

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON STATE COUNCIL OF CITY)
AND COUNTY EMPLOYEES) CASE 10659-C-93-629
)
For clarification of an existing) DECISION 5147 - PECB
bargaining unit of employees of:)
) ORDER CLARIFYING
ISLAND COUNTY) BARGAINING UNIT
)
)
)
)

Lori Province, Representative, Washington State Council of County and City Employees, appeared for the union.

Braun Consulting Group, by Robert R. Braun, Jr., represented the employer.

On September 1, 1993, the Washington State Council of County and City Employees filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, identifying nine positions which it claimed should be included in a "courthouse" unit of Island County employees. A hearing was held before Hearing Officer J. Martin Smith on July 11, 1994, at which time the parties limited their presentations to submission of documents.¹ Written arguments were filed to complete the record.

BACKGROUND

Island County includes Whidbey, Fidalgo and Camano Islands in Puget Sound. The largest population center in the county is Oak Harbor, but almost all of the county's services (including community

¹ At the hearing, the union withdrew its claim that a "district court probation officer" should be included in the bargaining unit.

development, planning, health services, the assessor's office and the treasurer's office) are provided from facilities at the county seat in Coupeville.

Island County and the Washington State Council of County and City Employees (WSCCCE) have had a collective bargaining relationship dating back to February of 1986, when an interim certification was issued naming the WSCCCE as exclusive bargaining representative of a unit described as:

All full-time and regular part-time clerical and technical employees of Island County excluding elected officials, officials appointed for fixed terms, confidential employees, supervisors, superior court employees, district court employees, sheriffs department, road department, engineering department, deputy prosecutors, custodians and county extension service employees.

Island County, Decision 2397 (PECB, February 21, 1986).

That bargaining unit does not appear to have been the subject of any subsequent unit clarification order, although there have been some false starts in that direction:

* The representation case was held open to resolve issues reserved by the parties on four positions, but the interim certification was converted to final in December of 1986, when the parties reported that they had resolved their eligibility dispute.²

* The employer filed a unit clarification petition in October of 1986, seeking to raise eligibility issues concerning the "chief appraiser" in the assessor's office and four other positions. The union moved for dismissal of that petition, on the basis that the stipulations made by the parties during the representation proceedings (i.e., that the employees named in the unit clarification petition were eligible voters) were binding, and

² Island County, Decision 2397-A (PECB, 1986).

that petition was dismissed in November of 1986,³ on grounds of "certification bar" and the absence of claimed changed circumstances sufficient to avoid the stipulations made during the representation proceeding.

* The "chief appraiser" in the assessor's office, the "office manager" in the planning department and four other positions were the subject of a unit clarification petition filed by the employer in June of 1987. That case was withdrawn prior to a hearing, based on the parties' written agreement removing the chief appraiser, the office manager in the planning department and three other positions from the bargaining unit as supervisors.⁴

The parties' current collective bargaining agreement, which is effective for the period from January 1, 1993 through December 31, 1995, describes the bargaining unit in terms of:

[A]ll full-time and regular part-time clerical and technical employees of the Employer excluding, elected officials, officials appointed for fixed terms, confidential employees, supervisors, superior court employees, sheriff's department employees, road and engineering department employees, deputy prosecutors and county extension service employees.

The only substantive differences between that description and the certification issued in 1986 are: (1) An exclusion of district court employees in the certification has been omitted, and at least

³ Island County, Decision 2572 (PECB, 1986).

⁴ Notice is taken of the docket records of the Commission for Case 6899-C-87-364, filed on June 5, 1987. With regard to the office manager in the planning department, the settlement document signed by the parties on January 19, 1988 stated:

Allen Haven, who now occupies this position will be allowed to choose whether or not to affiliate with the Union. Any successor in this position shall be excluded.

The case was closed by Island County, Decision 2867 (PECB, February 5, 1988).

a "Court Clerk - Dstrt & Municipal Ct" classification appears in the contract; and (2) an exclusion of "custodians" in the certification has been omitted, and at least a "Night Custodian" classification appears in the contract.

Although the timing and means of their exclusions are not detailed in this record, it is clear that two positions now titled "human service administrators", two "chief deputy" positions in the treasurer's office, and the "office manager" in the community development department were all excluded from the bargaining unit prior to the time the union filed the petition to initiate this proceeding. That petition was filed just prior to the signing of the parties' current contract, and it indicates the parties discussed the disputed positions in their negotiations.

POSITIONS OF THE PARTIES

The union asserts that none of the disputed positions are currently occupied by supervisors. It follows, according to the union, that the employees holding those positions ought to be included in the existing bargaining unit.

The employer argues that each of the disputed employees is a supervisor, and that all of the disputed positions should remain excluded from the courthouse bargaining unit.

DISCUSSION

Controlling Legal Principles

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. It is well established that, while supervisors are public employees within the meaning and coverage of

Chapter 41.56 RCW,⁵ they will generally be excluded from the bargaining units containing their rank-and-file subordinates in order to avoid potential conflicts of interest that would otherwise arise within the bargaining unit.⁶ The Commission noted in Morton General Hospital, Decision 3521-B (PECB, 1991), that Chapter 41.56 RCW does not contain a definition of supervisor, but that such cases can properly be analyzed using the definition found in RCW 41.59.020(4)(d):

(d) ... [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

In Morton, the Commission went on to observe:

A distinction has been drawn between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship.

Such questions are therefore determined on the basis of actual authority over subordinates, not on the basis of titles. In the public sector setting, where final authority is often vested in an elected board or elected official, the power to make effective recommendations is often of key importance in cases of this type.

⁵ Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

⁶ City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

See, City of Mukilteo, Decision 2202-A (PECB 1986); City of Royal City, Decision 2490 (PECB, 1986); Benton County, Decision 2719-B, (PECB, 1989).

Application of Precedent

Chief Deputy - Assessor's Office -

The incumbent in this position, Monty Pfeiffer, is supervised only by the elected assessor, and acts in the absence of the elected official. The only reference in the job description to authority over subordinates is a line indicating that the incumbent is "responsible for providing the supervision of the clerical support system for several sections of the Assessor's office ...".⁷

The parties indicated that the assessor's office is functionally divided into "office-clerical" and "appraiser" sections, and the union did not dispute that Pfeiffer had been involved in employee evaluations as part of his duties. Indeed, Article 6 of the parties' contract contemplates the existence of a "supervisor" between the rank-and-file employees and the department head, and it appears that Pfeiffer is the employer official who responds to grievances at Step One of the contractual procedure.

It appears this position was excluded from the bargaining unit at the time of its inception,⁸ and that it has remained excluded at all times since. This very limited record does not support a conclusion that the chief deputy assessor was improperly excluded

⁷ The job description stipulated in evidence at the hearing bore no date, but the parties agreed that it was the latest one for the job. The job description listed the position as "union exempt".

⁸ The "chief deputy" in the assessor's office was not among the positions reserved in the supplemental agreement. It appears from later correspondence that the position was excluded from the unit by stipulation in the election agreement filed in the representation case.

from the bargaining unit. Under City of Dayton, Decision 1432 (PECB, 1982), unit clarification proceedings are not the proper forum for a union to sweep up unchanged positions that were excluded as supervisory when the unit was created. The union is the moving party seeking a change, but it did not bring forth evidence of any changed circumstances affecting this position.

Chief Appraiser - Assessor's Office -

The incumbent in this position, Richard (Gene) Beason, is the only other employee who reports directly to the elected assessor. Beason stands in for the assessor at meetings, and at hearings before the Board of Equalization.

The job description for the position lists its major function and purpose as: "[Responsible for supervision of the Appraisal division as well as participating in the more complex appraisals conducted by the office". Under the heading of "Supervision Exercised", the same document states: "Employees in this position normally supervise the various Appraisers and the Sales Analyst."

The union argues that the disposition of certain grievances which it filed early in 1994 demonstrate that Beason lacks supervisory authority. A grievance filed on behalf of Ron Telles in January of 1994 concerned step-and-grade advancement on the contractual pay plan then in effect. Grievances filed on behalf of Daniel Jones and Robert Witt in March of 1994 claimed that they had been denied upgrades from Appraiser II to Appraiser III. Beason's grievance response, dated March 29, 1994, had recommended advancements for all three grievants. The elected assessor subsequently acknowledged that the grievants were eligible for the requested upgrades, but denied them based on budgetary constraints.⁹ It does not follow, however, that Beason lacks supervisory authority. The

⁹ The parties stipulated that those grievances were being submitted to an arbitrator.

definitions of "supervisor" found in Chapter 41.59 RCW and in Section 2(11) of the National Labor Relations Act do not require iron-clad legal authority to bind the employer on each and every action taken by a supervisor. As noted above, the power to make recommendations on employment matters is, itself, an indicator of supervisory authority.¹⁰ In this case, the denial of the grievance by the elected official appears to have been based on budgetary considerations which were not a part of Beason's recommendation, and which may have had little or nothing to do with the merits of the grievances. The fact that the union filed the pay upgrade grievances with the chief appraiser evidences that the union acknowledged his role on behalf of the employer. There is a clear potential for conflicts of interest if such officials are included in a bargaining unit.

The union acknowledged that the chief appraiser assigns work and tracks the productivity of his subordinates, but would nevertheless cast Beason as merely being a "lead worker". The fact of being called upon to do some high-level appraisal work does not preclude a finding that his primary duties are the supervision of other employees.¹¹ He is clearly more than a "lead worker".

Beason's position was excluded from the bargaining unit by the specific agreement of the parties which led to withdrawal of the case filed in 1987. Under City of Richland, supra, the status of those included in or excluded from a bargaining unit by agreement of the parties will not be disturbed in the absence of a change of circumstances. The union has not justified a return of the chief appraiser position to the bargaining unit.

¹⁰ A signature on a grievance form or an evaluation form is probative evidence that the person has been given authority to act on behalf of the employer. Renton School District, Decision 3287 (PECB, 1989).

¹¹ See, City of Spokane, Decision 4999 (PECB, 1995).

Office Manager in Planning Department -

The position of office manager in the Planning Department is now held by Edie Eldrick. She reports ultimately to the director of community development, but through a chief planner and the secretary to the director.

The only evidence concerning this position is a job description which was recently drafted by the employer. Part 1.1 of that document includes that "persons in this position are responsible for supervising office support activities for the department and to provide administrative and secretarial support to staff, as well as assist in the management of the office." Other duties listed in the job description are more typical of clerical and secretarial work (e.g., preparation of correspondence and preparation of planning department agendas). The Commission has historically declined to place great weight on job descriptions drafted in contemplation of unit clarification hearings. There is no testimony or evidence of any kind that this employee has any authority other than to pass along task assignments from the planning director or the chief planner.

The purported agreement made by the parties to exclude this position in 1988 appears to have been flawed from its outset. The parties were considering a claimed "supervisor" exclusion from a "wall-to-wall" unit, which would have left the affected individual with no opportunity to implement his statutory collective bargaining rights except through a separate unit of supervisors. At most, the parties created an option for the individual who was the incumbent at that time and a prospective exclusion based on a job title, without reference to actual conflicts of interest. Under City of Richland, supra, and Skagit County, Decision 3828 (PECB, 1991), a unit determination agreement made by the parties is not binding on the Commission if it is in conflict with the statute or the Commission's unit determination policies. This position is properly included in the bargaining unit.

Human Service Administrators -

One of the "human services administrators" positions at issue in this proceeding is held by Linda Morris, who coordinates for mental health, alcoholism and substance abuse issues. The other disputed position under this title is held by Jackie Hightower, who serves as coordinator for developmental disabilities issues. The primary task of these administrators is the coordination of programs which are contracted-out to private companies and service providers.

Under the heading of "supervision exercised", their job description promulgated in 1990 states:

Persons in this position do not supervise any staff, however, [sic] a significant amount of authority exists when dealing with contracted agencies.

They work under the direction of Health Services Director Tim McDonald.

The only reference in the record to any authority over subordinate bargaining unit employees is with regard to Morris' oversight of a mental health area resource coordinator. That reference is contained in a memorandum written by the health services director to the employer's labor relations consultant on September 24, 1993, which was shortly after the petition was filed to initiate this proceeding. The Commission has also declined to place great reliance on self-serving documents created in contemplation of unit clarification hearings. In this case, the employer did not expand on the document by calling its author as a witness. Thus, there is no valid basis for the employer's claim of exclusion as to these two positions.

The employer did not provide any evidence of how these positions came to be excluded from the otherwise wall-to-wall unit in its courthouse. The union correctly argues that supervision of

activities does not create a potential for intra-unit conflicts of the type that were of concern in City of Richland, supra, and is not a basis to exclude a public employee from a bargaining unit under Chapter 41.56 RCW. See, Pasco School District, Decision 3796 (PECB, 1991), where a "desegregation specialist" who coordinated an important program but supervised no employees was left in a bargaining unit. In this case, Morris and Hightower were explicitly guided away from supervisory status by their job descriptions promulgated before the filing of the petition in this case. In the absence of any valid basis for their exclusion, these positions will be included in the bargaining unit.

Some comment is warranted on the union's claim that supervision of less than one employee is occasional at best, and that Commission precedent requires that a supervisor have at least two subordinates. The Commission's unit determination authority under RCW 41.56.060 is not so easily reduced to a numbers game. It is theoretically possible that evidence of the exercise of substantial supervisory authority over one subordinate could be the basis for their placement in separate bargaining units. It suffices to say that those are not the facts established by this record.

Chief Deputies in Treasurer's Office -

One of the two employees now working under this title was an "accountant" when this proceeding was initiated. Chief deputies Bernice Bainbridge and Lois Rusher report directly to Maxine Sauter, the elected county treasurer. The employer explained that an organization chart would now divide the treasurer's office into two divisions: One dealing with revenue assessment and tax collection, headed by Bainbridge; the other handling the accounting for cash and cash reserves, headed by Rusher.

In the job description for these positions, item 1.1 states: "Employees in this position are responsible for providing supervision to the Treasurer's Deputies on a routine basis", while item

3.1 states: "Employees in this position normally supervise the various deputies." Apart from the elected official, Bainbridge, and Rusher, there are six other employees in the treasurer's office.

When the treasurer's office advertised for a property tax clerk in 1992, the interviews of the five finalist candidates were conducted by the elected official and the two chief deputies. It appears that Bainbridge and Rusher took an active role in the interviews, by asking questions of the applicants. It also appears that they participated in a "consensus" decision regarding which candidate was to be hired.¹² Neither NLRB precedent nor Commission precedent provides support for the union's assertion here that a person must have the ability to "veto" the views of more senior officials if they are to be excluded as a supervisor. A "consensus" implies the making of an effective recommendation.

The structure described by the employer is logical. While the record is unclear as to the history concerning their exclusion from the bargaining unit, there is no doubt that Rusher and Bainbridge were given supervisory authority by their job description promulgated in 1990, and that they exercised such authority during the hiring process in 1992. There is no reason to doubt that they would continue to play a vital role in future hiring decisions.

¹² The only male candidate filed a complaint with the federal Equal Opportunity Employment Commission, alleging gender discrimination in violation of Title VII of the Civil Rights Act of 1964, after an all-female interview team denied him a job with an all-female workforce. In dismissing that complaint, the EEOC stated that Rusher and Bainbridge had participated in the interviews as "supervisors" but had not chosen the new employee with any illegal motivation or activity. The EEOC finding is not binding on the Commission's determination of this dispute under Chapter 41.56 RCW, but it is credited as probative evidence of their participation in one of the major indicia of supervisory authority.

The record thus supports a conclusion that Rusher and Bainbridge are properly excluded from the bargaining unit.

Office Manager in Community Development -

Kelly Whitney serves as the office manager on the community development side of the employer's community development department. She ultimately reports to the director, but through at least the confidential secretary to the director.

This position is covered by the same recently-promulgated job description as the office manager in the planning section. While that document states, at Part 1.1, that the "persons in this position are responsible for supervising office support activities for the department and to provide administrative and secretarial support to staff, as well as assist in the management of the office", there is no testimony or documentary evidence showing any actual exercise of substantial supervisory authority over subordinate employees.

The employer has not provided any historical basis for the current exclusion of this position, nor has it provided any evidence of current activities which warrant exclusion of this position from the wall-to-wall bargaining unit in its courthouse. The presence of the excluded confidential secretary casts further doubt on the viability of any "supervisor" claim as to this position. It is properly included in the bargaining unit.

FINDINGS OF FACT

1. Island County is a political subdivision of the state of Washington, and is a public employer under RCW 41.56.020.
2. The 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 a wall-to-wall "courthouse" bargaining unit at Island County.

3. The chief deputy assessor appears to have been excluded from the bargaining unit by stipulation of the parties at the time of its creation, and has been excluded from the bargaining unit at all times since. The job description for the position describes supervisory authority for this position with regard to the office-clerical employees of the assessor's office. There is no evidence of a change of circumstances which has reduced or eliminated the supervisory authority of this position.
4. The chief appraiser in the assessor's office was excluded by agreement of the parties in the context of a previous unit clarification proceeding before the Commission. The job description for the position describes supervisory authority for this position with regard to the appraiser employees of the assessor's office, and there is evidence of actual exercise of such authority in connection with the filing and processing of grievances. There is no evidence of a change of circumstances which has reduced or eliminated the supervisory authority of this position.
5. The office manager position in the planning section of the community development department was the subject of an agreement made the parties in the context of a previous unit clarification proceeding before the Commission, but that agreement was only prospective in nature. The job description for the position is of recent origin. The record does not contain evidence of actual exercise of supervisory authority by this position.
6. The human service administrators employed by Island County deal with services provided by outside vendors, and have no

supervisory duties or authority over other employees in the bargaining unit represented by the WSCCCE.

7. The two employees working under the chief deputy treasurer title each have substantial supervisory authority under a job description promulgated in 1990. Bernice Bainbridge exercises day-to-day authority to direct the workforce in the assessment and tax collection division of the department; Lois Rusher has similar authority to direct the workforce in the accounting and receipts division of the department. They each made effective recommendations in connection with the hiring of a new employee in 1992.
8. The office manager in the community development section of the department of community development works under a recently-promulgated job description. There is no evidence that she has any actual authority to hire, fire, discharge, or discipline other employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The chief deputy assessor is properly excluded from the existing bargaining unit, on the basis of the previous stipulations and actions of the parties, and the absence of evidence of changed circumstances warranting a change of status under RCW 41.56.060.
3. The chief appraiser is properly excluded from the existing bargaining unit, on the basis of the previous agreement of the parties, the exercise of supervisory authority in connection with the processing of employee grievances, and the absence of

evidence of changed circumstances warranting a change of status under RCW 41.56.060.

4. The agreement of the parties to prospectively exclude the job title of office manager in the planning section of the community development department from the bargaining unit is not consistent with the Commission's policies and precedents concerning the exclusion of supervisors from bargaining units, and is not binding on the Commission under RCW 41.56.060.
5. The human services coordinators at Island County are not supervisors of employees in the existing bargaining unit of Island County courthouse employees, so that their inclusion in that unit would not create a potential for conflicts of interest in contravention of RCW 41.56.060.
6. The two employees working under the title of chief deputy treasurer are supervisors whose inclusion in the existing bargaining unit of Island County courthouse employees would create a potential for conflicts of interest in contravention of RCW 41.56.060.
7. The office managers in the community development department have not been shown to be supervisors of employees in the existing bargaining unit of Island County courthouse employees, so that their inclusion in that unit would not create a potential for conflicts of interest in contravention of RCW 41.56.060.

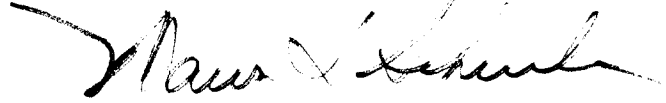
ORDER

1. The chief deputy and chief appraiser in the office of the Island County assessor are excluded from the existing bargaining unit of courthouse employees.

2. The chief deputy treasurer positions in the office of the Island County treasurer are excluded from the existing bargaining unit of courthouse employees.
3. The human resource administrator positions at Island County are included in the existing bargaining unit of courthouse employees.
4. The office manager positions in the community development department at Island County are included in the existing bargaining unit of courthouse employees.

Issued at Olympia, Washington, on the 8th day of June, 1995.

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.