

City of Chelan, Decision 6029 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CITY OF CHELAN)	
)	CASE 12386-C-96-774
For clarification of an existing)	
bargaining unit of employees)	DECISION 6029 - PECB
represented by:)	
)	
WASHINGTON STATE COUNCIL OF COUNTY)	ORDER CLARIFYING
AND CITY EMPLOYEES, COUNCIL 2)	BARGAINING UNIT
)	
)	

Jerald L. Osterman, Administrator, appeared for the employer.

John Cole, Deputy Director, appeared for the union.

On March 15, 1996, the City of Chelan filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking to have certain positions excluded from a bargaining unit of its employees represented by the Washington State Council of County and City Employees, Council 2. At a hearing on March 25, 1997, before Hearing Officer Rex L. Lacy, and in post-hearing briefs, the parties disputed whether the employees at issue were supervisors. Authority to determine these "eligibility" issues has been delegated to the Hearing Officer pursuant to WAC 391-35-190.

BACKGROUND

The City of Chelan (employer) is governed by an elected city council, which appoints a city administrator who is responsible

for day-to-day operations. Among other municipal services, the employer maintains and operates a Public Works Department which is headed by Bill Greenway, and a Parks and Recreation Department which is headed by Greg Mosher.

The Washington State Council of County and City Employees, Council 2 (union), is the exclusive bargaining representative of a city-wide bargaining unit of non-uniformed employees which includes employees of the Public Works Department and Parks and Recreation Department.

The employer and union have been parties to a series of collective bargaining agreements, the latest of which was effective from January 1, 1994 through December 31, 1996. A salary/classification study conducted by the employer in 1996 gave rise to the dispute presented for decision in this unit clarification proceeding.

POSITIONS OF THE PARTIES

The employer contends that the employees holding the titles of "assistant to the parks and recreation director" and "public works operations supervisor" should be excluded from the bargaining unit, because they fill in when their respective department heads are absent from the workplace, and because they are supervisors under Commission precedent.

The union contends that the employer's claim of supervisory status is highly speculative, and that neither of the disputed employees perform sufficient supervisory duties to create a conflict of interest of the type that would require their exclusion from the bargaining unit.

DISCUSSIONThe Standards for "Supervisor" Exclusions

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, neither defines "supervisor" nor excludes such persons from access to collective bargaining rights. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Numerous decisions of the Public Employment Relations Commission dating back to City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981) have, however, established and reiterated the principle that supervisors will be excluded from the bargaining units containing their rank-and-file subordinates, to avoid an inherent potential for conflicts of interest which arises where supervisors are called upon to simultaneously represent management's interest in dealing with employees and be a member of the same bargaining unit whose interest is protecting the rights of its members. Such separations are accomplished under the unit determination criteria of RCW 41.56.060, and recognize that supervisors have duties, skills, and working conditions which are separate and different from those of their subordinates. Seattle School District, Decision 2830-A (PECB, 1988).

The term "supervisor" is defined in RCW 41.59.020(4)(d), as follows:

(d) ... [S]upervisor ... means any employee having authority, in the interest of the employer, to hire, assign, promote, transfer, lay off, recall, discipline or discharge other employees, or to adjust their grievances, or to recommend effectively such actions, 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 person solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" includes only those employees who perform a preponderance to the above specific acts.

In evaluating claims of supervisory status based on the community of interest criteria set forth in RCW 41.56.060, the focus of consideration is on the scope of the disputed individual's relationship with other employees. Factors such as hiring, assignment of work, direction of the workforce, discipline and discharge, evaluation, the authority to grant or deny leaves, and authority to effectively recommend employment actions are pivotal.

Application of Standard

The Public Works Operations Supervisor -

Dwane Van Epps works under the direct supervision of the director of public works, and is responsible for daily operations involving streets, water, sewer, sanitation, and recycling activities. The job description for the position states, in relevant part:

EXAMPLES OF DUTIES AND RESPONSIBILITIES

- Promotes positive public relations.
- Oversees and assures quality of water, sewer, street, sanitation, and recycling services and systems, including preventable maintenance and snow removal.
- **Schedules and evaluates Public Works staff**, including part-time, temporary and seasonal workers.
- Ensures training, certification and safety standards are met and maintained.
- Reports all inquiries and requests for service either personally or by delegation and assignment.

- Develops and maintains computer aided drafting (CAD) maps, files and programs.
- During absence of the Director, assumes supervision and reporting assistance to the City Administrator.
- Performs other related duties as needed.

[Emphasis by **bold** supplied.]

On its face, that job description lacks delegation of authority in substantial personnel matters such as hiring, discipline, discharge, layoff, and recall.

Van Epps testified that he performs the duties set forth in his job description, that he schedules the daily activities of the other employees of the department, and that he evaluates their performance. He testified that he participates in the hiring process, can discipline his subordinates, has effectively recommended discharge and demotion, can recommend promotions, can grant requests for paid leave, and can adjust grievances. All of his actions are subject, however, to final approval of the city administrator and the city council.

Assistant to the Parks and Recreation Director -

Dave Erickson generally assists the parks director with budget preparation, capital projects and reports, and he attends meetings on behalf of the director. The job description for the position states, in relevant part:

EXAMPLES OF DUTIES AND RESPONSIBILITIES

- Promotes positive public relations.
- Prepares recreation programs, grants, park plans, etc.
- Supervises and selects part-time, temporary and seasonal employees.

- Assists with budget preparation and management work with City departments and outside agencies.
- **Performs park maintenance work when required.**
- Prepares reports for and assists as liaison to Park Board, City Council, and City Administrator.
- Performs other related duties as needed.

[Emphasis by **bold** supplied.]

That job description contains even less indicia of supervisory authority than that of the disputed position in the public works department.

Erickson testified that he replaces his department head when that individual is away from the workplace, but that role is also less defined than that of the public works operations supervisor. Erickson works alongside other full-time employees during the months when the parks and recreation areas are closed or their use is reduced.

The employer's "supervisor" claim as to this position is based, at least in part, on Erickson's dealings with part-time, temporary, and seasonal employees, including instructors and interns, who are hired to perform various functions involving the operation and upkeep of the employer's recreational facilities. Although he interviews and recommends the hiring of seasonal employees, temporary employees, and volunteers, his sole venture into the discipline arena involved the removal of a volunteer coach. Even then, however, the city administrator and city attorney were instrumental in the resolution of that incident. Erickson's role in evaluating other employees is confined to temporary and seasonal employees and volunteers, who are excluded from the bargaining unit by the collective bargaining agreement. There is no potential for

intra-unit conflicts of interest of the type that was of concern in Richland, supra, where the persons being supervised were not in the same bargaining unit. There is no evidence that he evaluates full-time or regular part-time employees of the employer.

Locus of Authority -

As is typical for public employers, authority concerning substantial employment issues is vested at high levels within the organization (e.g., at the city administrator and/or city council levels). The authority of the disputed employees is limited to making recommendations. For example:

Hiring is accomplished after job vacancies are advertised by posting notices at city hall and in the local press, and by word-of-mouth. Applications are screened, the best candidates are interviewed by a team of employer officials, and the chosen applicants are recommended to the city administrator. If he concurs, the city administrator recommends the successful candidate(s) to the city council for approval.

Leaves, including paid leaves, unpaid leaves of absence, and vacations are at the discretion of the department heads. The department heads may delegate that function to employees under their supervision.

Discipline and Discharge is initially the responsibility of the department heads, but discipline involving suspension or discharge must be approved by the city administrator and city council.

Other types of authority (e.g., transfer, layoff, recall, and promotion) are often closely circumscribed by personnel policies or collective bargaining agreements. The power to "reward" is necessarily limited, in the context of a state constitution which prohibits gifts of public funds.

The power to "assign" is often the role of a "lead worker", and Commission precedent distinguishes lead workers from supervisors. Having duties involving hands-on work with the tools of the trade is an important ingredient in situations involving leadworkers. A painter foreman who worked daily with the tools of his trade was included in the bargaining unit in Chelan County, Decision 667 (PECB, 1979), where it was stated:

While he may direct the work and set the pace of work under such circumstances, his independent supervisor authority is limited and he is more aptly classified as a "Leadman".

Similarly, in City of Buckley, Decision 287-A (PECB, 1977), employees who performed bargaining unit work for a majority of their work day were not excluded from the bargaining unit. In this case, the parties' contract explicitly identifies "shop superintendent", "field supervisor", "greens supervisor", "street leadman", and "head dispatcher" classifications as included in the bargaining unit.

Any authority possessed by Van Epps and Erickson is subject to so many layers of concurrence that it cannot be said that they possess the independent authority required for exclusion from the bargaining unit as supervisors.

FINDINGS OF FACT

1. The City of Chelan is a "public employer" within the meaning of RCW 41.56.030(1). An elected city council and a city administrator appointed by the city council direct the affairs of the employer.

2. The Washington State Council of County and City Employees, Council 2, AFSCME, AFL-CIO, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all full-time non-uniformed employees of the employer, excluding the city administrator, department heads, the assistant finance director, an accounting clerk, the city clerk/treasurer, a code administrator, a city engineer, deputy clerks, the public works supervisor and golf course pro-manager, and all confidential, part-time, seasonal, and temporary employees.
3. The employer and union have been parties to a series of collective bargaining agreements, the latest of which was effective from January 1, 1994 to December 31, 1996. While that contract was in effect, the employer conducted a salary/classification study for employees in the bargaining unit.
4. As the incumbent in the position of "public works operations supervisor", Dwane Van Epps is responsible for public works activities involving streets, water, sewer, sanitation, and recycling. He directs the department in the absence of the director. He participates as a member of a team for screening and interviewing applicants for employment, assigns routine and emergency duties, can grant paid leave requests in emergencies, can make recommendations on promotions, transfers and discipline of employees, and is responsible for evaluation of public works department employees. All actions taken and recommendations made by Van Epps are, however, subject to review and independent evaluation at higher levels within the employer's table of organization.

5. As the incumbent in the position of "assistant to the parks and recreation director", Dave Erickson assists the director in budget preparation, capital projects, and preparing reports. He is responsible for the supervision of seasonal and temporary employees and volunteers who provide recreational activities at various parks and locations, including screening of applications, interviewing applicants for employment, and making hiring recommendations to the department head. Those seasonal and temporary employees and volunteers are not within the bargaining unit represented by the WSCCCE. Erickson's decisions involving parks and recreation employees within the bargaining unit are subject to review by the department head and the city administrator.

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 exists.
2. The employee holding the position of "public works operations supervisor" is a public employee within the meaning of RCW 41.56.030(2), and does not exercises sufficient independent authority on behalf of employer to warrant exclusion from the existing bargaining unit, pursuant to RCW 41.56.060 and established precedent.
3. The employee holding the position of " administrative assistant to the parks and recreation director" is a "public employee" within the meaning of RCW 41.56.030(2), and does not possess sufficient independent authority on behalf of employer

to warrant exclusion from the existing bargaining unit, pursuant to RCW 41.56.060 and established precedent.

ORDER

1. The bargaining unit described in paragraph 2 of the foregoing findings of fact is clarified to include the position of "Public Works Operations Supervisor".
2. The bargaining unit described in paragraph 2 of the foregoing findings of fact is clarified to include the position of "Assistant to the Parks and Recreation Director".

Issued at Olympia, Washington, this 29th day of August, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, 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.