

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CUSTODY SERGEANTS' GUILD)	CASE 16064-E-01-2663
Involving certain employees of:)	DECISION 7900 - PECB
CLARK COUNTY)	ORDER OF DISMISSAL
_____)	

Garretson, Goldberg, Fenrich and Makler, by *Timothy Ching*, Labor Consultant, for the petitioner.

Arthur D. Curtis, Prosecuting Attorney, by *Dennis M. Hunter*, Senior Deputy Prosecuting Attorney, for the employer.

On October 22, 2001, the Custody Sergeants' Guild (CSG) filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking a severance of certain employees from an existing bargaining unit of employees of Clark County (employer). On December 14, 2001, an investigation conference was conducted, and an investigation statement was issued specifying that the following issue remained in dispute:

The employer questioned the appropriateness of the proposed unit stating that the petitioned-for employees are currently in a larger unit and continue to have a community of interest with that unit.

A hearing was conducted on March 25, 2002, before Hearing Officer Kenneth J. Latsch. The incumbent exclusive bargaining representative of the petitioned-for sergeants did not move for intervention

in this proceeding, either prior to, during, or since the hearing. The CSG and the employer filed post-hearing briefs on May 17, 2002.

The Executive Director rules that the custody sergeants are properly included in the existing bargaining unit as "lead workers," and do not have sufficient indicia of supervisory status to require the creation of a separate bargaining unit, so that the separate unit proposed for severance by the CSG is not an appropriate bargaining unit. The petition is DISMISSED.

BACKGROUND

Bordered on its southern and western sides by the Columbia River, Clark County provides the customary services to a population substantially in excess of 70,000 persons. The Clark County Sheriff's Office is headed by Sheriff Gary Lucas. Undersheriff Jane Johnson reports to the sheriff, and is responsible for coordinating the work of three major divisions: Support Branch, Enforcement Branch, and Custody Branch.

Bargaining History

The employer has collective bargaining relationships with several employee organizations, for a variety of existing units. Of particular interest here, the employer has a bargaining relationship with the Clark County Custody Officers' Guild (CCCOG) for a bargaining unit of non-supervisory corrections personnel who are "uniformed personnel" within the meaning of RCW 41.56.030(7)(b).

The record indicates that collective bargaining activity involving the correctional employees can be traced to the 1970's, when the correctional officers were part of a larger bargaining unit in the

Sheriff's Department. The recognition clause in a collective bargaining agreement between the employer and a Clark County Deputy Sheriff's Association (Law and Justice Division of OPEIU Local 11), that was effective from January 1, 1975, through December 31, 1976, described the bargaining unit as follows (emphasis added):

[A]ll Deputy Sheriffs, jailors, dispatchers, cooks and all office clericals employed by the Sheriff's Department except the Sheriff, Under-Sheriff, Chief Civil Deputy, Chief Criminal Deputy and Chief Correctional Officer.

By 1977, the correctional employees were represented in a separate bargaining unit. By 1995, the correctional employees had formed their own organization, and it won certification as exclusive bargaining representative of a bargaining unit described as:

All full-time and regular part-time custody officers and custody sergeants of the Clark County Sheriffs Office, excluding supervisors, confidential, and all other employees of the employer.

Clark County, Decision 5133 (PECB, 1995). The "full-time and regular part-time custody officers and custody sergeants" terminology was carried forward in the recognition clause of the collective bargaining agreement between the employer and the CCCOG that was effective for the period from January 1, 1999, through December 31, 2001.

Department Structure

With the general table of organization and bargaining history in mind, it is appropriate to analyze the employment structure within the employer's correctional service. Inmates are housed in two

jail facilities: A 500 bed main jail and a 200 bed jail/work center. Both facilities are operated 24 hours a day, seven days a week. Four "custody commanders" are responsible for day and night operations at the facilities, as well as related support services. The commanders report to an "assistant jail chief" and share responsibility for an on-call "command duty officer" role. The assistant chief reports to Chief Deputy Joe Dunegan, who reports to the undersheriff.

The jail facilities are staffed by approximately 118 custody officers and 14 sergeants. Among the sergeants:

- Six sergeants head a similar number of squads, working three shifts each day. The custody officers and sergeants bid for their shift and squad assignments annually, using seniority for selection.
- Five sergeants work in the administrative office, doing work such as pre-employment investigation, training, transport, and internal affairs investigation. Those administrative appointments are made by the jail administrator or undersheriff.

Up to this time, only the correctional officers and sergeants have exercised their right to engage in collective bargaining.

The Sergeants' Duties

The sergeants are responsible for the quality of work performed on their respective shifts. Their job description explains their "typical tasks and responsibilities" as follows:

- Train and supervise regular and temporary members of the jail staff, assigning work details and projects for completion on all shifts

- Monitors performance and takes corrective measures as necessary
- Counsels employees on job performance and employee conduct issues and problems
- Supervise the processing of incoming inmates and completes release procedures; book, fingerprints, photographs, and transports inmates
- Administer inmate routine and maintain order, conduct inspections of all areas of the jail and observe and recommend changes of security practices
- Oversee inmate meal delivery and post-meal clean up
- Determines when individual inmates are to be isolated or selected as trustees
- Inspects inmates for cleanliness and health, and authorizes medical and dental as deemed necessary
- Maintain equipment and supplies, and accurate inventory records
- Performs related duties as assigned

The "job purpose" of the sergeant classification is set forth in the same job description in the following terms:

Supervises Custody Officers in the operation of the Clark County jail and affiliated programs. Trains, schedules and makes work assignments to jail staff. Determines or communicates policies, procedures and job performance expectations and monitors operation of all jail programs and staff performance. Performs a variety of administrative function in addition to supervisory duties and participates in the formulation and operation of jail programs and policies.

The first word of that "job purpose" paragraph is then minimized by "classification distinctions" set forth in the same job description, as follows (emphasis supplied):

Custody Sergeant is a *first-level supervisor* classification. Authority and responsibility is generally at the level of a lead supervisor. *The next higher level of Custody Lieutenant is the first formal level of supervision with authority for hiring and discipline.* Sergeants may also perform a variety of administrative functions.

Confirming that limitation stated in the job description, the record indicates that the sergeants do not have a regular role in the hiring process, except for the sergeant assigned to do pre-employment background checks. Even then, that sergeant only participates in the hiring process to the extent of making recommendations to the civil service board concerning retention or removal of applicants from civil service eligibility lists, based upon criteria already established by the civil service board through published policies. Further, any recommendations made by a sergeant must be reviewed by the department's human resources office before being forwarded to the civil service board for final determination.

The record does reflect that custody sergeants have a limited role in the hiring process. They routinely take part in panel interviews of applicants referred under a "rule of three" screening process, and those panels makes recommendations about hiring decisions. The panels are normally composed of a custody commander and two sergeants, and attempt to reach a consensus recommendation, but the commander has the authority to make the recommendation to the sheriff in the event that consensus cannot be reached among the panel members.

Sergeants have a role in determining whether a probationary custody officer is retained. Sergeants make recommendations to training officers about employee progress, based on the sergeant's observa-

tion of the probationary employee's work during a particular shift. Sergeants can also review reports from a probationary employee's field training officer. The sergeant assigned as the training officer reviews the recommendations made by the other sergeants, and may recommend that the employment of a probationary employee be terminated, but the custody commander has the final authority to remove a probationary employee.

Sergeants are considered to be "mentors" for the custody officers under their direction. In this regard, sergeants have a major role in training programs for custody officers. Sergeants also evaluate custody officers' work performance, and may recommend specialized or remedial training. However, the sergeants do not have final authority to initiate training, and must have their recommendations approved by the custody commander.

The job description for sergeant indicates their "work environment and physical demands" is as follows (emphasis added):

Incumbents primarily work in a jail environment, occasionally escort inmates to court or appointments, and occasionally work in an office setting. *The majority of the time is spent in the jail facility, where incumbents must respond to emergencies presenting physical risks from various sources including violent suspects/inmates, variety of potential weapons, noise, chemicals, bodily secretions, and other potential situations/dangers typical to jail settings.* Incumbents must be able to wear protective equipment as required by the department. Additionally, incumbents are expected to *manage face-to-face interactions and confrontations with any, hostile, depressed and/or otherwise emotionally distraught suspects/inmates.* Custody Officers work shifts, overtime, holidays and weekends, and are *required to respond to emergencies.*

Essential tasks include use of various equipment associated with a jail environment in addition to equipment such as a personal computer, telephone, copiers, printers, and other applicable technical equipment. In addition to sitting, walking, standing, bending, carrying or light items, an *incumbent must be able to run, subdue, restrain individuals within and out of the jail facility. Incumbents are required to drive a vehicle:* to off-site training facilities, seminars, academies, or in the transport of inmates to appointments.

Thus, the sergeants are depicted as part of the current and ongoing custody workforce, rather than as managers watching from afar.

Sergeants have authority to schedule and assign custody officers within their particular squads, and they routinely approve overtime. Sergeants do not have authority to transfer custody officers from one shift or squad to another, nor can they lay off or recall custody officers.

Custody sergeants may impose discipline, including oral and written reprimands, with the concurrence of the custody commander. Disciplinary cases may lead to internal affairs investigations. If such an investigation takes place, the sergeant assigned to internal affairs will investigate the incident and prepare a report, and may recommend possible outcomes such as "sustained," "not sustained," "exonerated," or "unfounded." Those recommendations do not include a proposed level of discipline, however, and the final responsibility for discipline rests with the chief jail administrator and the sheriff.

In the event that a custody officer commits a serious breach of rules or is involved in a serious safety violation, the sergeant has authority to suspend the offending employee for one day, or as

many as three days if the suspension occurs on a Friday. In the event that a sergeant makes an emergency suspension, he/she must notify the custody commander. The commander routinely meets with the suspended employee, and further discipline may be imposed.

The grievance procedure in Article 19.3 of the existing collective bargaining agreement provides as follows (emphasis added):

The grievant shall attempt to resolve the matter with his/her immediate supervisor within ten (10) working days of its occurrence or within ten (10) working days of the date the employee should have had knowledge of its occurrence, whichever is later. For the purposes of this section, *the immediate supervisor is considered the first level of management not included in the bargaining unit.*

Thus, the sergeants are excluded from being an official step in the grievance procedure, and the record indicates that they cannot adjust employee grievances on behalf of the employer.

POSITIONS OF THE PARTIES

The CSG argues that the bargaining unit it proposes for severance is appropriate because the sergeants have a unique community of interests separate from the custody officers, and because the sergeants routinely exercise supervisory authority. The CSG maintains that the sergeants are expected to perform a number of duties that are not expected of the custody officers, ranging from pre-employment background investigations to supervision of shifts, and that the sergeants have a wide range of discretion in how they supervise their particular work shifts. The CSG urges that the sergeants can make effective recommendations on personnel matters

as scheduling, training, and certain levels of discipline. The CSG contends that the sergeants have a great deal of authority in deciding whether probationary employee should be retained. The CSG argues that these factors clearly show that the sergeants have a unique employment relationship with the Clark County Sheriff's Office, and must be allowed to form a separate bargaining unit.

The employer contends that the sergeants should not be allowed to form a separate bargaining unit. The employer notes that the sergeants have been part of the existing bargaining unit for over 20 years, and it contends that nothing has changed to justify their severance into a separate bargaining unit. The employer maintains that the sergeants do not have true supervisory authority within the meaning of Commission precedents, and that they share a substantial community of interests with the custody officers. The employer argues that the creation of a separate bargaining unit would unnecessarily fragment the existing bargaining relationship, and that the sergeants' interests are properly represented in the existing bargaining unit.

DISCUSSION

Applicable Legal Standard

The determination and modification of appropriate bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060 sets out the criteria to be used by the Commission, as follows:

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 instant case, the Commission must determine whether custody sergeants can separate from an historical bargaining unit that has represented them for over 20 years.

Severance Criteria -

While some of the statutory components will be inoperative in a particular case, and the "history of bargaining" component will have no application in a case involving unrepresented employees, a history grows with each passing day that employees are included in a particular unit configuration. The general rule stated in *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981) is that, "Absent a change of circumstances warranting the change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed."

Over the years, the National Labor Relations Board (NLRB) and the Commission have both struggled with attempts to "sever" existing bargaining units into two or more units. In *Yelm School District*, Decision 704-A (PECB, 1980), the Commission embraced the principles and stringent criteria set forth by the NLRB in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966). The net effect is that honoring the history of bargaining in the existing bargaining unit configuration inherently makes it difficult to justify a severance.

Separation of Supervisors -

Under a long line of Commission decisions dating back to *City of Tacoma*, Decision 95-A (PECB, 1977) and including *City of Richland*, the Commission has routinely implemented its unit determination authority to separate supervisors from rank-and-file employees and to place supervisors in separate units limited to supervisors. The clearly-stated purpose of the Commission's policy is to reduce the potential for conflicts of interest within bargaining units. In 2001, the Commission codified those precedents in WAC 391-35-340.

In determining whether a particular individual classification should be considered to be "supervisory" under the precedents and rule, the Commission has often applied the definition found in RCW 41.59.020(4)(d), which states that a "supervisor" is:

[A]ny 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.

The titles assigned by employers, including titles including the term "supervisor" and paramilitary ranks, are not, by themselves, determinative. Instead, the Commission carefully examines the duties, authority, and actual exercise of authority by the disputed classification. See *Skamania County*, Decision 6511-A (PECB, 1999). As was noted in *Franklin County*, Decision 5192 (PECB, 1995):

[T]he mere existence of a paramilitary structure of the type found in public safety organizations does not warrant a conclusion that all persons holding rank titles are supervisors.

Supervisors are distinguished from "lead workers" who have authority to direct employees in the performance of their work, but do not have authority to make independent decisions concerning the employment relationship. *King County*, Decision 7053 (PECB, 2000). Lead workers are routinely included in the same bargaining unit as the employees that they direct.

Application of Standards

It is clear the sergeants have and exercise some control over custody officers on their particular shifts. That control does not, however, rise to the level of supervisory authority requiring the creation of a separate bargaining unit. The sergeants merely have responsibility to assure that routine work is being performed in an appropriate manner; they are leadworkers who do not have authority to make meaningful decisions concerning the employment relationship.

Authority to Hire -

The sergeants have a minimal role in the hiring process, limited to: (1) participating on interview panels, without authority to make the effective recommendations on hiring; and (2) performing ministerial duties in checking references and forwarding the results of background checks, without authority to make the effective recommendations on acceptance or rejection.

Authority to Assign -

The sergeants assign shifts and daily work to the custody officers on their respective shifts, but the evidence falls far short of suggesting that they engage in this activity for a preponderance of their work time.

Authority to Promote, Transfer, Lay off, Recall -

The sergeants have a role in the promotion from probationary to permanent status, but they lack authority to make the effective recommendations on such matters. The evidence falls far short of suggesting that they engage in this activity (alone or in combination with making assignments) for a preponderance of their work time. Moreover, because probationary employees are excluded from the coverage of the contractual grievance procedure and the contractual "just cause" standard does not apply to them, there is little potential for intra-unit conflicts on such matters.

There is no evidence that the sergeants have any authority regarding other promotions. It is clear that they lack authority with regard to transfers, layoffs, and recalls from layoffs.

Authority to Suspend, Discipline, Discharge -

The sergeants only have authority to send an employee home on an emergency suspension, for a limited time. The sergeant's decision is promptly reviewed by superior officers.

To the extent that they forward any recommendations on discipline or discharge to senior officers, it is evident that the sergeants lack authority to make effective recommendations.

Adjustment of Grievances -

It is clear that the sergeants are excluded from any role in the adjustment of grievances.

Conclusions on Supervisory Status -

The sergeants' primary duty still involves the incarceration of inmates at the county's correctional facilities. The record clearly shows that the sergeants have a leadership role in that undertaking, but their leadership is more like a mentor than a supervisor. If the sergeants have any authority over the correctional officers, it is in how the work is to be performed on a daily basis. At the same time, the sergeants are still expected to be available to perform the same work as the officers.

Several sergeants have specialized assignments that take them out of the correctional facilities, but even those sergeants do not exercise any supervisory authority. At best, these temporary assignments deal with specialized matters which support the employer's correctional operation. They are not involved in the employer's overall labor relations policy, nor do they require the sergeants to make supervisory decisions that have impact on the correctional officers' employment.

No Justification for Severance -

The sergeants have always been represented in the same bargaining unit as the custody officers, and there is no evidence of changes that would overcome the reluctance of the Commission to disturb long-standing collective bargaining relationships unless there is a compelling need to do so. The CSG has not proven that severance of a separate bargaining unit is appropriate in this case.

An additional impediment evident from this record is the potential for fragmentation of the employer's supervisory workforce. WAC 391-35-340 does not require or encourage creation of a separate bargaining unit of supervisors for each rank within a paramilitary structure. In this case, the evidence that the corrections commanders make the effective recommendations on hiring, promotion

to permanent status, and various forms of discipline supports an inference that they are likely supervisors comparable to the lieutenants included with sergeants in a unit of corrections supervisors in *Snohomish County*, Decision 5375 (PECB, 1995). One-classification units of jail supervisors have been rejected in cases such as *Klickitat County*, Decision 5462 (PECB, 1996) and *King County*, Decision 7053 (PECB, 2000).

FINDINGS OF FACT

1. Clark County is a county of the state of Washington and is a "public employer" within the meaning of RCW 41.56.030(1). Among other services, the employer maintains and operates correctional facilities.
2. The Custody Sergeants' Guild, a "bargaining representative" within the meaning of RCW 41.56.020(3), has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of a separate bargaining unit limited to corrections sergeants employed by Clark County.
3. The Clark County Custody Officers' Guild, a "bargaining representative" within the meaning of RCW 41.56.020(3), is the incumbent exclusive bargaining representative of a bargaining unit of correctional personnel, including corrections sergeants, employed by Clark County.
4. Although the representation of the bargaining unit has changed over time, the corrections sergeants employed by Clark County have been included in the same bargaining unit with corrections officers for more than 20 years.

5. Sergeants working in the employer's correctional facilities direct work being done on a particular shift, and have authority to approve leave and overtime requests. Sergeants working in related special assignments conduct background checks on applicants for employment and work in the internal affairs section.
6. Sergeants participate on hiring interview panels and in making consensus recommendations concerning hiring, but the custody commanders have authority to disregard the recommendations made by the sergeants and they make the effective recommendations on such matters.
7. Sergeants can recommend training for custody officers, but the custody commanders have authority to disregard the recommendations made by the sergeants and they make the effective recommendations on such matters.
8. Sergeants can recommend that the employment of probationary employees be terminated, but the custody commanders have authority to disregard the recommendations made by the sergeants and they make the effective recommendations on such matters. Additionally, because termination of a probationary appointment is not subject to the "just cause" standard and grievance procedure contained in the existing collective bargaining agreement, there is little potential for conflicts of interest on such matters within the existing bargaining unit.
9. Sergeants can schedule employees and approve overtime within their shifts, but have no authority to transfer employees, to lay off employees, or to recall employees from layoff.

10. Sergeants do not have authority to adjust grievances of other employees, and they are not participants on behalf of the employer in the contractual grievance procedure.
11. Sergeants can impose an emergency suspension on custody officers, but the custody commanders have authority to disregard the recommendations made by the sergeants and they make the effective recommendations on such matters.
12. Sergeants work the same general work shifts and in the same facilities as the custody officers, and are expected to take an active role in maintaining order at the correctional facilities.
13. The existing bargaining unit structure continues to be appropriate, and there have been no changes of circumstances affecting the propriety of that unit.
14. The petitioner has not established that the proposed bargaining unit limited to sergeants encompasses all of the supervisory corrections personnel employed by the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The evidence does not support a conclusion that the sergeants at issue in this proceeding are "supervisors" within the meaning of Commission precedent and WAC 391-35-340.
3. The evidence does not support a conclusion that the separate unit of sergeants proposed for severance in this proceeding is

an appropriate bargaining unit within the meaning of RCW 41.56.060.

ORDER

The petition seeking investigation of a question concerning representation is hereby DISMISSED.

DATED at Olympia, Washington, this 7th day of November, 2002.

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.