

King County, Decision 7053 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON STATE COUNCIL OF)
COUNTY AND CITY EMPLOYEES,)
COUNCIL 2, AFSCME) CASE 14862-E-99-02478
)
Involving certain employees of:) DECISION 7053 - PECB
)
KING COUNTY) ORDER OF DISMISSAL
)
)
_____)

Audrie B. Eide, General Counsel, represented the petitioner.

Richard Hayes, Labor Negotiator, represented the employer.

Jared C. Karstetter, Jr., Attorney at Law, represented the incumbent intervenor, King County Corrections Guild.

On October 29, 1999, the Washington State Council of County and City Employees, Council 2 (WSCCCE) filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a bargaining unit of approximately 40 corrections sergeants employed by King County (employer). The petitioned-for employees are included in a bargaining unit of approximately 560 corrections officers and sergeants represented by the King County Corrections Guild (KCCG), and that organization was granted intervention in the proceedings. An investigation conference was conducted on November 23, 1999, by telephone conference call. An investigation statement issued on November 23, 1999, indicated that the issue for hearing was limited to the propriety of the proposed bargaining unit. A hearing was

held on February 29, 2000, before Hearing Officer Walter M. Stuteville.¹ The WSCCCE and KCCG filed briefs on April 14, 2000.

Based upon the evidence presented at the hearing and the record as a whole, the Executive Director rules: (1) the WSCCCE has not established that the corrections sergeants are supervisors within the meaning of Commission precedent, and (2) severance of those sergeants from the existing bargaining unit would not result in an appropriate unit configuration. The petition is dismissed.

BACKGROUND

The King County Department of Adult Detention operates two jail facilities: The King County Jail and Work Release Unit situated in downtown Seattle, and the Regional Justice Center situated in Kent, Washington. The department is headed by a director, two divisions commanders, two division majors, six shift captains, and a captain in charge of the court detail.

From the early 1970's until 1996, the corrections employees of King County (including corrections sergeants, corrections officers, and jail aides) were represented for purposes of collective bargaining by a local union of the Service Employees International Union, AFL-CIO. On September 10, 1996, the KCCG was certified as exclusive bargaining representative of the corrections sergeants and

¹ The investigation statement noted that the KCCG questioned the sufficiency of the petitioner's showing of interest, but that is not a matter for a hearing. The administrative evaluation of a showing of interest only needs to be re-done if the size of a bargaining unit found appropriate differs substantially from the unit proposed in the petition.

corrections officers, following a representation election conducted by the Commission.² King County, Decision 5619 (PECB, 1996).

POSITIONS OF THE PARTIES

The WSCCCE argues there have been significant changes in the duties and responsibilities of the corrections sergeants since the certification of the KCCG, and that they have become supervisors. It asserts that the sergeants now have a separate community of interest as supervisors, and that it is no longer appropriate for them to be in the same bargaining unit with their subordinates.

The employer took a neutral position at the hearing, and did not assert arguments on either side of this controversy.

The KCCG defends the existing bargaining unit as an appropriate configuration for the purposes of bargaining. It argues that the sergeants would have been removed from the bargaining unit in 1996, if that had been appropriate at that time, and that they do not meet the definition of supervisor. It further contends they have an ongoing community of interest with the corrections officers.

DISCUSSION

Definition and Placement of Supervisors

Supervisors in public employment in this state have collective bargaining rights under Chapter 41.56 RCW. Municipality of

² A controversy about the status of jail aides is the subject of a separate proceeding before the Commission.

Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). The legal standards for unit determinations concerning supervisors were extensively reviewed in City of Blaine, Decision 6122-A (PECB, 1998). As was explained there, the Legislature has delegated authority to the Commission to determine appropriate bargaining units under Chapter 41.56 RCW:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. ...

In the exercise of that authority, and with judicial affirmation, the Commission has generally excluded supervisors from bargaining units that contain their subordinates, in order to avoid a potential for conflicts of interest which might otherwise occur within the bargaining unit. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Accordingly, separate units of supervisors have been certified in numerous cases.

Chapter 41.56 RCW does not contain a definition of "supervisor". In numerous decisions, the Commission has looked to the definition of "supervisor" found in the Educational Employment Relations Act (EERA), at RCW 41.59.020(4)(d), as suggesting the types of authority which tend to generate conflicts of interest:

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

[Emphasis by **bold** supplied.]³

The Commission has distinguished supervisors from "lead workers", who merely direct the work of other employees, who lack the power to independently make substantial changes to the employment relationship, and who are routinely included in bargaining units with the employees they lead. See, University of Washington, Decision 6659 (PECB, 1999); City of Blaine, *supra*; Snohomish Health District, Decision 4735-A (PECB, 1995); Franklin County, Decision 5192 (PECB, 1995); and numerous other decisions implementing the separation called for by City of Richland, *supra*.

The determination of whether an individual possesses sufficient supervisory authority to be excluded from a rank-and-file bargaining unit is made on the basis of the actual duties and authority exercised by that individual. Such determinations are **not** made on the basis of titles. Morton General Hospital, Decision 3521-B (PECB, 1991). Job descriptions are not necessarily indicative of a person's actual job duties. Snohomish Health District, *supra*.

³ Except for the "preponderance" test, the EERA definition is patterned after the exclusionary definition in Section 2(11) of the National Labor Relations Act.

Alleged Changed Responsibilities of SergeantsPresumption of Ongoing Propriety Unwarranted -

The KCCG asserts that the existing bargaining unit should be presumed to be appropriate, because the employer did not challenge the propriety of mixing the sergeant and officer classifications when the KCCG raised a question concerning representation in 1996. While an organization certified as exclusive bargaining representative of an appropriate bargaining unit is entitled to a presumption of continuing status in that role, the KCCG overstates the presumption to which it is entitled. Subject to compliance with "certification bar" and "contract bar" time limitations growing out of RCW 41.56.070, any incumbent exclusive bargaining representative can be faced with decertification at any time another union or a group of disgruntled employees file a representation petition under Chapter 391-25 WAC, supported by a 30% showing of interest. Similarly, RCW 41.56.060 expressly gives the Commission a role in "modifying" bargaining units, and the unit clarification procedures in Chapter 391-35 WAC anticipate a need to modify existing units from time to time because of changed circumstances. The fact that the employer did not challenge the propriety of the "sergeants + officers" unit configuration in 1996 would not have precluded it from seeking a unit clarification based on changes of circumstances since 1996, and certainly does not categorically preclude the WSCCCE from asserting that a severance is justified because of changed circumstances since 1996.

Employer's Job Description Inconclusive -

A year 2000 Job Announcement issued by the employer spelled out the following responsibilities for a corrections sergeant:

JOB DESCRIPTION: Employees occupying positions in this classification are responsible for the

direct supervision of corrections staff during an assigned shift. Work is performed under the general supervision of a Corrections Captain.

ESSENTIAL JOB FUNCTIONS:

1. **Supervises officers** and related corrections staff, including booking, processing and caring for prisoners.
2. Provides instruction and training to staff as required.
3. Ensures security and maintenance of a designated area in the correctional facility.
4. Handles unusual problems such as abnormal bookings, releasing procedures, or emergencies.
5. Writes and reviews reports, makes appropriate recommendations. Ensures completion of proper documentation.
6. **Evaluates work performance, and recommends disciplinary actions for officers and related corrections staff.**
7. Recommends and implements administrative changes or modifications in operating procedures.
8. Communicates effectively with staff, management and other agencies.
9. Deals with situations of a potentially volatile or dangerous nature and responds to emergency situations. Provides direction to staff and uses physical restraints and physical force, including firearms, when necessary.
10. **Conducts investigations as required.**
11. Operates vehicles and supervises the transport of inmates.
12. Ensures that needed supplies and equipment are available and operational.
13. **Performs any and all essential job functions of a Corrections officer** as needed.
14. Assumes duties of Shift Commander as necessary.

[Emphasis by **bold** supplied]

Most of those paragraphs suggest that the sergeants are responsible for oversight of functions, rather than of personnel, and the 13th paragraph aligns them directly with the work of the corrections officers. The language of the 10th paragraph is no better than ambiguous, since it could encompass investigations of functions and inmate conduct as well as investigation of employee conduct. The language of the 1st paragraph is no better than conclusionary, in the absence of details about the "supervision". The language of the 6th paragraph certainly suggests the existence of supervisory authority, but is by no means sufficient to meet the "preponderance" test.

Supervisory Status Not Established -

The WSCCCE would place the focus of attention on changes in the job responsibilities of the sergeants allegedly made since 1996, and it cites seven changes as justification for finding that the sergeants have a separate community of interest and a potential for conflicts of interest if they remain in the rank-and-file bargaining unit:⁴

Investigation of employee misconduct allegedly began in 1996, but the evidence suggests that the sergeants only do preliminary investigations on allegations of misconduct or poor work performance by corrections officers. While such investigations can ultimately result in discipline of the employee(s) involved, the sergeants do not make effective recommendations on discipline. Instead, they report the results of their investigation to their superiors, who make independent determinations concerning those matters. Similarly, while the record establishes the sergeants are

⁴ The WSCCCE listed eight elements in its argument, but one of those was merely a statement that the sergeants "want out". Such a statement is not relevant in consideration of the sergeants' duties and responsibilities.

assigned to the internal investigations unit on a rotating basis,⁵ and those so assigned do further investigation when the circumstances indicate an investigation beyond that done by the shift sergeant is necessary, that still falls short of indicating that any of the sergeants have authority to act independently. The fact that the investigating sergeant(s) may be called upon to give testimony when discipline occurs does not establish that they have or exercise independent authority to discipline subordinates.⁶

The sergeants receive and respond to grievances at the first step of the grievance procedure contained in the collective bargaining agreement, under amendments negotiated for the 1997-1999 contract between the employer and the KCCG. The WSCCCE makes much of this, but such a procedure is also consistent with maintaining the command structure in a para-military organization. The KCCG and the employer could have lawfully and reasonably concluded that there was a value to involving sergeants occupying the first rung on the command ladder in problem solving. It was not established by the evidence, and cannot be assumed, that the sergeants have the final authority to adjust any or all grievances. Further, even though involvement in grievance processing could be significant or compelling if this bargaining unit were under the National Labor Relations Act (NLRA), where a disjunctive interpretation is applied

⁵ Two sergeants are assigned to the internal investigations unit at any point in time.

⁶ The employer voiced concern that the sergeants may be called upon to testify as the investigator in regard to discipline of a corrections officer. A circumstance of one bargaining unit employee testifying against another could occur between two corrections officers, however. Misconduct is not always observed by a supervisor, and any employee may be called upon to give testimony about misconduct they have witnessed. Thus, the potential for such situations would not be completely eliminated by creating a separate bargaining unit of sergeants.

to the "supervisor" definition, the evidence in this record falls short of meeting the "preponderance" test used by the Commission.

The sergeants attend management meetings related to the area in which they work, but the content of such meetings is not established. Attendance at meetings is not among the types of authority referred to in either the EERA or NLRA definitions.

The authority of sergeants to schedule corrections officers under procedures implemented since 1996 was a particular focus of the WSCCCE arguments in this case, but is not conclusive. While certainly important to the functioning of a 7-days/24-hours continuous operation, scheduling in the context of a collective bargaining agreement is commonly more of a coordination function than a supervisory function. Further, although they create schedules, approve leave request, and assign overtime, this record does not establish that the sergeants spend a substantial portion of their work time on those tasks. Persons performing such functions in other cases have been described as lead workers.

Assignment of a sergeant to revise Standard Operating Procedures does not compel a conclusion that the individual is a supervisor. Many matters covered in such documents typically relate to the functions and "customers" of the enterprise, so that revising and updating policies and procedures is more an exercise of professional expertise than of authority over personnel.

Filling in for the captains when they are on leave is certainly a function of the sergeants established by this record, but the frequency of such events is not established. Moreover, filling in as a caretaker for a day or for a limited period does not equate to having or exercising all of the authority of the senior rank.

The sergeants' authority to evaluate employees is discussed above in relation to their job description. The fact that the sergeants make recommendations on whether a probationary employee is to be retained present a minimal potential for conflicts within the bargaining unit, because discharges of probationary employees are typically excluded from the grievance and arbitration procedures of collective bargaining agreements.

In Skamania County, Decision 6511-A (PECB, 1999), the 10 elements found within the EERA and NLRA definitions of "supervisor" were utilized to determine supervisor status, subject to the "preponderance" test found in RCW 41.59.020(4)(d). Those elements are to: hire, assign, promote, transfer, lay off, recall, suspend, discipline, discharge, and adjust grievances. It is clear that, with exception of the "adjust grievances" element discussed above, the WSCCCE presented no evidence that the sergeants have any role in any of the listed indicia of supervisory responsibility. Most of the changes cited by the WSCCCE do not correspond to the Skamania list. From the testimony of Division Commander Michael Graber and several corrections sergeants, it is apparent that the sergeants have no independent authority to hire, assign, transfer, promote, lay off, or recall employees. It is particularly clear from Graber's testimony that the final determinations on discipline and discharge are made by officials further up in the departmental chain of command. Those responsibilities are reserved to the persons higher in the employer's hierarchy than the sergeants.

Conclusions

This record supports a conclusion that the corrections sergeants are properly described as lead workers: They assist corrections officers and other employees with difficult or unusual situations, they provide instruction and training, and they provide practical

input into policies and procedures, but those functions, drawing upon their expertise and experience, do not create a potential for conflicts of interest within the bargaining unit. The separation (or "severance") of supervisors from an existing bargaining unit is only warranted where there is a potential for conflicts within the existing unit. In the absence of such conflicts, the history of bargaining and the substantial similarity of duties, skills and working conditions between lead workers and rank-and-file employees weighs heavily against a severance which would both fragment the employer's workforce and create a potential for work jurisdiction conflicts.⁷

In this case, the disputed employees do not perform a preponderance of the duties and responsibilities that are an indicia of supervisory status, and their responsibilities as lead workers do not create a community of interest among the sergeants which is separate and distinct from the corrections officers. The conclusion reached here is consistent with the results reached in City of Redmond, Decision 2269-B (PECB, 1986) [police sergeants]; King County Fire District 16, Decision 2279 (1986) [fire department lieutenants]; State of Washington (Washington State Patrol), Decision 2806-B (PECB, 1988) [state patrol sergeants]; and Adams County, Decision 6005-B (PECB, 1998) [county law enforcement sergeants]; and Franklin County, supra [county corrections sergeants and corporals].

The facts of this case contrast with the facts in cases where employees with the rank of sergeant have been excluded from rank-

⁷ See, South Kitsap School District, Decision 1541 (PECB, 1983), where two bargaining units that artificially divided that employer's office-clerical workforce were both found inappropriate, because of existing and potential work jurisdiction conflicts.

and-file bargaining units. City of Sunnyside, Decision 1178 (PECB, 1981) is distinguished by the fact that there were no intervening ranks between the excluded sergeants and the chief of police. City of Marysville, Decision 4854 (PECB, 1994) is distinguished by the facts that, although those sergeants did not have the final word on hiring or severe disciplinary actions, there was only one lieutenant between them and the chief in that employer's hierarchy, they were authorized and expected to supervise and evaluate the members of their squads and non-commissioned personnel, and they maintained incident files and made recommendations on both discipline and commendations. Snohomish County, Decision 5375 (PECB, 1995) is distinguished by the facts that the sergeants there plan, schedule, assign, and evaluate the work of subordinate corrections officers and staff, and they participate in and make recommendations regarding the hiring, discipline, and discharge of subordinate employees.

FINDINGS OF FACT

1. King County is a "public employer" within the meaning of RCW 41.56.030(2). Among other services, the employer operates and maintains adult corrections facilities in two locations. In addition to a department director, the table of organization of the King County Department of Adult Detention includes two division commanders, two majors, and seven captains.
2. The Washington State Council of County and City Employees, Council 2, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition for investigation of a question concerning representation involving employees of King County holding the rank of

rank of corrections sergeant. There are approximately 40 employees in the proposed bargaining unit.

3. The King County Corrections Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the certified exclusive bargaining representative of employees of the King County Department of Adult Detention, in a bargaining unit described as follows:

All full-time and regular part-time corrections officers and sergeants of the King County Department of Adult Detention, Excluding supervisors, confidential employees and all other employees.

There are approximately 560 employees in that bargaining unit, including the corrections sergeants at issue in this proceeding. The KCCG continues to be a viable organization, and continues to represent that bargaining unit.

4. The corrections sergeants do not have or exercise independent authority with regard to hiring, promotion, transfer, lay off, or recall of subordinate employees.
5. The corrections sergeants engage in routine scheduling and coordination of the work of the corrections officers, and they function as the lead workers on their respective shifts.
6. The corrections sergeants have limited authority to impose corrective action at the lowest level of discipline, and to write initial evaluations of corrections officers, but do not have or exercise independent authority with regard to the suspension or discharge of subordinate employees. The results of their evaluations and their investigations into alleged

employee misconduct are forwarded to their superiors, for independent review and action.

7. The corrections sergeants have limited authority to adjust grievances at the lowest level of the grievance procedure contained in the collective bargaining agreement between the employer and the KCCG. Matters beyond their authority are forwarded to their superiors, for independent review and action.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 RCW.
2. The corrections sergeants employed by King County in its Department of Adult Detention are public employees within the meaning of RCW 41.56.030(2), who share responsibilities and a community of interest, under RCW 41.56.060, with corrections officers in the bargaining unit described in paragraph 3 of the foregoing Findings of Fact, and who lack authority sufficient to create a potential for conflicts of interest warranting their exclusion from that bargaining unit under RCW 41.56.060.
3. Based upon the history of bargaining described in paragraph 3 of the foregoing Findings of Fact and the ongoing community of interest described in paragraph 2 of these Conclusions of Law, severance of a separate bargaining unit of corrections sergeants from the existing bargaining unit would unduly fragment the employer's workforce and would not be an appropriate configuration of bargaining units under RCW 41.56.060.

ORDER

The petition for investigation of a question concerning representation filed in this matter shall be, and hereby is, DISMISSED, and the employees of the King County Department of Adult Detention holding the rank of corrections sergeant shall continue to be included in the bargaining unit represented by the King County Corrections Guild.

Issued at Olympia, Washington, on the 9th day of May, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC-391-25-660.