

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
CITY OF TOPPENISH	)	CASE NO. 4733-C-83-235
For clarification of an existing bargaining unit of its employees represented by:	)	DECISION NO. 1973 - PECB
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 524	)	ORDER CLARIFYING BARGAINING UNIT

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Cabot Dow Associates, by Barbara Revo, Labor Relations Consultant, appeared on behalf of the City of Toppenish.

Davies, Roberts, Reid, Anderson and Wacker, by Bruce E. Heller, appeared on behalf of the Union.

On August 1, 1983, the City of Toppenish (employer) filed a petition with the Public Employment Relations Commission (PERC) seeking clarification of an existing bargaining unit represented by International Brotherhood of Teamsters, Local 524 (union). A hearing was conducted on January 12, 1984, before Jack T. Cowan, Hearing Officer. Both parties filed post-hearing briefs.

BACKGROUND

Teamsters, Local 524 was certified in City of Toppenish, Decision 92 (PECB, 1976) as exclusive bargaining representative of:

All full-time and regular part-time employees in the following departments: Public Works Department including streets, sewer, water, parks, cemetery, garbage, waste water treatment plant, City Clerk-Treasurer's Department, Public Library Department including the office clerical staff of the above-named Departments.

Excluded from the unit at that time were:

Secretary to the City Manager, Public Works Director, Secretary to the Public Works Director, Assistant Public

Works Director, Superintendent of Garbage, Head Librarian, City Clerk, Deputy City Clerk and all other employees of the City of Toppenish.

The employer thereafter created a separate parks department. The 1981-83 collective bargaining agreement between the parties, signed in June, 1982, adds the parks department to the list of departments in the unit description.

The petition in this case sought rulings concerning "Garbage Superintendent" and "Parks Director" positions, both of which have historically been excluded from the bargaining unit, and a "Waste Water Superintendent" position historically included in the bargaining unit. The employer asserted in the petition that the parties had agreed during contract negotiations in June, 1982 to submit these positions for unit clarification determination by the Commission.

#### POSITIONS OF THE PARTIES

The employer contends that all three positions are supervisory, and that the incumbents should be excluded from the bargaining unit. The employer presented testimony and 42 exhibits in support of its position. In addition, the employer maintains that the parks director has become a confidential employee involved in the formulation of the employer's labor relations policies and in the negotiation of collective bargaining agreements.

The union argues that the three affected employees do not possess independent supervisory authority, and should properly be considered to be lead persons or working foremen. The union's post-hearing brief does not address the confidentiality claim made as to the parks director position.

#### DISCUSSION

##### The Garbage Superintendent

The public works department now has approximately 13 employees working in five functional areas: sewer, water, refuse, sewage treatment and streets. Each of the divisions is headed by a "superintendent" who reports to the public works director. Except for the numbers of divisions and employees, it appears that a similar structure was in effect at the time the bargaining unit was organized.

The record in this proceeding indicates that considerable discussion took place during the course of the original representation proceedings on the

subject of exclusions from the bargaining unit. The employer initially took the position during the proceedings in 1976 that the "superintendent" heading each of the divisions within the public works department performed more management functions that were acknowledged by the affected employees, and that all of them should be excluded from the bargaining unit. As a matter of compromise, the parties eventually agreed to exclude only the garbage superintendent and a vacant assistant public works director position from the bargaining unit. The employer states in its post-hearing brief that the employer has never had an assistant public works director.

Don Brestar has been the garbage superintendent since 1970. Through the time of the representation proceedings and up until 1979, the refuse division had at least four employees. Brestar was instrumental in implementing an automated garbage collection system in 1979, at which time the work force in the refuse division was reduced to Brestar and one other employee. Brestar and his co-worker now both drive garbage trucks. Since the 1979 changes, no new employees have been hired for the refuse division. Brestar's responsibilities have changed. He does not have independent authority to hire, discipline or discharge employees or even to schedule vacations. Brestar and his co-worker now take turns for overtime work opportunities and otherwise work under identical conditions. Although Brestar formerly assumed some budgetary responsibilities for the refuse division, he no longer does so, deferring management of the division to the public works director.

The unit determination policies under Chapter 41.56 RCW were not well-defined at the time this bargaining unit was certified, but it is apparent that the parties were looking at exclusion of persons aligned with the management. The principles for exclusion of supervisors are now well established. The logical basis to continue the exclusion made in 1976 would be that the garbage superintendent was and is a supervisor. The facts, however, indicate an intervening change of circumstances. The record does not support a conclusion that the garbage superintendent now has (or has had at any time since 1979) the type of supervisory responsibilities which warrant the exclusion under RCW 41.56.060 of supervisors from the bargaining unit which contains their subordinates. See: City of Richland, Decision 279, 279-A (PECB, 1978). Just as a change of circumstances can warrant exclusion of a previously included position from a bargaining unit, White Pass School District, Decision 573-A (PECB, 1979), a change of circumstances which erodes or eliminates the basis for an exclusion will warrant reversion of the previously excluded position to the bargaining unit.

#### The Waste Water Superintendent

The waste water superintendent position was one of those discussed, and then left in the bargaining unit during the representation proceedings in 1976. The incumbent, Ed Martindale, is considered to be the "plant operator". Two

other employees are assigned to the sewage treatment plant. Martindale works with the other two employees, performing the same range of duties (from custodial to general plant maintenance) as they do. Martindale's hours of work and compensation are similar to those of the other employees. Martindale does have some additional duties, however. He schedules the employees for the seven-day operation of the treatment plant, he makes recommendations for inclusion in the city budget, he corrects clerical errors in time cards, and he approves sick leave and vacation requests as an adjunct to his scheduling responsibilities. Martindale does not have independent authority to schedule overtime work. He has participated in interviews of new employees, but the final hiring decision rests with the public works director.

Much of the evidence is directed towards the role taken by Martindale in the discipline and eventual discharge of a sewage treatment plant employee in 1982. Close analysis of that evidence does not support a conclusion that Martindale is now a supervisor. The original written communication made by Martindale in 1979 was addressed to the prior public works director, and was more in the nature of a complaint about a co-worker than a supervisor's imposition of discipline on a subordinate. During a period when the public works director position was vacant, Martindale addressed communications directly to the city manager, and might have been regarded at least temporarily as possessing supervisory authority. However, any such authority ceased to exist when Gary Armstrong assumed his present office as public works director. At that time, final authority on personnel matters was shifted to Armstrong. Martindale thereafter provided information to Armstrong, but no longer exercised independent authority. Indeed, the record indicates that Martindale's recommendations have not been consistently acted upon by Armstrong or by other members of the city management. The evidence indicates that it was Armstrong who directed Martindale to write the termination letter regarding the employee in question.

To the extent that there was any change of circumstances, the situation has reverted to its original condition. Martindale shares a community of interest with the employees in the bargaining unit, and the city has not demonstrated the present existence of authority or exercise of authority so as to warrant exclusion of Martindale from the unit which includes his co-workers.

#### The Parks Director

The parks department was created as a separate department of the city during or about May, 1981. The position of parks director was created at the same time. Ovella Cromwell is the first incumbent of the position. The disputed

position is not mentioned specifically in the 1981-1983 collective bargaining agreement between the parties.

Cromwell worked as a lead person in the parks division prior to the creation of the separate department. As department head, she has responsibility of the city's parks, cemetery and swimming pool. She has interviewed and hired a number of temporary employees, as well as the swimming pool manager. She has also independently disciplined several parks department employees. Cromwell routinely assigns work, approves leave requests and overtime, and has implemented wage increases for non-bargaining unit employees. Cromwell is the spokesperson for the parks department for budget matters, equipment purchases, and grant applications for park improvements projects.

During negotiations and mediation sessions conducted in 1982, Cromwell acted as a management representative at the bargaining table. Cromwell also served as a member of the employer's bargaining team during negotiations held in December, 1983. She participated in management strategy sessions prior to each set of negotiations. The employer intends to retain Cromwell as a member of the management negotiating team in future collective bargaining.

The burden on a party seeking to exclude an individual from coverage of the statute as a "confidential" employee is a heavy one, City of Seattle, Decision 689-A (PECB, 1979), but the city has amply met that burden in this case. The "confidential" exclusion set forth in RCW 41.56.030(2)(c) protects the collective bargaining process as a whole by avoidance of putting individuals in a situation of divided loyalties. The parks director in Toppenish has been, and will continue to be, a member of the city's bargaining team and privy to confidential information concerning the employer's labor relations strategies and policies. She meets the test set forth in IAFF v. City of Yakima, 91 Wn.2d 101 (1978). In addition, the parks director has and exercises supervisory authority over bargaining unit employees, indicating that her inclusion in the bargaining unit would present a potential for conflicts of interest within the bargaining unit, thus warranting her exclusion from the bargaining unit under RCW 41.56.060 and City of Richland, supra.

#### FINDINGS OF FACT

1. The City of Toppenish is a political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).
2. Teamsters Union Local 524, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative

of a bargaining unit of public works employees including workers in streets, water, sewer, garbage, cemetery, parks and wastewater departments.

3. The union and the City of Toppenish are parties to a series of collective bargaining agreements covering the bargaining unit described in paragraph 2 of these Findings of Fact, the latest of which was executed on June 28, 1982, for the period January 1, 1981 through December 31, 1983. A dispute has arisen with respect to three positions titled wastewater superintendent, the garbage superintendent and parks director.
4. The wastewater superintendent and garbage superintendent currently do not regularly exercise independent judgment or supervisory authority over subordinate employees.
5. The parks director assigns work, hires, fires, disciplines employees, prepares budget material for the parks department, participates on behalf of the city in contract negotiations and planning of strategy with respect to labor relations policy.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under Chapter 41.56.060 RCW.
2. The garbage superintendent in the City of Toppenish is presently neither a supervisor or a confidential employee as defined in RCW 41.56.030(2), and should be included under RCW 41.56.060 in the unit of employees covering public works department workers.
3. The wastewater superintendent in the City of Toppenish is presently neither a supervisor or a confidential employee as defined in RCW 41.56.030(2), and should continue to be included under RCW 41.56.060 in the unit of employees covering public works department workers.
4. The parks director in the City of Toppenish exercises supervisory authority such that her inclusion in the same bargaining unit with her subordinates would create a potential conflict of interest within the unit and warranting her exclusion from the bargaining unit under RCW 41.56.060.
5. The parks director presently is a confidential employee, and is not an "employee" within the meaning of RCW 41.56.030(2)(c).

ORDER

1. The positions of garbage superintendent and wastewater superintendent are included in the bargaining unit referred to in paragraph 2 of the Findings of Fact.
2. The parks director is excluded from the bargaining unit referred to in paragraph 2 of the Findings of Fact.

DATED at Olympia, Washington, this 27th day of September, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.