

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
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| INTERNATIONAL ASSOCIATION OF |) | CASE 12549-C-96-780 |
| MACHINISTS AND AEROSPACE WORKERS, |) | |
| DISTRICT LODGE 160 |) | DECISION 5709 - PECB |
| |) | |
| and |) | |
| |) | |
| INTERCITY TRANSIT |) | |
| |) | |
| For clarification of an existing |) | ORDER CLARIFYING |
| bargaining unit. |) | BARGAINING UNIT |
| |) | |
| |) | |

Jesse M. Cote, Business Representative, appeared on behalf of the union.

Heller Ehrman White & McAuliffe, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the employer.

On June 13, 1996, Intercity Transit and International Association of Machinists and Aerospace Workers, District Lodge 160, jointly filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a decision on the bargaining unit status of a new "supervisor of maintenance" position. The parties waived a hearing on the issue and submitted an agreed statement of facts, stipulated exhibits, and arguments on October 16, 1996. Authority to decide this eligibility dispute has been delegated to Hearing Officer Pamela G. Bradburn, pursuant to WAC 391-35-190.

BACKGROUND

Intercity Transit (employer) provides public passenger transportation services in Thurston County, Washington. On April 21, 1994,

the International Association of Machinists and Aerospace Workers, District Lodge 160 (union) was certified as exclusive bargaining representative of mechanics, service workers, and cleaners employed by the employer.¹ Positions of maintenance supervisor, maintenance manager, and department director were excluded from the parties' collective bargaining agreement for the bargaining unit.

The employer's maintenance department operates seven days a week, and is staffed for two separate shifts each day. Lead mechanics performed a number of supervisory duties when the bargaining unit was certified, and those responsibilities increased after the single maintenance supervisor was reclassified to a lead service worker. The employer, the union, and bargaining unit members all raised concerns about the conflict of interest between the lead mechanics' supervisory responsibilities and their positions as fellow bargaining unit members with the employees they supervised.

Over a period of nine months with union input and consultation, the employer developed the new supervisor of maintenance classification at issue in this proceeding. The union and employer understood the purpose of the new position was to consolidate the lead mechanics' supervisory duties outside the bargaining unit. After supervisor of maintenance positions were posted and filled, a grievance was filed objecting to the exclusion of the two positions from the bargaining unit. The employer and union have jointly submitted the issue of the new classification's bargaining unit status to the Commission.

CONTENTIONS OF THE PARTIES

The employer urges the Commission to exclude the supervisor of maintenance classification from the existing bargaining unit,

¹ Intercity Transit, Decision 4648-A (PECB, 1994).

because its supervisory responsibilities pose a serious conflict of interest.

The union affirms its acceptance of the Commission's decision on the bargaining unit status of the disputed classification based on the stipulated facts it and the employer submitted.

DISCUSSION

Applicable Legal Standard

Public employees who possess supervisory responsibilities are entitled to the full range of collective bargaining rights granted by Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Nevertheless, the Commission has adopted a policy of excluding supervisors from bargaining units of supervised employees to avoid a potential for conflicts of interests.² City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

The Legislature neither uses nor defines the term "supervisor" in Chapter 41.56 RCW. In adopting the above-mentioned policy, the Commission found indicia of the type of authority posing a potential for conflicts of interest in the National Labor Relations Act, at Section 2(11), and in the Educational Employment Relations Act, at RCW 41.59.040(4)(d):

² Exclusion from a bargaining unit of supervised employees in no way precludes supervisors from forming an appropriate bargaining unit of their own, for the purpose of collective bargaining with their employer. See, for example, City of Seattle, Decision 689-C (PECB, 1981), and Snohomish County, Decision 4027 (PECB, 1992).

RCW 41.59.020 Definitions. As used in this chapter:

...
(4) The terms "employee" and "educational employee" means any certificated employee of a school district, except:

...
(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which 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 the consistent exercise of independent judgment,** and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

[Emphasis by **bold** supplied.]

Thus, evaluation of subordinates' work, involvement in hiring and firing, involvement in personnel actions such as transfers and discipline, involvement in assignment and training of subordinates, involvement in the grant or denial of leaves, and processing of grievances are all indicia of supervisory authority which call into question the supervisor's bargaining unit status. See, generally, Clallam County Transit, Decision 1079-A (PECB, 1981); Thurston County, Decision 1064 (PECB, 1980); Bethel School District, Decision 882-A (PECB, 1980), and Northwest Regional Council, Decision 876-A (PECB, 1981).

Differences in supervisors' wages, hours and working conditions, such as a higher rate of pay and/or a limited proportion of time spent doing the same work as subordinates, would provide additional

justification under RCW 41.56.060 for excluding supervisors from a bargaining unit of supervised employees.

Application of Legal Standard

The supervisor of maintenance classification possesses sufficient supervisory responsibilities to create a potential for conflicts of interest if it were to be included in the existing bargaining unit. It must, therefore, be excluded from the bargaining unit of mechanics, service workers, and cleaners.

Supervisors' Place in Management Structure -

A supervisor of maintenance is responsible for each of the employer's two shifts. Four lead mechanics report to the supervisors of maintenance.

The following employees report to the lead mechanics: Cleaners, who only clean vehicle interiors; support specialists, who do routine servicing, lubrication, and minor electrical repairs; apprentice mechanics, who do preventive maintenance, routine safety inspections, and assist in work on diesel engines, and mechanics, who diagnose problems and work on every vehicular system.

An unknown number of lead service workers also report to the four lead mechanics. In turn, the following employees report to the lead service workers: Vehicle cleaners, who do the same kind of work as the cleaners mentioned above, but may also be dispatched to clean a vehicle in the field, and service workers, who fuel vehicles, wash exteriors, check fluid levels, and handle tires.

Thus, the supervisor of maintenance classification directly supervises the lead mechanics and, through the lead mechanics, indirectly supervises all other employees in the maintenance department.

Authority to Make Decisions Affecting Subordinates -

Before the supervisor of maintenance classification was created, the lead mechanics were responsible for evaluating, counseling, and disciplining employees. The supervisor of maintenance classification now performs those functions, and the revised lead mechanic classification lacks them.

Aside from the lead service workers, who schedule and assign the work of service workers and vehicle cleaners, the supervisor of maintenance classification is the only one with responsibility for setting work priorities, scheduling work, and assigning tasks to other employees. Each supervisor of maintenance is expected to keep other employees' work loads balanced, and is responsible for approving or denying overtime work. The disputed classification also approves subordinates' vacation requests.

Another duty of the disputed classification that may ultimately affect subordinates in the area of discipline and discharge is the responsibility to assure that spare parts are properly accounted for and used. The disputed classification determines the training needs of the department's employees, coordinates a training program, and decides whether individual employees may participate in it. Although the record is silent on the role of the supervisor of maintenance in the collective bargaining agreement's grievance process, the classification is entrusted with following and enforcing the collective bargaining agreement with respect to the employees' daily activities.

The lead mechanics' revised classification description states they will assume some supervisory responsibilities when the supervisor of maintenance is absent. The parties have stipulated this happens extremely infrequently, and that the delegated responsibilities are limited to those necessary to the shop's continued functioning, such as answering questions during a lunch break.

Distinctive Nature of Supervisor Position -

Although the supervisor of maintenance must possess a Class "B" Commercial Driver's License and know how to safely operate vehicles and the shop's equipment, the classification description lists only managerial and administrative duties for the position.³ The parties have stipulated that, unlike each other position in the maintenance department, the supervisors of maintenance do no hands-on work with the employer's vehicles.

The supervisor of maintenance is the only classification in the department requiring a knowledge of supervisory principles and practices, prior supervisory experience, and the ability to manage other employees effectively. The other classifications primarily require technical knowledge and experience, and the general ability to communicate effectively and follow directions. The supervisor of maintenance is the only classification in the department for which academic preparation beyond a high school diploma or GED certificate is desirable. Additional vocational/ technical training is desirable for the classifications in the mechanics series.

Finally, the supervisor of maintenance is the only classification that may assist with budget preparation, on request.

Conclusion

The record supports the conclusion that the employer has achieved the goal it set out to accomplish, transferring from the lead mechanic classification to the supervisor of maintenance classifi-

³ The following is the sole reference to hands-on work by the supervisor of maintenance:

Working conditions: ... Duties require the operation of System vehicles for road testing and may require night, weekend, and holiday work hours.

cation those supervisory duties that create a potential for conflicts of interest.

The disputed classification acts on behalf of the employer in its dealings with employees in the bargaining unit represented by the union. For that reason, and because of its distinct duties, skills and working conditions, the supervisor of maintenance classification lacks a community of interest with the mechanics, cleaners, and service workers who make up the existing bargaining unit.

FINDINGS OF FACT

1. Intercity Transit is a public employer within the meaning of RCW 41.56.030(1).
2. International Association of Machinists and Aerospace Workers, District Lodge 160, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of mechanics, service workers, and cleaners employed by Intercity Transit.
3. In the spring of 1996, the employer created a new classification titled "supervisor of maintenance" and filled two positions in that classification. The employees in the new classification directly and indirectly supervise the work of all bargaining unit members, evaluate their performance, have the authority to discipline them, determine their training needs, approve or deny their use of vacation, determine work priorities, and assign and schedule work so their work loads are balanced, and approve their overtime work.
4. The employees in the supervisor of maintenance positions are responsible, on behalf of the employer, for ensuring the

parties' collective bargaining agreement is followed in the employer's maintenance department.

5. Lead mechanics, who are bargaining unit members that formerly possessed many of the above-described supervisory responsibilities, no longer possess those responsibilities since the supervisor of maintenance positions were created. On the rare occasions when a supervisor of maintenance is absent, the lead mechanics assume only limited aspects of their responsibilities sufficient to keep the shop operating. In such situations, the lead mechanics do not assume disciplinary authority or the power to approve time off work.

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, and no question concerning representation presently exists in the bargaining unit described in paragraph 2 of the foregoing findings of fact.
2. The petition for clarification of an existing bargaining unit in this matter was timely filed under WAC 391-35-020, with respect to the claim that the new supervisor of maintenance position should be excluded because of its supervisory responsibilities.
3. The duties of the supervisor of maintenance present a potential for a conflict of interest with regard to the other positions in the bargaining unit described in paragraph 2 of the foregoing findings of fact, such that the position of supervisor of maintenance should be excluded from that bargaining unit pursuant to RCW 41.56.060.

ORDER CLARIFYING BARGAINING UNIT

The position of supervisor of maintenance is excluded from the bargaining unit involved in this proceeding.

Issued at Olympia, Washington, this 4th day of November, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Pamela G. Bradburn

PAMELA G. BRADBURN, 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.