

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:))	
TEAMSTERS UNION, LOCAL 252))	CASE NO. 5479-E-84-984
Involving certain employees of:))	DECISION NO. 2381 - PECB
LEWIS COUNTY))	DIRECTION OF ELECTION
_____))	

M. Mike Mauermann, Business Agent, appeared on behalf of the union.

Eugene Butler, Deputy Prosecuting Attorney, appeared on behalf of the employer.

On October 3, 1984, Teamsters Union Local 252 filed a petition with the Public Employment Relations Commission, for investigation of a question concerning representation. The union sought certification as exclusive bargaining representative of full-time and regular part-time "communications technicians" employed by the "Lewis County Department of Communications". A pre-hearing conference was held on November 14, 1984, at which time it was determined that a dispute existed concerning the eligibility of two employees holding the Communications Officer III classification for inclusion in the bargaining unit. A hearing was held on December 12, 1984, at Chehalis, Washington, before Jack T. Cowan, Hearing Officer.

On February 6, 1985, the union filed a complaint charging unfair labor practices with the Commission, alleging that Lewis County had committed unfair labor practices by its discharge of two employees who had theretofore been stipulated to be eligible voters in the instant case.¹ The complaint was found to state a cause of action under WAC 391-45-110, and was assigned to an Examiner prior to the deadline for filing of briefs in the instant matter, which was deemed "blocked" under WAC 391-25-370. The union filed a request to proceed in the instant case, but the existence of eligibility disputes concerning four employees out of a claimed bargaining unit of eight employees contra-indicated expedited proceedings per City of Redmond, Decision 1367-A (PECB, 1982). Briefs were received through March 18, 1985.²

BACKGROUND

The Lewis County Communications Department provides emergency dispatch services for a number of law enforcement, firefighting and emergency medical service providers in Lewis County. The budget for the dispatch center is under the control of an "administrative board", while the operating policies of the dispatch center are under the control of an "operations board". Each of the boards is composed of representatives from the county and from local government agencies which utilize the services of the dispatch center. Reporting to the two boards is the Chief

¹ The unfair labor practice case was docketed as Case No. 5675-U-85-1024.

² The hearing on the unfair labor practice allegations in Case No. 5675-U-85-1024 was conducted on four separate days over a period between April 10, 1985 and June 11, 1985. The Examiner resigned from the Commission staff prior to issuing a decision on the matter, and the unfair labor practice case was thereupon transferred to the Commission for decision, where it remains pending.

Dispatcher, Garry Austin. The parties agree that Austin should be excluded from the petitioned-for bargaining unit.

The dispatch center operates 24 hours each day, every day of the year. There is a total of nine employees, including Austin, who perform dispatch duties. Although the terms "communications officer" and "communications technician" are used synonymously, it appears that all of the employees other than Austin are classified under formal titles of Communications Officer I, II or III. Pay and career progression moves upwards from the entry ("I") level through a probationary period to the "II" and "III" levels. The employees in all three classifications receive similar benefits.

Austin serves as the day-to-day administrator for the dispatch center. He is responsible for liaison with the two boards, budget preparation, payroll, policy administration and procedures for the department. During the 40 hours per week that Austin is on duty, it appears that any issues calling for any exercise of management discretion are referred to him. When he is away from the dispatch center, but in the local area, Austin carries a "beeper" and is subject to call by means of that device.

Leslie Mael and Michael Kytta occupied the two Communications Officer III positions at the time of the hearing in this matter. They had been employed at the dispatch center for three and five years, respectively. Both of them had been trained by an employee who now holds the classification of Communications Officer II. Both of them have attended meetings of the two boards, but they are not required to do so. When on duty, Mael and Kytta take part in the actual receiving of incoming calls and dispatching of emergency response personnel. Their duties are distinguished from those of persons in the Communications Officer II class by their assignments to certain additional

administrative duties. Thus, Mauel and Kytta have input on the scheduling of employees, training of employees and development of operating procedures. In addition, the members of the Communications Officer III class are authorized to copy incident tapes from the master recordings of dispatch center communications.

It appears that the normal crew size in the dispatch center is two employees on duty per shift. Three employees may be assigned to the same shift, particularly when one of those is a new employee in training. It can also be inferred that there are times when only one employee is assigned on the "graveyard" shift. When Austin is not on the premises, the most senior Communications Officer (looking first to classification, and then within classification by length of service) is deemed to be "in charge" at the dispatch center. The person in charge is responsible for overseeing the work of other employees on the shift. Thus, when either Mauel or Kytta are on duty with employees of lower classification (including the employee who trained each of them), the Communications Officer III is in charge. There are times, however, when Mauel and Kytta are both scheduled to work on the same shift, so Kytta would be in charge under those circumstances. There are also times when neither Austin nor Mauel nor Kytta is on duty, and then the senior Communications Officer II on duty is deemed to be in charge.

POSITION OF THE PARTIES

Local 252 contends the bargaining unit for which it seeks certification is an appropriate unit for bargaining, and it asks for inclusion of all employees in the Communications Officer I, II and III classifications within that unit.

The employer contends that the employees in the Communication Officer III positions should be excluded from the petitioned-for bargaining unit. The reasons advanced for such an exclusion are that they are supervisors, that they now have and will increasingly have access to confidential information, that they are the sole level of management between the employer and the rank-and-file communications workers, that they are capable of committing unfair labor practices which could be charged against the employer, and, additionally, that they lack a community of interest with other department personnel.

DISCUSSION

Supervisors

Unlike the situation which pertains in the private sector under the National Labor Relations Act, supervisors are public employees within the coverage of Chapter 41.56 RCW. METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Supervisors have been excluded from units of their subordinates under the unit determination provisions of Chapter 41.56 RCW where there is indication of a conflict of interest which precludes their inclusion in the same unit. City of Richland, Decision 279-A (PECB, 1979), aff. 29 Wa.App. 599 (1981), cert. den. 96 Wn.2d 1004 (1981). In deciding questions of alleged supervisory status, it is necessary to determine whether the disputed persons possess true supervisory authority, i.e., the ability to effectively recommend hiring, discipline or discharge. Thurston County, Decision 1064 (PECB, 1980). In City of Sunnyside, Decision 1178 (PECB, 1981), shift sergeants were excluded from a law enforcement officer bargaining unit as supervisors, where they were found to "have duties and responsibilities which included training, supervising and evaluating employees and

authority to discipline employees and adjust employee grievances".

Responding to a question as to whether a Communications Officer III has the authority to hire employees, Chief Dispatcher Austin replied, "No". Other testimony established that employees in the Communications Officer III class have participated in the development of examinations used as part of the hiring process, but it appears that employees in the Communications Worker II class also participated in such activity as an outgrowth of their expertise in the subject matter of the examinations rather than as an exercise of management authority to hire.

Austin testified that a Communications Officer III could effectively obtain the termination of an individual, or could suspend an employee, but that evidence is controverted in this record. The person in charge on each shift would evidently have the authority to send home a junior employee who showed up unfit for duty, or to fill out an "incident" report on problems arising or employee errors observed during the shift. There is strong indication that either the Communications Officer II or Communications Officer III would attempt to contact Austin for any substantial problem arising during a shift. There was even indication that an employee in charge might attempt to contact a member of the operations board in such a situation if Austin could not be reached. Contradicting Austin's testimony that discipline imposed by a Communications Officer III would be reviewed directly by the operations board, the testimony of the disputed employees clearly indicated that they did not believe they had the authority to suspend beyond the immediate shift, or authority to discharge any employee. Further, it was clear that they viewed their role as one of merely making a recommendation

to Austin, and that any recommendation they might make on discipline or discharge would be subject to independent review by Austin.

The disputed employees have submitted evaluations of junior employees. The employer relies particularly on an occasion where an employee was transferred to work with Mael in an attempt to insure that "the training would stabilize, that the person got the necessary training and evaluation throughout the process". Several previous evaluations of that individual by others had formed the basis for concern, so that the tenure of the employee was already in question when the transfer occurred. Mael submitted two additional evaluations of the employee, recommending in the second of those that the employee should be terminated. The employee was subsequently terminated. When questioned concerning the matter, however, Mael testified as follows:

Q. Have those evaluations resulted in either promotion or disciplinary action or even termination of an employee?

A. I don't know that any of my recommendations have resulted or been the prime factor, in the demotion, promotion or dismissal of a person. They may have been a part of it, but I don't know that any recommendation exactly that I have made has been used as the sole reason for, say, termination of employee, or promotion or suspension

The record also establishes that such evaluations have not been the exclusive province of the Communications Officer III class. The more senior employees in the Communications Officer II classification have also been asked for, and have provided, evaluations of the less senior employees that they have worked with on shift. Thus, while an evaluation made by a Communications Officer III has been consistent with the eventual termina-

tion of an employee, the record falls far short of establishing that particular evaluation, by itself, as the effective determinant concerning the termination, or of establishing that future evaluations would have a direct cause and effect relationship with action against employees.

While Mael and Kytta have authority to allocate part-time personnel to fill vacancies created by sickness or vacations, it appears that their authority is exercised within the close confines of a budget established by Austin and the administrative board and, further, within the confines of shift strength levels approved in advance at least by Austin. Additionally, it appears that a Communications Officer II would have the same authority to call out extra help in the event of an absence reported for a shift when they were the person in charge.

In summary, the record establishes that the real locus of authority on all matters of hiring, discipline and discharge is with Chief Dispatcher Austin, who has authority to independently review any recommendations made by his subordinates on such matters prior to final decisions made by Austin or the board.

Training is provided by a variety of experienced personnel, including the chief dispatcher and employees in the communications officer III and II classes. Thus, while the disputed employees do perform ongoing training activities, this is again not an exclusive function of their class or even of persons claimed by the employer as appropriately excluded from the bargaining unit.

There is currently no structured grievance procedure in existence for employees of the communications department, and so there is nothing to indicate that the members of the disputed Communica-

tions Officer III class would have any authority to adjust employee grievances beyond matters arising between them (as the person in charge) and other employees on particular shifts.

Lacking the necessary composite requirements of supervisory authority as set forth in Thurston County, supra, it is concluded that the employees in the Communication Officer III class in the instant case do not qualify for exclusion as supervisors.

Confidentiality

The term "confidential", as defined in numerous cases decided by the Commission and the courts, involves access, proximity or involvement with labor relations information and activity, where disclosure of employer information by an employee to the union would be damaging to the labor relations process. IAFF v. City of Yakima, 91 Wn.2d 101 (1978); San Juan County, Decision 1690-A (PECB, 1984); Grays Harbor County, Decision 1948 (PECB, 1984). The "confidential" exclusion of the collective bargaining statute does not protect other privileged information where disclosure by an employee to either their union or other members of the public would be a violation of trust. City of Buckley, Decision 287-A (PECB, 1977); City of Anacortes, Decision 452 (PECB, 1978).

The employer maintains tape recordings of the conversations which take place on its telephone lines and its radio frequencies. The Communications Officer III employees have access to those tapes for review purposes. They are able thereby to monitor dispatch center activities, and to initiate modifications of procedure or corrective measures. It was acknowledged that the radio transmissions were in the public domain, and subject to being overheard by anybody with the equipment to do so. Some of what transpires over the telephone lines might be regarded as being private between the parties to the conversation, but there is no

indication that any of that material is, or needs to be, concerned with the labor relations policies of the employer.

There is no indication in the record that the members of the Communications Officer III class have historically had any substantial input on budget, wage levels or benefit levels. The chief dispatcher himself indicated that he was unsure of the legal ramifications of collective bargaining. There has been no occasion in the past for the employer to bargain collectively concerning its dispatch center employees, and any discussion of plans to use the members of the Communications Officer III class as bargainers on behalf of management must be regarded as merely speculative at this time.

The record fails to support a conclusion that the disputed individuals have the intimate fiduciary relationship necessary to warrant exclusion. See: City of Mercer Island, Decision 725 (PECB, 1979); City of Richland, Decision 1519 (PECB, 1982).

Sole Level of Management

The employer's claim that the disputed individuals represent the sole level of management between the employer and the workers has been considered, but must be rejected on the facts of this case. Supervisory positions were excluded from a bargaining unit in Cascade School District, Decision 1961-A (PECB, 1983), where they reported directly to the executive head of a complex employer organization. In the case at hand, however, the chief dispatcher occupies the role of executive head of the single operation at issue. Thus, while the members of the Communications Officer III class report directly to the chief dispatcher, they are not the sole level of management within the department.

Potential for Unfair Labor Practices

An employer is responsible under Chapter 41.56 RCW for the acts of its agents. It indicates concern that it could be held responsible for "interference" or "discrimination" violations committed by persons holding the Communications Officer III classification. But speculation about the potential for somebody to commit an unlawful act is not a basis for re-writing the precedents established by the Supreme Court in METRO, supra, and City of Yakima, supra. Supervisors are public employees within the meaning of the Act, and mere possession of supervisory authority is not a basis for invoking the "confidential" exclusion. In this case, the individuals at issue are found to be neither supervisors nor confidential employees.

Community of Interest

The members of the Communications Officer III class have basic skills which are similar to those of the other dispatch center employees. Although they have limited administrative duties and serve as lead workers, their duties are not sufficiently disparate from, or in conflict with, the interests of other dispatch center employees to warrant their exclusion from the petitioned-for unit as supervisors. Neither are they so distinct as to suggest the propriety of a separate unit of supervisors as in Tacoma-Pierce County Law Enforcement Support Agency, Decision 537-A (PECB, 1978), where a separate unit of supervisors was certified after a re-organization of that department changed the facts on which Tacoma-Pierce County Law Enforcement Support Agency, Decision 84-A (PECB, 1977) had been based. See, also, City of Toppenish, Decision 1973-A (PECB, 1984). On the record here, it is concluded that the employees in the Communications Officer III class have a community of interest with other employees of the Lewis County Communications Department.

FINDINGS OF FACT

1. Lewis County 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 252, an employee organization within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition for investigation of a question concerning representation involving all communication technicians in the Lewis County Communications Department.
3. The overall management of the dispatch center is under the supervision of an administrative board and an operations board. Day-to-day management of the dispatch center is vested in the chief dispatcher.
4. Employees in the Communication Officer III class have duties, skills and working conditions generally similar to those of other employees of the Lewis County Communications Department. In addition, they act as lead workers on the shifts when they work, and perform quasi-administrative duties as assigned by the chief dispatcher.
5. The employees in the Communications Officer III class have attended meetings of the boards, but have not been required to do so, and have not been involved in establishing budgets, wages or benefits for the dispatch center or its employees.
6. The senior employee on duty on each shift is considered to be in charge in the absence of the chief dispatcher, and is thus called upon to report problems and errors occurring on the shift, as well as to take steps to assure the presence of a sufficient number of personnel fit for duty on the shift.

Such responsibility may be exercised by a member of the Communications Officer III class as to either the other Communications Officer III or employees in lower classes, and may be exercised by employees in the Communications Officer II class in the absence of the chief dispatcher and members of the Communications Officer III class.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. A bargaining unit of all full time and regular part-time dispatch technicians of the Lewis County Communications Department, excluding the chief dispatcher, is an appropriate unit for purposes of collective bargaining within the meaning of RCW 41.56.060.
3. Communications Officer III Leslie Mael and Michael Kytta are public employees, and are not confidential employees within the meaning of RCW 41.56.030(2)(c), who act as lead workers and who perform certain quasi-administrative duties. They share a community of interest with other non-supervisory dispatcher employees and are appropriately included in the petitioned-for bargaining unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission in the bargaining unit described as:

All full-time and regular part-time dispatch technicians of the Lewis County Communications Department, excluding the chief dispatcher.

for the purpose of determining whether a majority of the employees desire to be represented by Teamsters Union Local 252 or by no representative.

DATED at Olympia, Washington, this 25th day of March, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 392-25-590.