

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
MASON COUNTY)	CASE 11289-C-94-668
)	
For clarification of an existing)	
bargaining unit of employees)	DECISION 5261 - PECB
represented by:)	
)	
WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	ORDER CLARIFYING
LOCAL 1504)	BARGAINING UNIT
)	
)	

Gary P. Burleson, Prosecuting Attorney, by Michael Clift, Deputy Prosecuting Attorney, appeared on behalf of the employer.

Jerry Gillming, Staff Representative, appeared on behalf of the union.

On August 23, 1994, Mason County (employer) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The employer seeks exclusion of the "election superintendent" position from a bargaining unit of its employees represented by the Washington State Council of County and City Employees, Local 1504 (union). A hearing was held in Shelton, Washington, on January 26, 1995, before Hearing Officer Paul T. Schwendiman. The parties did not file briefs.

BACKGROUND

Mason County is governed by a three-member board of commissioners who are elected by popular vote. The county seat is at Shelton. Allen Brotche is the separately-elected county auditor, and he supervises operations in four sections of his office: Accounting,

recording, licensing and elections. The elections superintendent at issue in this proceeding reports directly to Brochte.

The union is the exclusive bargaining representative of Mason County employees in a bargaining unit described as follows:

[A]ll employees with the Department of the Auditor, Assessor (Appraiser's Guild excepted), Treasurer, County Clerk, Emergency Services and District Court excluding appointed officials as pursuant to statute, confidential employees, contractual employees as certified by the Public Employment Relations Commission, casual and temporary employees, and or as provided in Section 2 of this article, and the Chief Accountant in the Auditor's office and Administrative Assistant in the Treasurer's Office.

The parties' current collective bargaining agreement was signed on February 1, 1994, and is effective from January 1, 1994 to December 31, 1996. During the negotiations for that contract, the parties agreed to submit an issue concerning the supervisory status of the election superintendent to the Commission for determination.

A job description for an "election supervisor" classification promulgated in 1990 specified:¹

GENERAL STATEMENT

Management of Election office to include registration of voters, maintaining current records of voters, issuing absentee voter ballots, and accurate tabulation of same. Assists in election by notification of polling places, notification of board workers, providing lists of voters, and accurately recording voting records of voters. Provides transfers

¹ This predecessor to the disputed position has historically been included in the bargaining unit. Appendix B of the collective bargaining agreement lists the "election supervisor" classification at pay range 17.

and cancellation of voters. Write correspondence and news articles for the Auditor.

TYPICAL DUTIES

Supervision and training of part time-help, registrars, and poll workers.

Registration of voters, cancellation registrations, transfer voters.

Placement of voters in proper precincts and levy code.

Assist in preparations for elections: ballots, poll workers, absentee voters, distribution of materials to polls, computation of ballots, assist in official canvas, tabulation of date last voted for county wide voters.

Correspondence: For election processes, or other departments as requested by Auditor. Write news releases as requested. Assists in other areas of the office as needed.

QUALIFICATION

High School diploma, or equivalent.

General office skills: typing, keyboarding, shorthand, filing, and Computer experience.

Ability to read maps.

Ability to supervise and give instruction.

Letter writing and news article writing skills.

Ability to work with the public.

Ability to work under pressure.

The elected county auditor was directly involved in the administration of elections while that job description was in effect, and Diane Hartman took a backup role as the election supervisor.

Amendments to state law adopted in 1992 required each county to have two certified election administrators in its auditor's office.² Thereafter, Brochte began to shift the primary supervision of elections from himself to Diane Hartman. A decision was

². See Chapter 29.60 RCW and RCW 36.22.220.

made to allow the county auditor to focus on the accounting, records and license functions, instead of devoting long hours to personally supervising the election process and personnel.

The union asked the employer to consider reclassification of the "election supervisor", and the employer hired an outside consultant to draft a job description. On June 23, 1994, the employer and union agreed upon a job description for a new "election superintendent" position, as follows:

GENERAL POSITION SUMMARY:

This classification is primarily responsible for the planning, direction and supervision of primary, general and special election processes for the County to insure compliance with statute and are certifiable. The classification supports other Auditor functions when available and utilized employees from other Auditor functions when available and utilizes employees from other auditor functions to support election requirements.

JOB FUNCTIONS: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions in the class)

ESSENTIAL:

Organize, supervise and perform all responsibilities from pre-election to post-election to insure that elections are conducted in accordance with statute and are certifiable

Recruit, train and supervise election personnel

Receive and process all filings of candidates for political office and propositions for special elections

Maintain up to date voter registration lists and provide appropriate change notices to voters and officials

Confirm and provide notification of all precinct boundaries, annexations and formation of districts

Develop and update policies and procedures with regard to the election process

Develop and prepare ballots

Maintain all records of election process including statistics, certification, instructions and correspondence

Create and develop new and improved systems for election process

Develop and negotiate contracts for polling locations

Assist in preparation of and administer election department budget

SECONDARY:

Respond to citizen candidate and official requests, questions and concerns regarding the election process

Coordinate with junior taxing district employees to assist with the interpretation of statutes and respond to questions and concerns

Develop communication materials with regard to elections to inform the public and candidates on timing and process

Insure maintenance of sufficient supplies, materials and equipment for elections

May administer oath of office to elected and appointed officials

JOB COMPLEXITY:

This classification requires the incumbent to be able to interpret state statutes, the Washington Administrative Code and federal election laws as they pertain to elections; plan and coordinate all elections within the County in compliance with state and federal requirements to insure certification of the election; recruit, train and supervise elections staff. Errors in judgment and performance could have a major impact on election results, public relations and could result in lawsuits and major unbudgeted expenditures for the County. Backup systems for error avoidance and/or detection include the Auditor internal audit procedures and Secretary of State Office's audit and certification procedures and process. Continuing periodic education may be required to insure up to date knowledge of procedures and laws.

SUPERVISORY RESPONSIBILITY:

Positions in the classification are responsible for the recruitment, training and supervision of election staff including regular full time and part time employees and temporary employees and volunteers during the election cycle. Position coordinates the process and makes final recommendations to Auditor for hire of regular employees, temporary employees and utilization of volunteers.

INTERPERSONAL CONTACTS:

Incumbents in this classification have regular contact in person and by telephone with the Secretary

of State's office, county political committees, special election sponsors (i.e. school districts, taxing districts), Public Disclosure Commission, candidates for offices and election staffs in other counties to provide information, interpret laws and resolve issues.

SPECIFIC JOB SKILLS:

Incumbents are required to know: federal and state election laws, rules, procedures and process; short and long term planning process; office organization and administration. Incumbents are required to have the ability to: maintain confidentiality; read and interpret maps; make logical decisions based on knowledge available; provide and require of employees a high degree of accuracy on a continuing basis; develop new and improved systems for accomplishing requirements and goals; resolve issues and supervise election process and employees under stressful conditions and time constraints; communicate effectively with other employees, officials, the public and federal and state agencies; develop work process and patterns to effectively and efficiently accomplish the goals of the organization; establish and maintain effective working relationships with employees, other county departments, taxing districts and state election officials.

...

EDUCATION AND/OR EXPERIENCE: Any equivalent combination of education and experience which proves the applicant with the knowledge, skills and ability to successfully perform the job. A typical way to obtain the knowledge and abilities would be:

A Bachelors Degree in Business or Public Administration or a High School Diploma or equivalency and a combination of courses relating to supervisor skills and three to five years experience in elections.

LICENSES AND/OR CERTIFICATIONS:

Successful completion of the elections certification course conducted by the Secretary of State resulting in State Certification within 18 months of appointment to the classification.

Valid Washington State Driver's License and good driving record.

Brochte has charged Hartman with responsibility for supervising about a half-dozen elections per year.

Hartman now supervises one full-time employee and two regular part-time election assistants on a year-around basis, as well as

recruiting and training temporary employees who work during parts of the election process. Hartman recommends discipline and schedules time off for employees in the election department.

POSITIONS OF THE PARTIES

The employer contends that Hartman should now be excluded from the bargaining unit as a supervisor, and that her continued inclusion in the unit creates a potential for conflicts of interest with the employees she supervises.

The union contends that the election superintendent does not have the requisite authority to be excluded from the bargaining unit. The union also claims that there has been no substantial change to the election superintendent's job.

DISCUSSION

Applicable Legal Principles

Early in its history, the Public Employment Relations Commission noted that the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, differs importantly from the National Labor Relations Act (NLRA), with respect to the status of supervisors. City of Tacoma, Decision 95-A (PECB, 1977). The Supreme Court of the State of Washington adopted the same view in Municipality of Metropolitan Seattle (METRO) vs. Department of Labor and Industries, 88 Wn.2d 925 (1976). Noting that the NLRA is concerned with the authority that a supervisor exercises over other employees, and the possible conflict of interest with management, the court contrasted Chapter 41.56 RCW as being concerned with relationships between employees and the heads of bargaining units or other public officials.

In accordance with the holding in METRO that supervisors are employees within the meaning of Chapter 41.56 RCW, the Commission has exercised its unit determination authority under RCW 41.56.060 to exclude supervisors from some units:

Where a potential exists for conflicts of interest within the bargaining unit, or within the labor organization certified as exclusive bargaining representative, supervisors will be excluded from the bargaining unit which contains their subordinates.

City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wn.App. 599 (Division III, 1981); pet. rev. den. 96 Wn.2d 1004 (1981).

Chapter 41.56 RCW does not define the term "supervisor", but the statute was enacted at a time when that term had acquired a history and a definite meaning under the National Labor Relations Act (NLRA). The NLRA Section 2(11) defines supervisor as:

[A]ny employee having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them or adjust grievances or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

The definition of "supervisor" found in the Educational Employment Relations Act (EERA), Chapter 41.59 RCW, is generally similar to the definition found in Section 2(11) of the NLRA, but RCW 41.59.020(4)(d) adds a "preponderance" requirement for status as a supervisor. The Commission has looked to the EERA definition when exercising its unit determination authority under Richland in cases under Chapter 41.56 RCW. City of White Salmon, Decision 4370-A (PECB, 1994); Snohomish Health District, 4735-A (PECB, 1995). Thus, employees are not excluded from bargaining units for each and every exercise of supervisory authority. In particular, working

foremen who merely oversee and assist other employees are not excluded from bargaining units. City of Bellingham, Decision 2823 (PECB, 1987); City of White Salmon, supra.

As labor and management sought to implement the principles laid down in Tacoma, METRO, and Richland, problems continued to arise about the "timeliness" of unit clarification petitions. The Richland decision had made it clear that the Commission was not creating a perpetual "open season" to disrupt bargaining units or to abuse Commission procedures:

Absent a change 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.

Expressing concern that parties should have notice of any potential changes to the scope of the bargaining unit, so that bargaining would be realistic in reflecting the actual situation between the employer and union, the Commission adopted a "timeliness" standard in Toppenish School District, Decision 1143-A (PECB, 1981). That approach was later codified in the Commission's rules, as follows:

WAC 391-35-020 PETITION--TIME FOR FILING.

(1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Except as provided in subsection (1) of this section, where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bar-

gaining agreement covering the position or class at issue in the unit clarification proceedings, (i) it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure, and (ii) it filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

Claims for exclusion on the basis of status as a "supervisor" are controlled by WAC 391-35-020(2).

Timeliness of the Petition

The petition in this case was filed after the collective bargaining agreement was signed. The union acknowledged at the hearing, however, that it had agreed with the employer to submit this supervisory issue to the Commission.

Even without the indicated agreement of the parties, this record would support an inquiry under the "changed circumstances" aspect of WAC 391-35-020(2)(a). It is clear that the new job description and title were agreed upon by the parties after the collective bargaining agreement was signed. If Hartman has more responsibility, if she has more educational requirements, and if she now has to be certified by the state, and if Brochte has largely removed himself from personal supervision of the elections functions, those facts warrant consideration.

Application of "Supervisor" Criteria

It is clear that Hartman plans and directs all primary, general and special elections in Mason County, with responsibility to assure that they comply with state law and that elections results are certifiable. Technical expertise or mere supervision of an activity or function is not, however, a basis for exclusion of a position from a bargaining unit under City of Richland, supra.

Hartman is charged with achieving a high degree of accuracy on a continuing basis, including stressful conditions and time restraints. The job description agreed upon by the parties calls for Hartman to oversee regular and temporary employees in the election department.³ Her supervisory authority goes beyond the mere guidance and assistance to other employees expected of a working foreperson. The testimony and exhibits clearly indicate that Hartman has exercised supervisory authority.

The record shows that Hartman recruits employees, and is the final recommending authority for hiring regular and temporary employees. Hartman then supervises the election staff on a day-to-day basis, including scheduling employees, granting employee leave requests, and evaluating employee performance.

Hartman has effectively recommended discipline of subordinates, up to discharge. Brotche testified that Hartman is not allowed to actually fire anyone while he is away (e.g., on vacation), and that she does not presently have sufficient expertise in progressive discipline to act independently in a discharge situation, but that she is authorized to independently suspend an employee with the possibility of discharge (pending a review by Brotche).

On the facts presented, the circumstances have changed. Hartman is now a supervisor, and potential conflict exists by retaining her in a rank-and-file unit.

³ Job descriptions promulgated unilaterally by employers are often of little, or even negligible, probative value, particularly when a modification appears to have been made in contemplation of unit determination proceedings before the Commission. See, Morton General Hospital, Decision 3521 (PECB, 1990). The record here indicates, unlike the facts in Morton: (1) There was independent reason for the change, inasmuch as state law changed to require certified election administrators; (2) the job description was not unilateral, but occurred in response to a union request for an upgrading of the position; and (3) the employer and the union agreed to the new job description.

FINDINGS OF FACT

1. Mason County is a "public employer" within the meaning of RCW 41.56.020 and 41.36.030(2). The staff in the Mason County Auditor's Office includes an individual who holds the job title of "election superintendent".
2. Washington State Council of County and City Employees, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of Mason County employees that has historically included a job classification of "election supervisor".
3. In response to a change of state law enacted in 1992, under which certification of election administrators is now required, the elected auditor of Mason County restricted his personal involvement in election administration and increased the responsibilities of the employee holding the bargaining unit position of "election supervisor".
4. The union thereafter requested a reclassification of the "election supervisor" position, and the parties agreed upon a procedure to implement a reclassification. On June 23, 1994, the employer and union agreed to a job description for the new classification titled "election superintendent".
5. The employer filed the petition for unit clarification in this matter on August 23, 1994.
6. As election superintendent, Diane Hartman is responsible for the hiring and day-to-day supervision of election department employees. She assigns and schedules employees; can effectively recommend discipline, including discharge; and approves vacation and sick leave.

CONCLUSIONS OF LAW


1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.
2. The election superintendent is a "public employee" within the meaning of RCW 41.56.030(2), whose duties and responsibilities as a supervisor indicate a potential for a conflict of interest, so that exclusion of the position from the bargaining unit is warranted under RCW 41.56.060.

ORDER

The bargaining unit described in paragraph 2 of the foregoing findings of fact is clarified to exclude the position of election superintendent.

Dated at Olympia, Washington, this 19th day of September, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

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