

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PIERCE COUNTY

For clarification of an existing bargaining
unit represented by:

TEAMSTERS LOCAL 117

CASE 23474-C-10-1438

DECISION 11123 - PECB

ORDER OF DISMISSAL

Spencer Nathan Thal, General Counsel, for the union.

Mark Lindquist, Pierce County Prosecuting Attorney, by *Denise Greer*, Deputy Prosecuting Attorney, for the employer.

On August 26, 2010, Pierce County (employer) filed a unit clarification petition seeking exclusion of an administrative officer position from an existing bargaining unit of employees represented by Teamsters Local 117 (union). Hearing Officer Robin A. Romeo held a hearing on April 19, 2011, and the parties filed post-hearing briefs which were considered.

ISSUES PRESENTED

1. Did the employer file its petition in a timely manner consistent with WAC 391-35-020?
2. If so, should the administrative officer position occupied by Billie O'Brien be excluded from the unit as a supervisory employee?

Based upon the record, the employer's unit clarification petition is untimely. The employer did not establish a substantial change of circumstances as required by WAC 391-35-020(2)(b), nor did it establish that it put the union on notice during contract negotiations that it would contest the inclusion of Billie O'Brien's (O'Brien) position through a unit clarification proceeding filed prior to the signing of the recent collective bargaining agreement, as required by WAC

391-35-020(2)(a). Accordingly, the question of whether the position at issue is supervisory will not be answered here.

APPLICABLE LEGAL STANDARDS

A unit clarification petition may be filed at any time regarding a newly created position, disputes between two different bargaining units, certain school district employees, employees eligible for interest arbitration, confidential employees, and one person bargaining units. WAC 391-35-020(1). A unit clarification petition concerning status as a supervisor may only be filed under certain conditions in order for it to be timely. WAC-391-35-020(2).

Where there is a valid collective bargaining agreement, the employer must have placed the union on notice during the bargaining of the agreement that it was contesting the inclusion of the position in the unit and the employer must have filed a petition before the bargaining is complete. WAC 391-35-020(2)(a). If the employer has not done so, the employer must demonstrate substantial changed circumstances during the term of the agreement which warrant a change in the bargaining unit in order to file a petition. WAC 391-35-020(2)(b). *Yakima School District*, Decision 9020-A (PECB, 2007).

A change in circumstances must be clearly and unequivocally proven, *Pierce County*, Decision 3992 (PECB, 1992), *citing Central Kitsap*, Decision 1296 (PECB, 1982), and the change must demonstrate an identifiable conflict of interest. *Ben Franklin Health District*, Decision 6478 (PECB, 1998). A change in job title alone is not sufficient to show a change in circumstances. The actual change in the duties and authority of the individual is examined. *State - Corrections*, Decision 9921 (PECB, 2007).

ANALYSIS

The Pierce County Assessor-Treasurer's Office is responsible for assessment of real and personal property in the county, collecting taxes, setting levies, cartography, and segregation of property. The union represents a bargaining unit of certain employees of the employer in the following operations:

Assessor/Treasurer, Clerk, Facilities Management, Human Services, Medical Examiner, Parks and Recreation, and Veterans' Aid Bureau.

Individual positions are listed in Appendix A of the parties' 2009-2011 collective bargaining agreement but recognition language in the agreement excludes employees represented by other labor organizations, supervisors, except for classifications specifically set forth in Appendix A, guards, confidential employees, and all other employees. Agency records do not reflect that this bargaining unit was certified by the Commission.

The position in question is one of two administrative officer positions in the Assessor-Treasurer's Office, and is currently occupied by O'Brien. At the employer's request, O'Brien's position was added to the bargaining unit in 2005. Prior to the current collective bargaining agreement, which expires December 31, 2011, the duties of this position included oversight of several teams: Customer Service, Open Space & Exemptions, Mobile Home Support & Personal Property, Cartography & Land Maintenance, Foreclosures – Real Property & ULID, and Levies. The fact that O'Brien's administrative officer position is not listed in Appendix A was described as an oversight by the employer.

In 2009, a new Assessor-Treasurer, Dale Washam (Washam) was elected. For a short period of time following Washam's election, O'Brien served as the acting deputy chief. The duties of the other administrative officer did not change. O'Brien remained in that position until May 2009, when a new deputy chief was hired.

In March 2010, the other administrative officer resigned. That position was subsequently eliminated and the organizational chart was changed to reflect a new reporting structure. That structure reflected that O'Brien, as administrative officer, reported directly to Washam as she had been doing since May 2009. Other than a change regarding to whom O'Brien reported, there is no evidence that any significant changes were made to O'Brien's duties and responsibilities. Furthermore, although the employer asserts that it discussed removal of O'Brien's position from the bargaining unit in late 2009 or 2010, it admits this was well after the collective bargaining agreement was executed in June 2009.

CONCLUSION

A substantial change of circumstances did not occur. The only change that occurred was in the reporting structure of the administrative officer from the deputy chief to the Assessor-Treasurer. The employer did not put the union on notice that it was going to contest O'Brien's inclusion in the bargaining unit prior to executing the collective bargaining agreement. Therefore, the petition was not timely filed and must be dismissed. Accordingly, the supervisory status of O'Brien's position will not be addressed in this proceeding.

FINDINGS OF FACT

1. Pierce County is a public employer within the meaning of RCW 41.56.030(13).
2. Teamsters Local 117 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Teamsters Local 117 is the exclusive bargaining representative of a bargaining unit of Pierce County employees in the following operations: Assessor/Treasurer, Clerk, Facilities Management, Medical Examiner, Parks and Recreation, and Veterans' Aid Bureau.
4. A 2009-2011 collective bargaining agreement between the parties is currently in effect.
5. Pierce County filed a unit clarification petition seeking to exclude the administrative officer position currently held by Billie O'Brien in the Assessor/Treasurer's Office from the bargaining unit.
6. The duties of the administrative officer include oversight of several teams: Customer Service, Open Space & Exemptions, Mobile Home Support & Personal Property, Cartography & Land Maintenance, Foreclosures – Real Property & ULID, and Levies.

7. In 2009, O'Brien began reporting directly to Assessor/Treasurer Dale Washam. Since that time, there has been no substantial change in her duties and responsibilities.
8. The employer did not put the union on notice during contract negotiations that it would contest the continued inclusion of the administrative officer position occupied by O'Brien in the bargaining unit.

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 petition was not timely filed under WAC 391-35-020(2)(b) as there has been no substantial change in circumstances to the administrative officer position held by O'Brien.
3. The petition was not timely filed under WAC 391-35-020(2)(a) as the employer did not put the union on notice during negotiations that it would contest the continued inclusion of the administrative officer position held by O'Brien in the bargaining unit.

ORDER

The petition for unit clarification is hereby DISMISSED in its entirety.

ISSUED at Olympia, Washington, this 4th day of August, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 08/04/2011

The attached document identified as: **DECISION 11123 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23474-C-10-01438 FILED: 08/26/2010 FILED BY: EMPLOYER
DISPUTE: MANAGEMENT
BAR UNIT: ALL EMPLOYEES
DETAILS: -
COMMENTS:

EMPLOYER: PIERCE COUNTY
ATTN: JOE CARRILLO
615 S 9TH ST STE 200
TACOMA, WA 98405-4670
Ph1: 253-798-6690 Ph2: 253-798-7480

REP BY: DENISE GREER
PIERCE COUNTY
CIVIL DIVISION
955 TACOMA AVE S STE 301
TACOMA, WA 98402-2160
Ph1: 253-798-7748

PARTY 2: TEAMSTERS LOCAL 117
ATTN: TRACEY THOMPSON
14675 INTERURBAN AVE S STE 307
TUKWILA, WA 98168-4614
Ph1: 206-441-4860

REP BY: SPENCER NATHAN THAL
TEAMSTERS LOCAL 117
14675 INTERURBAN AVE S STE 307
TUKWILA, WA 98168
Ph1: 206-441-4860