

City of Blaine, Decision 6122 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
TEAMSTERS UNION, LOCAL 231	)	CASE 12977-C-97-813
For clarification of an existing bargaining unit of employees of:	)	DECISION 6122 - PECB
CITY OF BLAINE	)	ORDER CLARIFYING BARGAINING UNIT
_____	)	

Davies, Roberts & Reid, by Michael P. Monaco, Attorney at Law, appeared on behalf of the union.

Summit Law Group, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the employer.

On February 13, 1997, Teamsters Local 231 filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking to have a particular position included in a bargaining unit of City of Blaine employees represented by the union. A hearing was held in Blaine, Washington, on June 18, 1997, before Hearing Officer Pamela G. Bradburn. The last brief was received, and the record was closed, on August 14, 1997.

BACKGROUND

The City of Blaine (employer) has a population of approximately 3,500. Its location in the northwestern corner of the state of Washington, just south of the border between the United States and Canada, makes its economy largely dependent on the exchange rate between the U.S. dollar and the Canadian dollar. Tony Mortillaro has served as the employer's city manager since 1994.

In 1981, the employer voluntarily recognized Teamsters Local 231 (union) as exclusive bargaining representative of a bargaining unit encompassing the employer's office-clerical, finance, and public works employees. The parties' collective bargaining agreements have excluded department heads and separately-represented employees.<sup>1</sup> Although the record indicates the employer has a total of 58 employees, the precise number of employees in the bargaining unit was not established. There are 13 department heads, of which 10 are in departments touched by this bargaining unit.

The present controversy grew out of adjustments the employer made to the workforce in its Planning Department.<sup>2</sup> In 1995, the employer's income from gambling taxes fell, its sales tax receipts began fluctuating, and it had to draw on its reserves. Consequently, the employer made changes in its 1996 budget, including reducing its planning workforce by one and one-half employees. An office-clerical position was eliminated, and a "code compliance administrator" position held by Beverley Kittel was reduced from full-time to half-time. The changes at that time apparently did not affect the remaining department employee, Building Official Ray Chenowith, whose position is funded separately.

During 1996, a consultant reviewed the employer's organization on a city-wide basis, to identify possible efficiencies. With regard to the Planning Department, the consultant recommended: (1) Reducing the director position to a "planning manager" position; (2) eliminating Kittel's position completely, and (3) dividing Kittel's

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<sup>1</sup> The employer's law enforcement officers and fire fighters are separately-represented, as is now required by WAC 391-35-310 in light of their eligibility for interest arbitration. Employees of the employer's Light Division also have separate representation.

<sup>2</sup> This department was previously called the "Community and Economic Development Department". Its current name is used in this decision, for the sake of consistency.

work between the new "planning manager" and Chenowith. The city council implemented the consultant's recommendations. The employer contracted with an agency for temporary employees to fill the department head position during and after September of 1996. Kittel's position was eliminated as of December 31, 1996, and she assumed a bargaining unit position in a different department on January 1, 1997.

The union filed the petition to initiate this proceeding in February of 1997, while the Planning Department remained under temporary leadership. The employer hired Planning Manager Grant Taylor on April 28, 1997.

#### POSITIONS OF THE PARTIES

The union contends the new planning manager position should be added to the bargaining unit, because Taylor now performs many duties formerly performed by Kittel. It disputes the employer's claim that Chenowith is learning and will eventually take over Kittel's former duties, noting the lack of a deadline for such a transfer and the employer's equivocation about the possibility that Chenowith will never become comfortable with all of those duties. The union asserts that Taylor lacks the supervisory authority which would require his exclusion from the bargaining unit to avoid conflicts of interest, and that the evidence demonstrates that City Manager Mortillaro retains most real power over personnel despite the language of Taylor's job description.

The employer contends the union has failed to carry its burden of proving that the agreed exclusion of department heads should now be reversed for the Planning Department. In defense of the traditional exclusion, the employer asserts: (1) There have been no substantial changes since the voluntary recognition; (2) the parties' collective bargaining agreements have always excluded

department heads, and (3) Taylor is a department head because of his duties, his exemption from overtime pay requirements, and his weekly meetings with Mortillaro and other senior staff. Responding to the union's suggestion that the Commission "follow the duties", the employer points out that this is not an unfair labor practice case. It argues that supervisors often perform some bargaining unit work, and that the exclusion of Taylor's predecessor was upheld in an informal opinion letter,<sup>3</sup> even though she did some bargaining unit work.

## DISCUSSION

### Inapposite Arguments

Some misdirected arguments which the parties have dragged across the trail in this case can be dealt with at the outset:

- The union's focus on Taylor having fallen heir to Kittel's duties puts more weight on "unit work" than Commission precedents will bear. While it is clear from South Kitsap School District, Decision 472 (PECB, 1978) and subsequent decisions on "skimming" of unit work that an employer must give notice to an exclusive bargaining representative and fulfill its bargaining obligations before transferring unit work to employees outside of a bargaining unit, the employer correctly notes this is not an unfair labor practice case. Where the analysis in an unfair labor practice case looks to and remedies past wrongs, the analysis in a unit clarification case takes the parties and positions where they are found, and

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<sup>3</sup> The letter was issued by a member of the Commission staff in connection with a unit clarification petition that was eventually closed on the basis of the parties' agreement to abide by the informal opinion. Case 9922-C-92-572. The issuance of such letters has been discontinued.

looks to the future. In Pasco School District, Decision 4708 (PECB, 1994), "skimming" concepts were found inapposite to a unit determination analysis on a confidential employee.<sup>4</sup> The present duties of disputed employees are considered, but that is done in comparison to the "duties, skill and working conditions" of bargaining unit employees under RCW 41.56.060.

- The employer's contentions about a burden of proof in this case are erroneous. Unit determination proceedings are investigatory, rather than adversary in nature. The Commission has a responsibility to the individual employees whose statutory rights are actually being affected, while deciding the claims of the employer and union that are the parties to the case. Concepts of burden of proof which apply in unfair labor practice proceedings thus have less applicability. City of Puyallup, Decision 5639-B (PECB, 1997).
- The employer's arguments founded on the parties' collective bargaining agreement overstate the importance of agreements made by labor and management on unit matters. Unit determination is not a subject for bargaining in the usual mandatory/permissive/illegal sense. While parties may agree on units, such agreements do not guarantee that the unit agreed upon is or will continue to be appropriate. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). The Commission will only hold parties to their stipulations about unit placement if they are warranted by the facts existing when they were made and those facts remain unchanged.
- The employer's focus on the box which the disputed position occupies on its organization chart is not founded on any

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<sup>4</sup> In the instant case, the employer disclaimed any contention that Taylor is a confidential employee.

provision of statute. The union correctly notes that the job titles assigned by employers are not controlling, and that the Commission looks to actual responsibilities in making unit determinations. The term "department head" does not compute in a unit determination analysis. In ruling that supervisors have full collective bargaining rights under Chapter 41.56 RCW, the Supreme Court of the State of Washington gave a very narrow reading to the exclusions from coverage of the statute. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). While the Commission routinely separates supervisors from the bargaining units containing their subordinates under City of Richland, supra, that is done on the basis of actual authority giving rise to a potential for conflicts of interest.

#### Changed Circumstances

The parties have framed an issue in this case as to whether the union is free to seek a change in the bargaining unit status of the planning manager. Commission precedent dating back to City of Richland, supra, has generally conditioned changes of bargaining unit status upon the existence of changed circumstances.

Contrary to the employer's contentions and narrow focus on the "department head" role, the record indicates that there have been many changes of circumstances since the voluntary recognition of the union in 1981, and even since the parties' latest collective bargaining agreements were negotiated:

- The size of the Planning Department has fluctuated over the last few years. The earliest data in the record is the budget for 1994, which shows three regular employees and a student volunteer. The 1995 budget shows four regular employees. Kittel was reduced to half-time and the secretarial position was eliminated in the 1996 budget, leaving the workforce at

2.5 employees. Kittel's position was eliminated in 1997, leaving only two positions in the department. Such fluctuations necessarily affect the employees' duties and workloads, and may result in changes of program or emphasis which could modify employees' responsibilities.

- The status and title of the person holding the top job in the Planning Department have also varied over time. Sylvia Goodwin headed the department from at least September of 1992 until September of 1996, apparently in addition to her duties as Senior Planner.<sup>5</sup> The consultant hired by the employer recommended in August of 1996 that Goodwin's position be reduced in status, largely because completion of a city plan required by the state's Growth Management Act had almost eliminated the long term planning work that had taken most of her time.<sup>6</sup> The consultant also recommended moving economic development responsibilities from the Planning Department to the city manager.
- The arrival of City Manager Tony Mortillaro, on August 30, 1994, was apparently accompanied by changes of management philosophy and practices.

Persons excluded from a bargaining unit as confidential employees or as supervisors are not immune for life from changes of circum-

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<sup>5</sup> Both the informal agency ruling dated September 1992, and the employer's 1994 budget identified Goodwin as "Senior Planner/Acting Department Director". She was listed as both senior planner and department director in the 1995 budget, and only as department director in the 1996 budget.

<sup>6</sup> The consultant estimated this change would save \$3,400 per year. Long-term planning produces development and zoning charts intended to govern a city for a substantial period, while short-term planning considers minor adjustments to long term plans for specific projects.

stances. A modification of responsibilities or relationships of an excluded individual may signal a reconsideration of the propriety of their exclusion.<sup>7</sup> Among the possibilities, a change of senior managers can affect the amount of independent authority an individual actually surrenders, retains or acquires over bargaining unit members.<sup>8</sup> For these reasons, it is appropriate to evaluate the unit placement of the planning manager in this case.

#### Lack of Independent Authority

The question to be answered here is whether the planning manager has sufficient authority to be deemed a "supervisor". Because Chapter 41.56 RCW lacks a definition of that term, the Commission has looked to the definition contained in the Educational Employment Relations Act, Chapter 41.59 RCW, as describing the types of authority which give rise to a potential for conflicts of interest warranting exclusion from a bargaining unit which includes their subordinates under City of Richland, supra:

[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 the consistent exercise of independent judgment ... The term "supervisor" shall include

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<sup>7</sup> Richland School District (Public School Employees), Decision 2208, 2208-A (PECB, 1985) demonstrates this concept. After the basis for an exclusion disappeared, an employee was properly included in the bargaining unit logical to her duties, skills and working conditions.

<sup>8</sup> See, discussion in City of Winlock, Decision 4056 (PECB, 1992), affirmed without comment on this issue, City of Winlock, Decision 4056-A (PECB, 1992).



only those **employees who perform a preponderance of the above-specified acts of authority.**

RCW 41.59.020(4)(d) [emphasis by **bold** supplied].

The Commission has distinguished supervisors from "lead workers", who merely direct the work of other employees, who lack the power to independently make substantial changes to the employment relationship, and who are routinely included in bargaining units with the employees they lead. Mukilteo School District, supra.

Predecessor's Job Description Unconvincing -

The record demonstrates that Mortillaro actually retained and exercised final approval over most aspects of the supervisory authority given to Goodwin in her job description:

- Goodwin was nominally responsible for directing departmental activities, but Mortillaro disagreed with her work priorities, particularly over the amount of staff time spent in code enforcement (regarding weeds, junk cars in yards, etc.).
- Goodwin's job description nominally gave her substantial disciplinary authority, ranging from correcting employees' work to implementing discharge procedures, but Mortillaro clarified that all discipline at the level of suspension and above required his approval and signature. Taken together with the collective bargaining agreements for the period from January of 1993 to the date of hearing, which require a written warning before an employee can be suspended, Mortillaro's statement suggests a department head could issue a written warning on his or her own. However, the only evidence about written warnings (and the only evidence of discipline in the Planning Department during Mortillaro's tenure) concerns a situation in which the city manager excluded Goodwin from any involvement. Mortillaro himself issued a written reprimand to Kittel. He explained that he

and Goodwin were having a difference of opinion regarding direction of the department. Asked to specify the areas of disagreement, Mortillaro testified:

She disagreed with the direction that I had taken in respect to implementing budgetary reductions. She had other areas she disagreed with in respect to how I managed the City. She disagreed with who she reported to. So yeah, there was [sic] some differences of opinion there.

Transcript, page 115.

The record lacks any evidence suggesting this was atypical of Mortillaro's interactions with department heads regarding lower level discipline.

- Goodwin was nominally responsible for the evaluation of her staff, but it is Mortillaro's practice to review and comment on drafts of all evaluations made by department heads. The only evidence on this practice in the record (draft and final evaluations of Kittel and Chenowith for 1995) shows that Mortillaro's review is highly detailed,<sup>9</sup> and demands a response from the department head. Both draft evaluations bear Mortillaro's requests that Goodwin discuss the matters with him. Goodwin responded with a two page memo justifying

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<sup>9</sup> Mortillaro's comments on Goodwin's draft evaluation questioned the professionalism of Kittel's attire, saw Kittel as affecting other employees with a "negative view" of the city, questioned the quantity of Kittel's work where Goodwin had praised its quality, challenged Goodwin's description of Kittel's work in one area as showing ingenuity, and told Goodwin that Kittel needed to complete all assigned work instead of prioritizing as Goodwin had suggested. Mortillaro agreed that Chenowith needed to keep regular business hours, asked whether Chenowith was really busy or just avoiding helping at the office, and disagreed with Goodwin's assessment of the quantity of Chenowith's work because she had not included any measures of acceptable quantity.

her comments; she changed only one evaluation score though she modified a few words in the comment sections.<sup>10</sup> The employer failed to introduce any evidence suggesting this experience was atypical of Mortillaro's interaction with department heads over evaluations.

- Goodwin's job description called for her to participate in developing and administering the department budget. The department budget that she submitted to the finance director was consolidated with all other departmental budgets for Mortillaro's review on a line-item basis. The city manager made changes, sometimes with his department heads' advice and sometimes over their objections. Mortillaro's final version of the budget went to the city council for its approval after a very general review. Mortillaro controlled any compensation increases other than those required by the collective bargaining agreement.
- Goodwin's job description nominally gave her the power to select personnel,<sup>11</sup> but it does not appear that any employees were hired into the department during Goodwin's tenure. Moreover, Mortillaro indicated that city practice only allowed department heads to do recruitment, and that a statute gave him final authority in hiring.<sup>12</sup> Neither party presented evidence of other hiring.

The record is replete with evidence about the limits placed on Goodwin's supervisory authority. The employer failed to rebut this

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<sup>10</sup> Goodwin's resistance on some of these items seem to touch on the disagreements Mortillaro said he had with Goodwin. She left the city in September 1996.

<sup>11</sup> The city council approves new positions in the budget. Mortillaro decides whether new positions should be exempt from the Fair Labor Standards Act.

<sup>12</sup> Mortillaro himself handled the hiring of Goodwin's replacement.

evidence, or to distinguish the relationship between the city manager and other department heads. That history leads to a conclusion that Mortillaro's interactions with the former department director are relevant in determining the present question.

Current Job Description Unconvincing -

Taylor's job description appears to endow him with substantial authority over Building/Code Compliance Official Ray Chenowith. It states, in pertinent part:

... manage and review the activities and operations of the Planning Division, ... exercises direct supervision of assigned staff ... Direct, oversee and participate in the development of the division's work plans: assign work activities ...: review and evaluate work products ... Supervise and participate in the development and administration of the division's budget: ... Select, train, motivate and evaluate personnel: provide or coordinate staff training: work with employees to correct deficiencies: implement discipline and/or termination procedures.

Exhibit 6.

Any job description must be scrutinized, however, through the lens of actual experience.

Taylor testified he believes he is a supervisor, but he had held his position less than two months at the time of the hearing, and he had not had any actual occasion to reprimand, discipline, or evaluate Chenowith. Neither party asked Taylor whether he had actually approved any vacation or sick leave for Chenowith, nor was Chenowith questioned about Taylor's exercise of authority over him. The record indicates that Taylor was training Chenowith to assume some duties formerly performed by Kittel.

Taylor's job description is virtually identical to the job description Mortillaro approved for Goodwin in February of 1995. Close comparison of the job descriptions reveals three minor differences: (1) the summary in Goodwin's called for her to "direct" the department, while Taylor's says he is to "manage" the Planning Division; (2) Taylor's substitutes "[o]versee the preparation of the Planning Commission agenda", where hers said "[d]irect" preparation of the agenda; (3) Taylor's typical duties add "review of ... shoreline permits" and various responsibilities related to the Environmental Protection Act, but those involve exercise of authority over functions and clientele. The record thus fails to demonstrate any increase of authority for Taylor.

The evidence as a whole leads to a conclusion that Taylor is unlikely to exercise any substantial independent authority over Chenowith. The record demonstrates that real authority over the Planning Department employees has been concentrated in the hands of the city manager while Mortillaro has held that position, that Taylor's predecessor did not have sufficient authority to warrant exclusion as a supervisor, and that there is no evidence indicating Mortillaro will give Taylor more latitude than was given to Goodwin. This is not a criticism of the city manager's approach, as employers are generally free to delegate or retain power and responsibility as they see fit.<sup>13</sup> On the existing facts, however, exclusion of the position now held by Taylor from the bargaining unit is not warranted.<sup>14</sup>

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<sup>13</sup> It is not uncommon for a manager or mayor's view of the amount of delegated authority to vary from subordinates' experiences. See, for example, Town of Granite Falls, Decision 2617 (PECB, 1987).

<sup>14</sup> This in no way precludes refiling the petition if Taylor exercises substantial authority over Chenowith's employment in the future. The Commission must make unit determination decisions based on the record the parties have presented, not on unrealized potentialities.

Categorization as a Lead Worker -

The Commission recently explained a distinction between "supervisors" and "lead workers", as follows:

Lead workers have authority to direct subordinates' job assignments, but do not exercise independent judgment in fundamental personnel matters or have authority to make meaningful changes in the employment relationship.

Mukilteo School District, supra at p. 6-7.

That distinction becomes more concrete in the circumstances of actual cases:

- Positions must exercise a preponderance of the indicia listed in RCW 41.59.020(4)(d) to be excluded as supervisors. In City of Puyallup, Decision 5639-B (PECB, 1997), two engineering positions were included in a bargaining unit despite participation on hiring panels, providing input to superiors on work assignments for subordinates, and alleged ability to recommend discipline; there was no evidence they had ever recommended hiring a candidate, and any exercise of judgment was subject to the department head's "sole" authority.
- In Mukilteo School District, supra, the disputed individual gave input about employee performance to a supervisor who prepared their evaluations, participated in hiring interviews, and could assign work in the few instances not covered by the collective bargaining agreement.<sup>15</sup> Although the lead worker attended several investigatory interviews, there was no evidence of any participation in disciplinary decisions.

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<sup>15</sup> The decision emphasized the lack of opportunity for independent judgment because the collective bargaining agreement controlled topics like work assignments, leaves, transfers, layoffs and recalls, pay rates, and benefit levels.

- In Island County, Decision 5147-D (PECB, 1996), two office managers oversaw four employees, approved leave requests, and had some role in evaluation, but they were found to be lead workers who also performed the same type of clerical support work for their own superiors. Service administrators coordinated with contractors, as well as overseeing one employee by assigning daily duties, granting leave, and reporting on work quality to a superior. The Commission concluded that all of the disputed positions lacked a preponderance of the supervisory indicia, and did not exercise independent judgment.

The evidence suggests Goodwin assigned some work among her small staff, but job descriptions approved by the city manager had divided duties between Chenowith and Kittel along lines of their individual skills. Goodwin and Kittel do seem to have shared or exchanged duties between themselves.<sup>16</sup> There is inherently a reduced potential for exercise of authority to assign work at the present time, however, with an even smaller number of employees to perform the work and a reduced scope of work in the department. These facts certainly support no more than a "lead worker" categorization for the position at issue.

#### Employer's Arguments Unavailing -

The employer cites Island County, Decision 5147 (PECB, 1995), for the proposition that either direct authority or the power to make effective recommendations in **any** of the areas mentioned in RCW 41.59.020 (4)(d) will suffice to warrant an exclusion. The context of the cited language in Island County was, however, a discussion of the role of effective recommendations in the public sector,

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<sup>16</sup> For example: Kittel performed several functions that had appeared within Goodwin's job description, including coordinating the department's activities with other city departments and outside agencies, coordinating residential and commercial development activities within the city, and preparing changes to the municipal code involving zoning, subdivisions, signage, and landscaping.

where final authority is often lodged in an elected body. In fact, RCW 41.59.020(4)(d) requires that an individual "perform a **preponderance** of the above-specified acts of authority" [emphasis by **bold** supplied] to be categorized as a supervisor. The record in this case suggests that Mortillaro makes an independent review and determination on virtually all recommendations made by department heads, so that any such recommendations could not be considered as "effective recommendations".

The employer would have the interactions between Mortillaro and Goodwin discounted because Mortillaro was having "performance problems" with Goodwin at the time they disagreed about Kittel's evaluation. That argument is not supported by the record, however: Kittel's evaluation was discussed by Goodwin and the city manager in January and February 1996; Mortillaro never gave a date for his reprimand of Kittel, so the events are not sufficiently connected.

The employer argues that exclusion of the planning manager from the bargaining unit is required because of Taylor's exempt status for purposes of overtime compensation. The claimed exempt status of the position for overtime purposes was unilaterally determined by Mortillaro, however. Apart from the possibility of a challenge under the Fair Labor Standards Act, the employer's interpretation of that federal law certainly does not bind the Public Employment Relations Commission under the entirely separate and different standards used in applying the state Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

Finally, the employer argues that exclusion is warranted because of Taylor's attendance at weekly senior staff meetings held by the city manager. Kittel attended such meetings from her hiring until Goodwin was hired, and afterward in Goodwin's absence, and Mortillaro disclaimed any labor relations confidentiality for his weekly senior staff meetings. A similar argument was rejected in City of Puyallup, supra, as to engineering employees who repre-



sented their department at city council, planning commission, and outside committee meetings.

Position Shares Community of Interest

The history, as well as comparison of the past and present job descriptions, establishes that the disputed position was downgraded in status under the recommendation of the employer's consultant. That recommendation was based on the disappearance of what had been distinguishing duties of the director, and on the fact the downgraded position was to assume a portion of Kittel's duties. Although not sufficient to compel a result, as the union argued, the assumption by Taylor of duties formerly performed by Kittel at least contributes to a conclusion that the disputed position shares a community of interest with the remaining bargaining unit employee in regard to the "duties" performed. Bremerton-Kitsap County Health Department, Decision 2984 (PECB, 1988). It is clear that, both now and in the future, Taylor and Chenowith will perform some similar or identical duties. Both Taylor and Chenowith confirmed they approach their individual tasks as a team, discussing actions in advance, reviewing each others' letters, and checking on each other's code interpretations.

Scrutiny of the current collective bargaining agreement and the employer's 1997 budget reveal that Taylor's \$47,087 salary is only 6.9% greater than the \$44,052 salary Kittel would have received if she had worked full-time in her code compliance administrator position. Taylor's salary is only 20% above the maximum salary for Chenowith's job class. Those pay differentials reflect the employer's acceptance of its consultant's recommendation that the position be downgraded.

The record is slim on specifics of hours and working conditions. Taylor and Chenowith continue to work in an "annex" building to which the department moved from city hall in the autumn of 1995,

but the record does not indicate that they are thereby isolated from other bargaining unit employees.

The record supports a conclusion that Taylor shares a community of interest with the other technical, professional, support, and clerical employees in the bargaining unit at issue here. The disputed position is thus properly included in the bargaining unit with the other employee performing related work.

#### FINDINGS OF FACT

1. The City of Blaine is a public employer within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 231, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of the non-uniformed employees of the City of Blaine, including office-clerical, finance, and public works employees. Employees of what is now referred to as the employer's Planning Division have been included in that unit.
3. The employer and union have historically excluded department heads from the bargaining unit by the terms of their collective bargaining agreements. That person in charge of the employer's Planning Division was so excluded prior to 1996.
4. The size of the workforce in the employer's Planning Division has varied from three regular employees in 1994 and four in 1995, to 2.5 employees in 1996 with elimination of a clerical position and reduction of Code Compliance Administrator Beverley Kittel to half-time in 1996, and to two employees when Kittel's position was eliminated in 1997.
5. In 1996, a consultant hired by the employer recommended that the position in charge of the employer's Planning Division be

downgraded, in response to a staff reduction in the department and in light of completion of state-required long-term planning work historically done by that position.

6. The employer accepted the recommendation of its consultant organization, and filled the position in 1997 with a "planning manager" position that reflects the downgraded title, status, and wages recommended by the employer's consultant. Duties formerly performed by the department head were transferred to the city manager, and the employee hired for the downgraded position took over duties performed by Kittel prior to her layoff.
7. Tony Mortillaro, who has been the employer's City Manager since 1994, retains and exercises independent authority on all significant personnel matters. The employer did not rebut evidence that this is typical of the City Manager's interactions with department heads, notwithstanding job descriptions which nominally delegate substantial authority to department heads, and the record thus supports an inference that it is unlikely that department heads will exercise substantial independent authority in the future.
8. Grant Taylor commenced work in the downgraded "planning manager" position on April 28, 1997, less than two months before the hearing in this matter. While his job description substantially mirrors that of his predecessor, and Taylor testified to a belief that he is a supervisor, had not had any occasion to exercise substantial supervisory authority over the one other employee remaining in the Planning Division.
9. Taylor's duties include some of duties performed by his predecessor, but now includes many duties performed by bargaining unit employee Kittel before her position was eliminated. Taylor shares some of Kittel's former duties with

the remaining bargaining unit employee in the division, and the two remaining employees approach their responsibilities as a team, consulting together before either acts formally.

10. The wages, hours and working conditions of the disputed position are closely related to the wages, hours and working conditions of employees in the existing bargaining unit.

CONCLUSIONS OF LAW

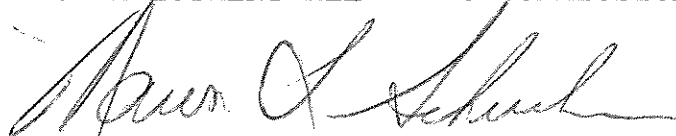
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 391-35 WAC.
2. The planning manager position now held by Grant Taylor shares a community of interest, under RCW 41.56.060, with the employees in the existing bargaining unit, and is not a "supervisor" whose exclusion from that bargaining unit is warranted position by a potential for conflicts of interest.

ORDER CLARIFYING BARGAINING UNIT

The position of "planning manager" is included in the bargaining unit involved in this proceeding.

Issued at Olympia, Washington, this 13<sup>th</sup> day of November, 1997.

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.