

City of Sequim, Decision 10955 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

CITY OF SEQUIM

and

TEAMSTERS LOCAL 589

For clarification of an existing bargaining unit .

CASE 23693-C-10-1443

DECISION 10955 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Dan Taylor, Staff Representative, for the union.

Gary Long, Labor Consultant, for the employer.

On December 17, 2010, Teamsters Local 589 (union) and the City of Sequim (employer) jointly filed a unit clarification petition under Chapter 391-35 WAC, seeking to clarify its existing city-wide non-uniformed bargaining unit that has been in existence since about 1980. The employer recently had a major reorganization of several city departments and revision of job classifications and job descriptions. As a result of that reorganization, both parties are seeking to exclude the Streets Manager and Utilities Manager as supervisors and the Payroll Administrator/HR Assistant as confidential. On January 5, 2011, Representation Coordinator Sally Iverson conducted a conference call with the parties during which they stipulated to the exclusion of the petitioned-for positions.

ISSUES

1. Should the Streets Manager and Utilities Manager positions be excluded from the existing city-wide non-uniformed bargaining unit as supervisors?

2. Should the Payroll Administrator/HR Assistant position be excluded from the existing city-wide non-uniformed bargaining unit as confidential?

The Executive Director accepts the parties' stipulations and modifies the existing non-uniformed bargaining unit represented by the union to exclude the petitioned-for employees.

APPLICABLE LEGAL PRINCIPLES

The status of supervisors - Supervisors are employees within the meaning of Chapter 41.56 RCW and are entitled to organize for the purpose of collective bargaining. *METRO v. Department of Labor and Industries*, 88 Wn.2d 925 (1977). In order to prevent a conflict of interest, supervisors are separated from the bargaining units that contain the employees they supervise. *City of Richland*, Decision 279-A (PECB, 1978), *affirmed*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). This principle has been codified in WAC 391-35-340 which states:

It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from the bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

Chapter 41.56 RCW does not contain a definition of supervisor, but the Commission has traditionally looked to the definition of supervisor set forth in RCW 41.59.020(4)(d). *Granite Falls School District*, Decision 7719-A (PECB, 2003). According to that definition, a supervisor is:

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 . . . The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

A supervisor can perform a “preponderance” of the supervisory duties in two ways. If a majority of an individual’s time is spent on supervisory duties, that individual is a supervisor. *Richland School District*, Decision 10151 (PECB, 2008). Alternatively, an individual who spends less time performing supervisory duties but performs a preponderance of the enumerated duties, is also a supervisor. *King County*, Decision 10075 (PECB, 2008).

Exclusions of confidential employees – A public employer seeking a confidential employee designation has a heavy burden of proof, because confidential status deprives an employee of all collective bargaining rights. *King County Fire District 13*, Decision 9845 (PECB, 2007); *Pierce County*, Decision 8892-A (PECB, 2006); *State – Natural Resources*, Decision 8711-B (PSRA, 2006); *Town of Ruston*, Decision 9976 (PECB, 2008).

WAC 391-35-320 codifies the confidential employee test, often referred to as the labor nexus test, as follows:

Confidential employees excluded from all collective bargaining rights shall be limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

It is not sufficient to simply establish the existence of an intimate fiduciary relationship between the alleged confidential employee and a public official because the labor nexus between actual job duties and the formation of labor relations policy must be demonstrated as well. *King County Fire District 13*, Decision 9845. Confidential employees’ work assignments do not have to be exclusively or primarily confidential, but the employees must have “necessary, regular, and ongoing” confidential work assignments. *City of Redmond*, 7814-B (PECB, 2003), citing *City of Cheney*, Decision 3693 (PECB, 1991).

ANALYSIS

Issue 1: Streets Manager and Utilities Manager Positions

The Streets Manager position and Utilities Manager Position use independent judgment on behalf of the employer to assign and manage the work of employees in the division workgroups, conduct performance evaluations, make effective decisions or recommendations on hiring, transfers, promotions, grievances, discipline, and discharges.

The parties stipulate that the Streets Manager and Utilities Manager positions are supervisory because a preponderance of their work time is engaged in supervisory activities.

Issue 2: Payroll Administrator/HR Assistant Position

The Payroll Administrator/HR Assistant position assists the HR Manager in a confidential capacity in preparing information for the development of the city's collective bargaining negotiations.

The parties stipulate that the Payroll Administrator/HR Assistant position is confidential and therefore excluded from the bargaining unit because she assists and acts in a confidential capacity to another confidential employee and because her confidential duties are necessary, regular, and on-going.

CONCLUSION

The Executive Director finds that the stipulations filed by the parties are sufficient to constitute a basis for a ruling, and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the clarification requested by the parties. The Executive Director accepts the stipulations affected by the parties that the two supervisory positions at issue exercise authority on behalf of the employer over subordinate employees pursuant to WAC

391-35-340, and therefore are excluded from the existing non-uniformed bargaining unit. The Executive Director also accepts the parties' stipulations that the confidential position at issue assists and acts in a confidential capacity to another confidential employee, and therefore is appropriate for exclusion pursuant to WAC 391-35-320 from the existing non-uniformed bargaining unit.

FINDINGS OF FACT

1. The City of Sequim is a public employer within the meaning of RCW 41.56.030(13).
2. Teamsters Local 589 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union is the exclusive bargaining representative of a bargaining unit consisting of all non-uniformed employees of the employer.
4. The employer recently completed a major reorganization of several city departments and revised job classifications and job descriptions.
5. The parties jointly petitioned for determination of the supervisory status of the Streets Manager and Utilities Manager after the employer's reorganization.
6. The parties jointly petitioned for determination of the confidential status of the Payroll Administrator/HR Assistant after the employer's reorganization.
7. The parties stipulate that the Streets Manager and Utilities Manager are supervisors because a preponderance of their work time is engaged in supervisory activities.
8. The parties stipulate that the Payroll Administrator/HR Assistant is confidential because she assists and acts in a confidential capacity to the HR Manager.

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 positions of Streets Manager and Utilities Manager are supervisory positions under WAC 391-35-340.
3. The position of Payroll Administrator/HR Assistant is a confidential position under WAC 391-35-320.

ORDER

The positions of Streets Manager and Utilities Manager are excluded from the existing non-uniformed bargaining unit as supervisory positions and the Payroll Administrator/HR Assistant is excluded as confidential position.

ISSUED at Olympia, Washington, this 7th day of January, 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.