and the supervisor of MIS are supervisors whose inclusion in the existing bargaining unit of clerical/technical employees would create a potential for conflicts of interest in contravention of RCW 41.56.060.

ORDER

The supervisor of technical services, the accounting supervisor, and the supervisor of MIS are excluded from the existing bargaining unit of clerical/technical employees represented by the Washington State Council of County and City Employees.

Entered at Olympia, Washington, this 26th day of December, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Hearing Officer

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.