

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of)	
)	
WASHINGTON STATE COUNCIL OF)	CASE NO. 815-C-77-33
COUNTY AND CITY EMPLOYEES,)	
LOCAL 307, AFL-CIO)	DECISION NO. 440-PECB
)	
For Clarification of a Bargaining)	
Unit of Employees of)	ORDER CLARIFYING
)	BARGAINING UNIT
CITY OF VANCOUVER)	
_____)	

APPEARANCES:

PAMELA G. BRADBURN, Attorney at Law, appearing on behalf of the Union.

RICHARD N. BURT, Consultant, appearing on behalf of the City.

Washington State Council of County and City Employees, Local 307, AFSCME, AFL-CIO, filed a petition with the Public Employment Relations Commission on March 7, 1977, wherein it requested a clarification of an existing bargaining unit with respect to the job classifications of "chemist" and "sewer maintenance supervisor". A hearing was held at Vancouver, Washington on February 23, 1978 before Rex L. Lacy, Hearing Officer.

POSITIONS OF THE PARTIES

The Union contends that the burden of proving the exclusion of the disputed positions to be appropriate lies with the employer; that the recognition clause of the current collective bargaining agreement does not determine the issue before the Commission; and that both positions should appropriately be included in the bargaining unit. The Union asserts that there is no conflict of interest and that the disputed employees have duties, skills and working conditions which are compatible with those of other unit employees.

The employer contends that the language of Article I "Recognition and Bargaining Unit" of the 1977-1978 collective bargaining agreement between the parties specifically excludes supervisory and professional employees; that the "sewer maintenance supervisor" is a supervisor within the meaning of that exclusion; and that the "chemist" is a professional employee within the meaning of that exclusion.

HISTORY OF BARGAINING

The Union was certified as the exclusive bargaining representative for employees of the City's Public Works Department by the Washington State Department of Labor and Industries on November 16, 1967. That certification described the bargaining unit as:

"Unit: Public Works Department

Included: The Municipal Building employees of the Building Division; the Street Maintenance Section employees and the Traffic Sign Section employees of the Street Division; all Water-Sewer Division employees; all Cemetery Division employees.

Excluded: The Office Section employees; the Engineering Division employees; the Building Inspection employees of the Building Division; the Electrical Section employees of the Street Division; the Equipment Maintenance Division employees."

The Employer and the Union negotiated collective bargaining agreements containing recognition clauses. The 1975-76 agreement between the City and a Joint Labor Coalition which included Local 307 was typical of those agreements in describing the Union's jurisdiction as:

"Article I - Union Representation

Section 1. The Employer recognizes the Coalition Unions as the exclusive bargaining agents for all of its employees covered by this Agreement as follows:

* * *

- (e) All employees of Custodial Section of the Maintenance Services Division of the Personnel and Support Services Department; Cemetery Section of the Parks and Memorials Division of the Parks, Memorials and Recreation Department; and Water, Sewer and Street Divisions of the Public Works Department as indicated on Attachment A to the Master Agreement represented by Local 307VC, AFSCME, hereinafter referred to as the Union."

The 1977-1979 collective bargaining agreement contained a modified recognition clause, the following portions of which are relevant hereto:

"Article I - Recognition and Bargaining Unit

Section 1. The City hereby recognizes the unions listed below as the exclusive collective bargaining representatives for the purposes stated in

Ch. 41.56 RCW of all regular full-time and permanent part-time employees, employed within the bargaining unit of this agreement and as certified by the State of Washington, Public Employment Relations Commission (PERC), but shall exclude all supervisory, professional, temporary and casual part-time employees:

* * *

- (c) All employees of the Custodial and Cemetery Sections of the Parks and Memorials Division of the Parks, Memorials and Recreation Department as indicated on Attachment A to the Master Agreement, represented by Local 307VC, AFSCME, hereinafter referred to as the "Union".

Both the 1975-76 and 1977-79 agreements contain union security clauses under which bargaining unit employees are required to become and remain union members as a condition of employment. The employees who currently hold the "chemist" and "sewer maintenance supervisor" positions were required to become and remain members of the union and had been regarded as bargaining unit employees.

DISCUSSION

The Joint Labor Coalition unions have agreed with the City on recognition clause language which excludes "supervisors" and "professionals". RCW 41.56.030 does not define either of the exclusionary terms used by these parties, but both terms are defined in the National Labor Relations Act and are familiar elements in the lexicon of industrial relations. Supervisors are employees within the meaning of RCW 41.56. City of Tacoma, Decision 95-A (PECB, 1977). Absent an exclusion of "professionals" such as that found in RCW 53.18.010, it is concluded that professional employees are also employees within the meaning of RCW 41.56.

Coverage of the Act and scope of bargaining unit are not necessarily the same. City of Tacoma, supra, and City of Richland, Decision 279-A (PECB, 1978) clearly establish that covered employees who are supervisors may be excluded from units composed primarily of employees under their supervision. Unit determination under RCW 41.56 is controlled by RCW 41.56.060. In the Tacoma case a separate unit of supervisors was sought and granted. In the Richland case the separate and distinct duties, skills and working conditions of supervisors were relied on in determining their unit placement. The same principles can be applied to "professionals", resulting in the conclusion that the bargaining unit description agreed to by the parties here is not inappropriate on its face.

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. City of Richland, supra.

"CHEMIST"

Ayman Aboulezz was hired by the City in November, 1973 for the position he currently holds. He is a graduate of American University in Cairo, Egypt, with a Bachelor of Science degree in Chemistry. His work consists of performing chemical and biochemical analysis in connection with the operation of the City's wastewater treatment plant. He is assisted in the laboratory by one technician whose unit status is not disputed by the employer.

The job description for the "chemist" position which was in effect at the time Aboulezz was hired contains the following language:

"This is advanced technical sub-professional chemical and biochemical laboratory and field work in connection with water quality monitoring and industrial waste control programs, associated with operation of wastewater treatment plants. Work is characterized by application of general and specialized methods, techniques, and instruments commonly used in the laboratory. General supervision is received and work is reviewed through conferences and evaluation of reports." (Emphasis added).

The desirable training and experience levels for that job description were graduation from a standard high school with two years of college level course work in chemistry, bacteriology, biochemistry or similar science and two years of experience in water or wastewater analysis. The testimony revealed that employees can also satisfy this portion of the job requirements through on-the-job training.

An evaluation form filled out by Aboulezz's supervisor in May, 1977 contained a job summary statement utilizing the same language as set forth above, except for the deletion of the prefix "sub-" from the term "sub-professional". Sewer Superintendent Tom Kolby testified that he removed the "sub-" because of his personal assessment of Aboulezz. However, the "desired training and experience" requirements remained the same as they were when Aboulezz was hired.

More recently, the employer has made application to the State of Washington for a certification of its laboratory which would permit the employer to contract for laboratory work with other entities. In

connection with that proposed change, the employer has developed, and it presented at the hearing, a new job description for "chemist" which contains the following summary of duties:

"Regularly and independently plan and conduct chemical and biochemical laboratory and field analysis, tests and investigations associated with water control monitoring, industrial waste control and primary/secondary sewage treatment plant operations. Define and establish sampling and laboratory procedures and tests in accordance with local, state and federal regulations."

The new job description presented by the employer contains revised minimum qualifications, including a requirement for a Bachelor of Science degree in Chemistry and three to five years of experience in chemical and bacteriological analysis. In addition, the employer would now require the chemist to hold a Washington State Health Department license for chemical and bacteriological analysis.

Neither Aboulez nor the Union had been informed of any changes in the chemist job classification. Aboulez testified that he continues to perform the same duties that he has performed throughout his employment.

Aboulez performs water analysis tests using the standardized methods set down by the American Public Water Association and the American Water Works Association. Aboulez may select one of several methods to perform any given test, but he cannot create or devise his own method of testing. The tests can be performed by other individuals within the Department, and Sewer Superintendent Kolby testified that he had performed some tests.

The National Labor Relations Act defines "professional employee" as:

"(a) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital as distinguishable from an apprenticeship or from training in the performance of routine, mental, manual or physical processes or (b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) performing related work under the supervision of a professional employee as described in paragraph (a).

In the absence of any evidence or indication to the contrary, it is concluded that the NLRA definition of "professional" was contemplated by the parties when they used that term in their collective bargaining agreement.

Application of the NLRA definition of "professional" in this case readily indicates that the position held by Aboulez has been a "technician" job as distinguished from a true "professional". The employer's job description in effect at the time Aboulez was hired indicated as much, and Aboulez was seemingly overqualified for the position for which he was hired.

The work required for a job classification, and not the qualifications of the incumbent individual, controls the classification of a position as "professional". Western Electric Co., 45 LRRM 1475 (NLRB 1960). The employer's application for certification of its laboratory was still pending at the time of the hearing, and the implementation of any change must be regarded as prospective. The chemist position will not be removed from the bargaining unit on the basis of speculation as to what the future might bring. The chemist has been and continues to be paid in accordance with the employer's Salary Administration Manual within bargaining unit pay levels at or below pay grade 19. The lowest pay assigned to non-bargaining unit employees of the City is substantially higher, at pay grade 30.

"SEWER MAINTENANCE SUPERVISOR"

Ed Russell has been employed as Sewer Maintenance Supervisor more than two years. He reports to Sewer Superintendent Tom Kolby. In turn, Kolby reports to an Operations Manager, who reports to the Public Works Director, who reports to the City Manager. Russell's present classification was created by combining duties previously assigned to the Chief Operators. Previous to the creation of this position and the employment of Russell, all maintenance work was contracted to outside organizations.

Russell is responsible for the maintenance of all mechanical equipment in the employer's sewage and wastewater treatment plants and all interim pumping stations. In the absence of any other Department employee qualified to perform machinist work, Russell is personally responsible for all of the machinist work in the Department. The record indicates that he spends 50 to 60 percent of his time working with Department employees to effectuate repairs and maintenance of equipment and 25 percent of his

time performing machinist work that he alone is qualified to do. The balance of his work time is allocated among budgetary responsibilities, acquisition of necessary parts and materials, and supervision of three employees assigned to the maintenance department.

Hiring of employees is accomplished through a team interview. The team includes Sewer Superintendent Kolby, a supervisor, and another individual appointed by the employer. Operating on a one-man-one-vote principle, they interview and score applicants and select the candidate to be hired from the applicants receiving the two or three top scores. Russell has not participated in hiring of employees during his tenure as Sewer Mechanic Supervisor.

Russell's authority with respect to discipline of employees is limited to warnings on work performance. Discipline beyond the warning level is done by Kolby. Russell would be involved at the first step under Article XIX, Grievance Procedure, but that step is limited to an informal process. Only at higher steps of the grievance procedure is a written grievance filed and the process formalized. Russell makes daily work assignments to the three employees in his group. He has no association with the management's labor relations processes and has no authority to make purchases except for routine supplies.

Russell wears a work uniform similar to that worn by other Department employees. He receives overtime pay for overtime work, and his basic salary is established among the pay grades for bargaining unit personnel. Russell cannot be regarded as a supervisor. The majority of his duties are not sufficiently distinct or unique to warrant separate treatment for bargaining unit purposes. His position is comparable to the working foremen considered in City of Buckley, Decision 287-A (PECB, 1978) and City of Lacey, Decision 396 (PECB, 1978).

FINDINGS OF FACT

1. The City of Vancouver is a municipal corporation of the State of Washington, located in Clark County.

2. Washington State Council of County and City Employees, Local 307, AFSCME, AFL-CIO is a bargaining representative certified as the exclusive representative of employees of the City of Vancouver in a bargaining unit consisting of all employees of the Custodial and Cemetery sections of the Parks and Memorials Division of the Parks, Memorials and Recreation Department; and the Water, Sewer and Street Divisions of the Public Works Department; excluding supervisory, professional, temporary and casual part-time employees.

3. The job classification of "chemist" has historically been included in the bargaining unit. The minimum qualifications for such position have not included a requirement for college graduation, although the incumbent of the classification holds such a degree. The duties of the chemist were previously described as advanced technical sub-professional chemical and biochemical laboratory and field work analysis; and such duties have not changed during the tenure of the incumbent.

4. The job classification of "sewer maintenance supervisor" has historically been included in the bargaining unit. The incumbent spends the preponderance of his time in the performance of maintenance and machinist work, some of which only he is qualified to perform. The incumbent is paid and receives overtime benefits similar to those of bargaining unit employees, and wears a uniform similar to that worn by his subordinates. The incumbent does not have authority, in the interest of the employer, to hire, promote, transfer, layoff, recall, suspend, discipline or discharge other employees or to recommend effectively such action. The authority of the incumbent with respect to assignment and warning of employees and adjustment of their grievances is limited to routine and informal matters.

CONCLUSIONS OF LAW

1. The sewer mechanic supervisor is an employee within the meaning of the Public Employees Collective Bargaining Act, RCW 41.56, and is not a supervisor whose duties, skills and working conditions require his removal from the bargaining unit described in Findings of Fact paragraph 2.

2. The chemist is an employee within the meaning of RCW 41.56, and is not a professional employee whose duties, skills and working conditions require his removal from the bargaining unit described in Findings of Fact paragraph 2.

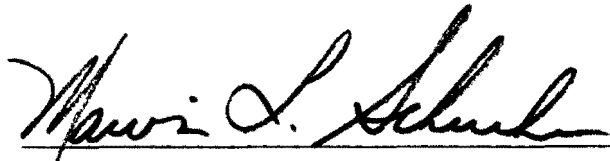
3. The bargaining unit described in Findings of Fact paragraph 2 is a matter of agreement between the parties and is not inappropriate.

ORDER

The positions of sewer mechanic supervisor and chemist shall continue to be included in the bargaining unit described in Findings of Fact paragraph 2.

DATED at Olympia, Washington this 25th day of May, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, reading "Marvin L. Schurke", written over a horizontal line.

MARVIN L. SCHURKE, Executive Director