

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
TACOMA POLICE SERGEANTS ASSOCIATION) CASE 16173-E-02-2685
Involving certain employees of:) DECISION 7967 - PECB
CITY OF TACOMA) ORDER OF DISMISSAL
_____)

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for incumbent intervenor Tacoma Police Union, Local 6.

On January 11, 2002, the Tacoma Police Sergeants Association (TPSA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of police sergeants employed by the City of Tacoma (employer). Tacoma Police Union, Local 6, was granted intervention in the proceedings, based on its status as the incumbent exclusive bargaining representative of those employees. During an investigation conference conducted on February 26, 2002, the parties framed issues concerning whether the TPSA was an organization qualified for certification under the statute and concerning the propriety of the petitioned-for bargaining unit. A hearing was held on April 23, 2002, and on June 19 and 20, 2002, before Hearing Officer Frederick J. Rosenberry. The TPSA and Local 6 each filed post-hearing briefs.

Based on the evidence and arguments, the Executive Director concludes that the sergeants in the Tacoma Police Department lack sufficient supervisory authority to warrant their exclusion from the existing bargaining unit of non-supervisory law enforcement officers, and that, in the absence of changed circumstances, severance of the proposed unit from an existing bargaining unit with a lengthy history of bargaining is not appropriate. The petition is DISMISSED.

BACKGROUND

The employer provides the customary municipal services, under the direction of a city manager. Law enforcement services are provided by the Tacoma Police Department, under the direction of a police chief who is appointed by the elected mayor of Tacoma.

The Paramilitary Rank Structure

Under the Manual of Rules and Procedures (MRP) of the Tacoma Police Department, the chain of command for commissioned law enforcement officers below the police chief consists of eight paramilitary ranks. With brief descriptions quoted from the MRP, they are:

1. Deputy Chief - Appointed by the chief of police. "The Deputy Chief shall command the Administrative Support Bureau."
2. Assistant Chief - Appointed by the chief of police. "An assistant chief shall command the investigations or operations bureau."
3. Captain - Appointed by the chief of police on a permanent basis from a civil service list. "A captain shall command a division."

4. Lieutenant - Appointed by the chief of police on a permanent basis from a civil service list. "A lieutenant shall command a division."
5. Sergeant - Appointed by the chief of police on a permanent basis from a civil service list. "A sergeant shall supervise a unit or detail."
6. Detective - Appointed by the chief of police on a permanent basis from a civil service list.
7. Patrol Specialist - Appointed by the chief of police.
8. Patrol Officer - Appointed by the chief of police on a permanent basis from a civil service list.

Absent extenuating circumstances, there is no circumvention of the rank structure or the chain of command from police officer to police chief.

Internal Structure of the Police Department

The Tacoma Police Department is divided into five primary sections. Those sections and their staffing by employees in the bargaining units currently represented by Local 6 and the TPMA are as follows:

The Office of the Chief staffing includes one captain, two lieutenants, one sergeant, and one employee in the detective/specialist/officer classes;

The Operations Bureau encompasses "Patrol" where staffing includes two captains, six lieutenants, 27 sergeants, and 191 employees in the detective/specialist/officer classes, as well as "Traffic" where staffing includes one lieutenant, 3 sergeants, and 18 employees in the detective/specialist/officer classes.

The Investigative Bureau encompasses "Criminal Investigations" where staffing includes one captain, two lieutenants, four sergeants, and 48 employees in the detective/specialist/officer classes, as well as "Special Investigations" where staffing includes one captain, one lieutenant, three sergeants and 20 employees in the detective/specialist/officer classes;

The Administrative Support Bureau encompasses "Support Services" where staffing includes one captain, one lieutenant, three sergeants, and four employees in the detective/specialist/officer classes, as well as "Finance and Property" which is staffed by only one captain.

The Bureau of Professional Responsibility was created a short time before the hearing was held in this proceeding, and no evidence was submitted regarding the number or rank distribution of the staff assigned (or to be assigned) to it. The small number of sergeants assigned to sections other than patrol and traffic supports an inference that there are or will be few sergeants in this section as well.

The department-wide staffing and rank distribution among the same classes is thus understood to have been as follows as of May 2002:¹

<u>Captain</u>	<u>Lieutenant</u>	<u>Sergeant</u>	<u>Detective / Specialist Patrol Officer titles</u>
5	12	43	230

The sergeants head units (details) staffed by detectives, patrol specialists, and/or patrol officers. In order to maintain the integrity of the reporting relationships, the MRP calls for advancing an "acting sergeant" where five or more employees are working in the absence of a sergeant.

¹ At that time, the department was not staffed at its full budgeted level.

Existing and Proposed Bargaining Units

The evidence describes three separate organizations currently representing commissioned law enforcement personnel in Tacoma.²

- Tacoma Police Union, Local 6, currently represents the sergeants, detectives, patrol specialists, and patrol officers.³ The captains and lieutenants were included in that bargaining unit for many years,⁴ until a separate unit of supervisors was created in 2001 as detailed below.
- Since January 2, 2001, the Tacoma Police Management Association (TPMA) represents a separate bargaining unit of supervisors, currently limited to captains and lieutenants.⁵

² Non-commissioned personnel in the department are also appointed by the chief of police, but they are not "uniformed personnel" within the meaning of RCW 41.56.030(7), and thus are not (and could not be) included in any of the bargaining unit involved in this proceeding. See WAC 391-35-310.

³ Notice is taken of docket records transferred to the Commission by the Department of Labor and Industries (L&I) under RCW 41.58.801, which suggest that collective bargaining activity among law enforcement officers in Tacoma predates 1970: L&I Case O-579 was opened on January 5, 1970, for mediation between this employer and a "Tacoma Police Union, Local 224". Review of Commission docket records discloses cases involving law enforcement officers in Tacoma dating back to 1977: Case 1102-M-77-409 was docketed on September 2, 1977, for mediation between this employer and Local 6. It appears the captains were added to that bargaining unit in 1979, by voluntary recognition. *City of Tacoma*, Decision 664 (PECB, 1979).

⁴ The collective bargaining agreement that was in effect between the employer and Local 6 for the period ending December 31, 2000, covered the captains, lieutenants and sergeants, along with the lower ranks in the department.

⁵ *City of Tacoma*, Decision 7248 (PECB, 2001).

- The Professional Public Safety Management Association (PPSMA) currently represents the assistant police chiefs.⁶

The TPSA is a recently-created independent organization with a membership limited to police sergeants, and it proposes the creation of a bargaining unit limited to police sergeants. While Local 6 intervened to protect the unit it represents, the TPMA and PPSMA neither moved for intervention nor participated in the hearing in this matter.

⁶ Mention of this arrangement does not constitute any ratification of its propriety. Notice is taken of the Commission's docket records for Cases 14656-C-99-940, 15002-E-00-2496, and 15461-E-00-2574, which disclose:

On June 21, 1999, the employer filed a unit clarification petition seeking to have the captains and lieutenants removed (as supervisors) from the bargaining unit represented by Local 6. That case was closed on February 28, 2000, upon a disclaimer of those classes by Local 6. *City of Tacoma*, Decision 6981 (PECB, 2000).

On January 26, 2000, Local 6 had filed a representation petition seeking a separate bargaining unit of "police . . . above the rank of sergeant, excluding confidential employees." By March 7, 2000, an issue had been framed concerning whether three assistant chiefs should be included in that supervisors unit. Both the TPMA and a Professional Public Safety Managers Association (PPSMA) intervened in that proceeding. That case was closed on October 19, 2000, upon a withdrawal by Local 6. *City of Tacoma*, Decision 7214 (PECB, 2000).

On November 1, 2000, Case 15461-E-00-2574 was docketed on the basis of an intervention motion which had been filed by the TPMA in the earlier representation case, but was supported by a 30% showing of interest. There is no indication of a motion for intervention by the PPSMA, and the employer and TPMA stipulated the propriety of a unit described as: "All full-time and regular part-time captains and lieutenants . . . excluding supervisors, confidential employees and all other employees." In light of its earlier claim that the assistant chiefs had "confidential" status, there is basis to question whether the employer has purported to extend collective bargaining rights to individuals it previously excluded from the coverage of the statute.

DISCUSSION - STATUS AS A LABOR ORGANIZATION

The TPSA contends that it is a lawful organization eligible for certification as an exclusive bargaining representative. The employer took no position regarding the eligibility of the TPSA for certification. Local 6 maintains that the TPSA does not meet the standards necessary to be eligible for certification as an exclusive bargaining representative.

Applicable Legal Standards

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, defines "bargaining representative" broadly, as including "any lawful organization which has as one of its primary purposes the representation of employees." RCW 41.56.030(3). Commission precedent allows organizations to establish qualifications for certification with a relatively small amount of evidence. In *Southwest Washington Health District*, Decision 1304 (PECB, 1981), an organization qualified even though it had only held one meeting and had not collected any dues. The Commission has held that "no particular level of formality or documentation is required by the statute". *Kitsap County*, Decision 2116 (PECB, 1984); *Snohomish County*, Decision 3012 (PECB, 1988); *City of Moses Lake*, Decision 3322 (PECB, 1989).

Application of Standards

In support of its claim of eligibility to serve as an exclusive bargaining representative, the TPSA provided evidence that an organizational meeting was held on January 10, 2002, that articles of incorporation were approved and accepted at that meeting, and that it has since been established as a non-profit corporation

under the laws of the State of Washington.⁷ The articles of incorporation document is extensive, and addresses a multitude of matters, including affiliations, objectives and methods, membership and dues, meetings, officers and executive board and their duties, revenues, quorums and amendments. Importantly, Article III of the document states, in relevant part:

Objectives: the objectives of this Association shall be to negotiate and administer a collective bargaining agreement between it and the City of Tacoma, and to engage in such bargaining activities as are allowed by statute.

A preliminary draft of by-laws for the TPSA was placed on hold, pending the outcome of this proceeding. Members will be afforded the opportunity to participate in the finalization of the by-laws if the TPSA prevails in its effort to create a bargaining unit.

Notwithstanding the assertions of Local 6, the evidence supports a conclusion that the TPSA meets the requirements of the Commission precedents. The TPSA is a lawful organization which has, as its primary purpose, the representation of public employees in their employment relations with the City of Tacoma.

DISCUSSION - THE PROPRIETY OF THE PROPOSED BARGAINING UNIT

The TPSA maintains that the sergeants have authority to impose suspensions, to make effective recommendations on hiring, promotions, and discipline, and to adjust grievances. The TPSA further

⁷ A certificate of incorporation was issued by the Secretary of State on January 10, 2002. The incorporators were four police sergeants who serve as president, vice-president, secretary and treasurer of the TPSA.

maintains that the sergeants engage in such personnel actions as transferring, suspending, and recalling employees, along with granting leaves and vacations. According to the TPSA, these indicia of supervisory status have led to conflicts within the bargaining unit represented by Local 6. It is the position of the TPSA that the sergeants should be severed from the existing bargaining unit and allowed to create their own separate unit.

The employer did not take a position on the propriety of the bargaining unit proposed by the TPSA.

As the incumbent exclusive bargaining representative of a bargaining unit that includes the sergeants, Local 6 maintains that the sergeants should remain in the existing bargaining unit. It argues that the sergeants do not meet the requirements for exclusion as supervisors under Commission precedents, and that the sergeants lack sufficient supervisory authority to effectively recommend or independently implement personnel action or otherwise direct the work force. According to Local 6, all personnel actions must be in conformity with the paramilitary rank structure, with established personnel (civil service) rules, with standards detailed in the collective bargaining agreement it has negotiated with the employer, and with the MRP, so that little or no room is left for discretionary personnel action at the sergeant level.

Applicable Legal Standards

The determination and modification of bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

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. . . .

While none of the four components of the statutory unit determination criteria prevails over or trumps the others, they may not all operate in every case. Specifically, the "history of bargaining" component which is inapposite to proposed bargaining units of unrepresented employees takes on significant weight when (as here) there is an attempt to "sever" a group of employees from the bargaining unit in which they have historically been included.

Stability of Bargaining Relationships -

Each bargaining relationship created by the certification or recognition of an exclusive bargaining representative inherently has the potential to become a long-term relationship. In that context, the Commission wrote:

Absent a change of circumstances warranting a 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.

City of Richland, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

Severance Petitions Disfavored -

The existence of a history of bargaining normally warrants imposition of strict "severance" standards where one union seeks to represent only a portion of a larger bargaining unit historically

represented by another union. In *Yelm School District*, Decision 704-A (PECB, 1980) and numerous subsequent cases, the Commission has applied the "severance" criteria to reject Balkanization of bargaining units.

Rights and Treatment of Supervisors -

The current treatment of supervisors under Chapter 41.56 RCW emanated from a petition filed by the City of Tacoma shortly after the Commission commenced operations in 1976. That petition concerned a bargaining unit of employees who would have qualified as "supervisors" under Section 2(11) of the National Labor Relations Act (NLRA). In *City of Tacoma*, Decision 95-A (PECB, 1977), the Commission noted that Chapter 41.56 RCW does not contain exclusionary language similar to the NLRA, and that none of the supervisors were excludable on the narrow grounds set forth in RCW 41.56.030(2). The Commission thus rejected policies and precedents developed by its predecessor agency, the Washington State Department of Labor and Industries (L&I), and affirmed the propriety of the separate unit of supervisors.

When *Tacoma*, Decision 95-A was decided by the Commission, an appeal from an L&I decision concerning another separate unit of supervisors was pending before the Supreme Court of the State of Washington. The Commission notified the Supreme Court of the change of administrative interpretation of the statute,⁸ and supplied a copy of the *Tacoma* decision. In a unanimous decision, the Supreme Court then embraced the Commission's *Tacoma* reasoning in *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977). As a result, persons who would be excluded

⁸ *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977), at footnote 1.

from the coverage of the NLRA as "supervisors" have full bargaining rights under Chapter 41.56 RCW.

In a subsequent ruling on another appeal from an L&I decision concerning the bargaining rights of supervisors, our Supreme Court gave the term "confidential" as used in RCW 41.56.030(2) a narrow interpretation and further slammed the door on a top-down exclusion of supervisors equating them with managers. *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).⁹

Recognizing the potential for conflicts of interest that is inherent in having both supervisors and rank-and-file employees in the same bargaining unit, the Commission separated battalion chiefs from rank-and-file fire fighters in *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). Since that time, the Commission has routinely exercised its unit determination authority under RCW 41.56.060 to implement the separate communities of interest that distinguish supervisors from rank-and-file employees. The focus in making unit determinations under *Richland* is on the possession and exercise of authority affecting employee wages, hours, and working conditions.

Lacking a definition of "supervisor" within Chapter 41.56 RCW, the definition contained in the Educational Employment Relations Act, Chapter 41.59 RCW, has been looked to as setting forth the types of

⁹ While the *Yakima* decision was not unanimous, the main debate among the justices concerned the ongoing inclusion of battalion chiefs in the same bargaining unit with rank-and-file fire fighters. A simple solution to that debate would have been for the Court to remand the case to PERC for a unit determination consistent with *Packard Motor Car Co. v. NLRB*, 330 U.S. 485 (1947) and its own *METRO* decision.

authority that give rise to a potential for conflicts of interest. RCW 41.59.020(4)(d) includes (emphasis added):

[S]upervisor . . . means any employee having authority, in the interest of the employer, to *hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge* other employees, or to *adjust the grievances*, or to recommend effectively such actions, 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 and shall not include any person solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

Separate analysis of the functions and responsibilities of each position is required.

The titles and characterizations applied by the parties are not controlling. Absent evidence demonstrating an actual potential for conflicts of interest, the Commission has included persons holding titles that clearly connoted supervisory status in a rank-and-file bargaining unit. *City of Gig Harbor*, Decision 4020-A (PECB, 1992). Similarly, having discretionary authority in administrative matters does not warrant exclusion from a bargaining unit as a "supervisor". *Island County*, Decision 5147 and 5147-D (PECB, 1996). It is necessary to determine whether the disputed position truly has independent authority to act or to effectively recommend personnel actions on behalf of the employer. *Thurston County*, Decision 1064 (PECB, 1980).

The Commission has used terms such as "lead worker" to describe persons who have "authority to direct subordinates in their daily job assignments, without possessing authority to make meaningful

changes in the employment relationship" and has declined to exclude such persons from bargaining units. *City of Aberdeen*, Decision 4174 (PECB, 1992). The Commission wrote:

A distinction has been drawn between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship.

Morton General Hospital, Decision 3521-B (PECB, 1991). Where an individual has limited authority to act in the name of the employer on personnel matters, or where the authority exercised is the ministerial regulation of programs or functions, there is little potential for conflicts of interest within a bargaining unit and exclusion from the bargaining unit is not then warranted. *Federal Way Water and Sewer District*, Decision 3794 (PECB, 1991).

In the context of the instant case involving a paramilitary rank structure, it is important to note Commission precedents holding that exclusion is not warranted where an individual merely makes recommendations in a highly-structured environment that uses predetermined rating systems and criteria based on objective standards, or where the actual decisionmaking authority is vested at a higher level in the organization. *Clallam County Transit System*, Decision 1079-A (PECB, 1981). Similarly, having evaluations made by employees who are in the best position to observe the evaluatee's performance does not necessarily pose sufficient conflict of interest to warrant a "supervisor" exclusion. *King County Fire District 24*, Decision 2279 (PECB, 1986); *Snohomish Health District*, Decision 47350-A (PECB, 1995). The mere existence of a paramilitary rank structure of the type found in many uniformed collective bargaining units clearly does not automati-

cally warrant a determination that all persons holding a higher rank over subordinate ranks are supervisors. *Franklin County, Decision 5193 (PECB, 1995).*

Rank-by-Rank Unit Structures Disfavored -

Commission precedents clearly reject the fragmentation that would result from creating a separate bargaining unit for each rank in a paramilitary organization. This was addressed as follows:

[A]ll of the employees in the petitioned-for bargaining unit are supervisors. It is clear that the deputy chiefs are senior supervisory employees, with broader authority than other bargaining unit members. . . . [I]n *City of Seattle, Decision 689, 689-A, 689-C (PECB, 1981)*, where eligibility issues arose in a new bargaining unit of supervisory employees in the Seattle Police Department . . . the . . . decision placed supervisors of differing levels of authority in the same bargaining unit.

The paramilitary structure used in the uniformed services is often argued as a major distinction from the supervision arrangements commonly used in non-uniformed public employment. No case is cited or found, however, where a paramilitary rank structure has been taken as absolute. Thus, . . . the Commission has . . . frequently included persons holding a variety of paramilitary rank titles in the same unit. The title is not controlling.

It is the nature and scope of authority which must be evaluated. *City of Redmond, Decision 1367 (PECB, 1982)*; *City of Richland, Decision 279-A (PECB, 1978)*; *City of Richland, Decision 1519-A (PECB, 1983)*. In such cases, the Commission has determined that the community of interest and the avoidance of fragmentation of bargaining structures have weighed in favor of inclusion of two or more paramilitary ranks in the same bargaining unit. In the *City of Seattle*, the fire department rank and file bargaining unit includes lieutenants and captains as well as firefighters occupying the lowest rung on the rank ladder. Similarly, the city's rank and file police officer unit includes sergeants.

. . .
One final observation about this unit determination question is worthy of note here: Absent a finding that they are "confidential" employees, the deputy chiefs are

public employees having a right to organize under Chapter 41.56 RCW for the purposes of collective bargaining. If excluded from the bargaining unit petitioned for in this case on the basis of their supervision of the battalion chiefs, the deputy chiefs could nevertheless form yet another separate bargaining unit of supervisors. There is no evidence or indication that such a result would serve the best interests of labor relations policy. On the contrary, *the potential for work jurisdiction disputes between two such units with some overlapping responsibilities, the potential for disputes in the event of reversion of a deputy chief to his or her civil service rank of battalion chief, and the general effect of such unnecessary fragmentation must be avoided.*

City of Seattle, Decision 1797-A (PECB, 1985) (emphasis added). The same principle has been reiterated in numerous cases, including at least *Clover Park School District*, Decision 3002-A (EDUC, 1989); *Snohomish County*, Decision 5375 (PECB, 1995); *Skamania County*, Decision 6511-A (PECB, 1999); *Kitsap County*, Decision 6805 (PECB, 1999); *City of Blaine*, Decision 6619 (PECB, 1999); *City of Moses Lake*, Decision 7008 (PECB, 2000); *City of Lynden*, Decision 7527-B (PECB, 2002); and *City of Redmond*, Decision 7814 (PECB, 2002). The type of work jurisdiction conflict encountered in *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001) (where separate rank-and-file and supervisor units each laid claim to certain overtime work opportunities) would be greatly exacerbated by having multiple bargaining units within an employer's supervisory structure.

Application of Standards

Environment for Exercise of Authority by Sergeants -

The evidence in this record indicates the sergeants operate in an environment that inherently limits their authority.

The collective bargaining agreement between Local 6 and the employer expressly supercedes any conflicting provisions of the

city charter or ordinances. That contract details and controls the procedures to be followed in implementing a wide variety of personnel actions including, but not limited to:

- Standardized compensation, including at least: wages (e.g., base pay, specialty pay, overtime pay, shift pay, longevity pay) and paid leaves (e.g., vacation, sick leave, holidays);
- Standardized hours, including at least: specific hours of work, compensatory time off, detailed regulation of shift scheduling and shift changes, and attendance at union meetings while on duty;
- Standardized working conditions, including at least: personal property damage reimbursement, unpaid leave (e.g., extended Family Medical Leave Act, union business), and limitations on work assignments; and
- A detailed grievance procedure ending in final and binding arbitration.

The contract severely limits the scope of authority left to the discretion of individuals holding the "sergeant" rank.

The employer's manual of rules and procedures (MRP) addresses a wide variety of matters in exacting detail, including command, the rank structure, departmental organization, procedures for the dispatch of patrol and traffic units, complaints and discipline, job descriptions, and equipment. Many of the procedures detailed in the MRP harmonize with the collective bargaining agreement between Local 6 and the employer, and are even instructive in explaining how that collective bargaining agreement is to be administered. Of particular interest in this case, the MRP:

- Spells out the procedures that both the employer and the employee must follow in regard to scheduling vacations,

holidays, and compensatory time, by detailing the sign-up procedure, how many individuals may be on leave at any given time, and how exceptions are to be handled; and

- Addresses family leave, by detailing the procedures that both the employees and the employer must follow in administering such leaves.

While the sergeants have some ministerial role in forwarding paperwork concerning such absences, there is little or no room for them to engage in any exercise of discretion.

The employer's job description for "sergeant" delegates largely-ministerial functions, describing their duties as follows:

RESPONSIBLE TO: Police Lieutenant

SUPERVISES: Police Detectives and Police Patrol Officers

DUTIES:

Responsible to plan, organize, and *direct activities* within their unit or assignment.

Responsible to promptly *obey and transmit all legitimate orders of higher authority*, ensuring uniform interpretation and full compliance.

Responsible to be *familiar with administrative policy* and execute service programs within their area of responsibility.

Responsible to ensure protection of rights to all persons coming within the scope of police authority.

Responsible to diligently *enforce the observance of high ethical standards in the performance and conduct of personnel* under their command.

Responsible to set an example for all subordinates in sobriety, deportment, dignity, courtesy, discretion, skill, diligence, neatness, and the observance of proper discipline.

Responsible for promoting fleet and personnel safety within their area of responsibility, exerting every effort toward the reduction of hazards and incidents.

Responsible for investigating all incidents of damage or neglect to department vehicles and equipment under their command, *completing prescribed reports, and taking necessary corrective or remedial action.*

Responsible for examining reports written by subordinates to *ensure accuracy, neatness, proper content, and conformity to established reporting procedures,* referring incorrect and incomplete reports back to subordinates for correction and providing the indicated remedial instructions.

Responsible for *initiating recommendations for commendations* to adequately recognize outstanding performance of subordinate personnel.

Responsible for *instructing and directing subordinates* in investigations and effective case preparation and presentation.

Responsible for the enforcement of state, county, and city laws and ensuring that the rules, regulations, policies, and manual of rules and procedure of the department are adhered to.

Responsible for *keeping the Lieutenant informed of the continuing status of all activities* within their unit or division.

Responsible to ensure the proper processing of crime scenes.

Responsible for *ensuring that all personnel within the division or unit maintain a positive image* in the eyes of the public and fellow employees and work continuously toward improved community relations.

Responsible for *training and directing subordinates within their command.*

Responsible for *training and assisting probationary officers* assigned to their command and for submitting monthly *evaluation reports* regarding their abilities, deficiencies, and progress.

Responsible to *secure all information* pertinent to the proper conduct of business from the police lieutenant and/or police sergeant going off duty and to *relay such information* to their relief.

Responsible for *conducting formal inspection of personnel* and equipment under their command, promptly correcting and reporting defects and shortage to their lieutenant.

Responsible to assist in the interpretation and analysis of crime incident data and to make pertinent recommendations.

Responsible to *respond with officers to calls in their area of responsibility* which appear to be of major proportion and require police action or assistance and shall take appropriate action.

Responsible for the preparation, distribution, and filing of daily work assignment reports.

Responsible for maintaining staffing levels within their unit or shift and *approving time off for subordinates*.

Responsible for control of all property under their care.

Responsible for *approving overtime slips*.

Responsible for notifying officers of civil interviews and returning completed interview request forms to the division commander.

Responsible for *assigning cases* to police detectives within their unit and continually monitoring assigned cases for progress and disposition.

Responsible for liaison with other agencies concerning crimes of mutual interest.

Responsible to *evaluate the day-by-day job performance of personnel* assigned under their command.

Responsible for making recommendations to improve operational effectiveness.

Responsible to perform other related duties as assigned.

(emphasis added). Thus, the role of the sergeant as a conduit for information receives emphasis as one of the first items in a long list, and many of the other tasks listed clearly involve only procedural and organizational matters.

Authority to Hire -

Hiring is a coordinated activity between the support services section of the Police Department and the employer's Human Resources Department. Applications for employment are filed with the Human Resources Department, and applicants undergo a written test, a

physical agility test, and medical/psychological examinations, all administered by that department. Applicants are subjected to a background check conducted by either a detective within the department or a retired detective working under a personal services contract. Thus, sergeants have no role in that initial process.

Applicants are interviewed by a three-member panel made up of a random variety of ranks, including lieutenants, sergeants, and police officers. The highest-ranking member of the particular interview panel makes a recommendation that is passed up the chain of command. Thus, although a sergeant may have the opportunity to make a recommendation on a particular applicant, that only occurs on a random basis and the sergeants do not stand out as having an ongoing role in the hiring process that rises above the routine. Even when a sergeant serves as the highest-ranking member of an interview panel, that falls short of making an "effective" recommendation because all hiring decisions are made by the chief based on information passed through the chain of command.

Authority to Assign Employees -

Sergeants are responsible for assigning specific work or projects to the employees in their unit or detail. In that regard, the sergeants review cases and determine how best to proceed, whether the matter is workable, and if there is follow-up capability. The evidence does not, however, support a conclusion that those routine work assignments rise above the "lead" role.

The sergeants' role in deploying officers to different sectors or geographic areas to meet operational and staffing needs is closely controlled by detailed procedures in the MRP:

I. TRAFFIC PROBLEMS

The following procedure will provide for dispatch and/or handling of traffic-related matters:

- E. Traffic supervisors will be responsible for ensuring that their field units are utilized in the most efficient manner and may, if the situation in the field requires it, countermand the dispatch of a unit away from an existing problem.

II. DISPATCH OF PATROL UNITS

Members of other divisions or units who desire assistance from on-duty patrol personnel, will first obtain approval from a Patrol Division Supervisor. Emergency assistance or priority backup situations are precluded.

In both of those circumstances, sergeants serving as the designated traffic or field supervisors are told exactly what they are to do. Thus, although sergeants are involved in making public safety decisions that need to be made on a day-to-day basis at the field level regarding operational matters, those decisions do not call for the consistent exercise of *independent* judgment creating a potential for conflicts within the rank-and-file bargaining unit. The assignments are job-related, but the authority is not directed at core personnel matters.

The involvement of sergeants in shift scheduling is confined to the administration of the MRP and collective bargaining agreement provision detailing matters down to hours of work shifts and scheduled days off. Variations generally require the consent of Local 6 and the employer and, even if the chief or his designee might change shifts in an emergency, there is no evidence that such changes have been or would ever be made by a sergeant. Patrol officers who desire a shift change submit their requests (which are controlled by the terms of the collective bargaining agreement and the MRP) to their sergeants, but the sergeants merely forward such requests to the supervising lieutenant for action.

The collective bargaining agreement and MRP also regulate shift extensions, the accrual and use of vacation time, holidays and

compensatory time off. The sergeants administer those matters without any independent authority or discretion concerning them.

The minimum staffing requirements (referred to as the "red line" in departmental parlance) are established by the MRP and the collective bargaining agreement. Sergeants are responsible for maintaining the required staffing level, but any exception to the "red line" would require the consent of a lieutenant.

Sergeants may occasionally encounter situations that could warrant calling in a specially-trained team to deal with matters such as a civil disturbance or special tactical procedures, but the sergeants normally do not have the authority to act independently on such situations. Instead, the sergeant would make a recommendation to a higher-ranking officer.¹⁰

Where there is evidence of a serious crime, a criminal investigations sergeant has the authority to call out detectives to initiate an investigation. In the event of a call-out, a sergeant will look for volunteers from a posted list of employees who desire such call-outs. There is no evidence of call-outs being imposed, and the collective bargaining agreement and MRP regulate call-outs down to establishing the rate of premium pay and the minimum number of hours that will be worked. Further, although the sergeant oversees the investigation process, there is little or no personnel actions other than deciding that a call-out is appropriate.

Promotions and Demotions -

The record also reflects that promotions and acting appointments are controlled by civil service rules.

¹⁰ For example, deployment of the department's disorderly response team requires the authorization of a lieutenant.

In a sense, new employees are "promoted" to permanent status if they successfully complete their probationary period. Following completion of their law enforcement academy training, new patrol officers work under the direction of a police officer specially-trained as (and designated as) a field training officer (FTO). Based on their first-hand observations, the FTO's submit evaluations of the actual and potential performance of probationary employee. Those reports call for responses to predetermined criteria, but include expressions of opinion regarding the new officer's performance. The reports are routed through a designated field training coordinator (who may be another patrol officer). The main involvement of sergeants in that process is the compilation of weekly and monthly evaluations by a field training sergeant,¹¹ and forwarding of those materials to an assigned lieutenant or captain. The senior officer meets monthly with the training coordinator and the sergeant to discuss the progress of new officers, but any differences of opinion are resolved by the lieutenant or captain.

The Human Resources Department administers the testing process for promotions to the sergeant rank. Although the record reflects that some sergeants were asked to assist with crafting test questions in about 1995, that apparently-isolated activity did not rise to the level of exercising meaningful discretion and authority. Beyond the testing process, there is an oral examination by a panel of law enforcement personnel from other departments, eligibility for promotion is certified by the civil service commission (based on written and oral examination scores), rosters naming three eligible applicants are provided to the chief, and the chief selects the employee(s) to be promoted.

¹¹ Although other sergeants do not normally accompany probationary officers, they may respond to a call to observe the performance of a probationary officer.

The detective position is a civil service rank subject to a testing procedure. Those who pass are referred for an interview by a panel made up randomly from assistant chiefs, lieutenants, sergeants, and other detectives. A civil service list of three finalists is crafted, and the final selection is made by the chief. Again, the sergeants do not exercise any independent discretion or authority in the selection of detectives.

Promotion to the specialist rank is not subject to the civil service promotional process. The participation by sergeants in that selection process is limited to serving on review panels that are normally made up of a captain, a lieutenant, a sergeant and another specialist. Ultimately, however, the sergeant has no individual discretion in that process and the final authority to appoint and remove specialists is vested in the chief.

The department solicits and values the recommendations of sergeants on selecting patrol officers for FTO assignments.¹² Even then, however, the sergeants' recommendations are filtered through the supervising lieutenant in charge of processing the applications. There is no evidence that sergeants have discretionary authority to make such appointments.

The department also maintains several technical specialty positions such as bomb technician, range master, dog handler, special tactics team, and methamphetamine laboratory investigation. Applications for those assignments are normally submitted to the bureau commander for processing, and for a determination as to whether the circumstances call for convening an interview panel. According to

¹² The FTO role requires special training for working closely with probationary officers, and counseling them on how to perform their work in a safe and proficient manner.

Deputy Chief Michael Darland, bureau commanders may sometimes directly or indirectly solicit opinions from employees, including sergeants. Thus, sergeants play no special or ongoing role in the selection process for appointment to these specialty positions.

Transfers -

The department has a career rotation policy that allows employees to transfer out of general duty assignments - and to seek a specialty assignment - for a duration of up to six years. The record reflects that sergeants may be involved in the administration of such rotations, but such personnel decisions are made within the framework of existing criteria, the collective bargaining agreement and the MRP. There is minimal evidence indicating exercise of substantive discretion on the part of sergeants.

Lay-off and Recall -

The sergeants are not involved in these types of personnel action.

Suspension -

A sergeant has the authority to temporarily remove a lower-ranking employee from duty in exceptional circumstances, in the event the sergeant determines that the employee is unfit or unable to perform police work for reasons such as being under the influence of alcohol. A sergeant may be involved in the ensuing investigation made to determine whether other sanctions are in order, but the sergeant does not have discretionary authority to unilaterally impose other sanctions.

There are brief periods of time when a sergeant may be the highest-ranking police officer scheduled on duty in the department. There is, however, no evidence that any personnel actions are scheduled to take place at such times or that the sergeant holding that status would have any authority to take independent action on any

personnel matter. In addition, a command duty officer with the rank of captain is readily accessible by telephone and available for call-out under circumstances which are detailed in the MRP. Thus, these brief flirtations by some of the sergeants with command authority do not warrant exclusion of those particular sergeants, let alone warranting a change of bargaining unit status for all of the sergeants.

Discipline -

Sergeants have the authority to counsel subordinates about minor deficiencies. Under the MRP, the purpose of such counseling is to correct a problem and develop an understanding of procedures.

Sergeants have issued oral warnings for minor infractions. Even when issued, however, an oral warning is merely an admonishment that an act, conduct or performance is not proper or acceptable. Further, MRP Section 2.09.001 seems to exclude sergeants from the issuance of oral warnings, stating: "[O]ral reprimand may be given by supervisors one or more levels above the employee's immediate supervisor, i.e. for a patrol officer or detective, this would be a lieutenant."

The evidence suggests that, as the eyes and ears of the department, sergeants can be in a position to recommend demotion of a patrol specialist. However, a sergeant does not have the authority to unilaterally relieve a patrol specialist of such assignment.

It is clear that the sergeants cannot impose written reprimands or more serious forms of discipline. Any allegations that are serious enough to warrant more than an oral reprimand are advanced to higher ranks or other departments for processing. The final determination on any discharge is made by the city manager.

Concerns about employee conduct may be brought to the attention of a sergeant from various sources, including personal observations, others within the department, or even the city manager's office. The sergeants evaluate such matters, to distinguish between process inquiries and alleged misconduct, but the MRP contains 10 pages of detailed instructions and directions for dealing with internal and external complaints against employees. Similarly, while sergeants may be involved in the initial investigation of complaints against patrol officers and patrol specialists, such matters must be documented and referred to the division commander (a lieutenant or higher) if the sergeant determines that the matter cannot be readily resolved. Even if a sergeant is assigned to submit a report to the supervising lieutenant, the format for such reports is fully prescribed.¹³ If the lieutenant believes an investigation is incomplete, it will be returned to the sergeant for additional work. Given that completed reports are processed up through the chain of command to the chief, who is the final decision maker regarding the imposition of discipline short of discharge, the record does not support finding that the reports prepared by the sergeants constitute effective recommendations on any such matters.

Whenever it is determined that a matter being investigated could lead to economic sanctions, the collective bargaining agreement requires that officer interviews be terminated and requests for administrative reports be cancelled. The bureau commander will then determine whether to submit the matter to the department's internal affairs section for investigation. Staffed by a lieutenant and three sergeants, the internal affairs section refers its

¹³ The details include notations as to which MRP is allegedly violated, a summary of the complaint against the officer, the path of the investigation, a synopsis of interviews, the investigation findings, and conclusions regarding the validity of the complaint, and suggested recommendations.

investigative findings to higher-ranking employees for evaluation. A sergeant may be asked about the validity of charges at a meeting held by a lieutenant or a deputy chief, but the sergeants do not provide input regarding appropriate disciplinary sanctions. In addition to the processes detailed in the MRP, the collective bargaining agreement requires just cause for the imposition of discipline, and contains an extensive employee rights article that addresses such matters as employee interviews, dismissal, suspension, investigation of alleged criminal conduct on the part of the employee, and psychologist referrals. Those procedural limitations place significant restrictions on the discretionary authority of sergeants.

The conclusion from the foregoing is that the evidence does not sustain the TPSA claim that sergeants have authority to recommend and impose discipline. Indeed, the record fairly reflects that such actions are taken in a tightly-controlled environment that does not allow for exercise of any substantive discretion by sergeants, and that any recommendations made by sergeants are subject to independent review by higher-ranking officers.

Adjust Grievances -

Sergeants are expected to attempt to resolve personnel issues arising in their units or details before they become grievances. According to the TPSA, the allocation of overtime by sergeants is the personnel issue that comes up most often.¹⁴ Be that as it may, there is no evidence that a sergeant would have the authority to authorize a cash disbursement to resolve any grievance concerning an overtime allocation or any other issue.

¹⁴ The record is not clear how overtime is allocated, but it is inferred that the sergeants allocate overtime pursuant to department policy, that there is a fixed standard for distribution that removes meaningful discretion.

The formal grievance procedure set forth in the collective bargaining agreement between the employer and Local 6 contains four steps. Initial submission of such grievances is at the assistant chief level, so that it is clear the sergeants have no formal role in that process.¹⁵ This record contains reference to, but minimal details concerning, a formal review board process that can be invoked by employees to appeal disciplinary decisions. It does not appear that sergeants have an established and ongoing role in that process.

Conclusions on Authority -

The sergeant's primary duty is to direct the work unit in its performance of its public safety mission, and to encourage the most efficient use of resources. While it is clear that the sergeants do not have the same daily routine as the patrol officers, patrol specialists, or detectives, the sergeants are required to respond to certain types of calls. The sergeants monitor police activities; they direct, coach, counsel, and train officers in the day-to-day operations of the department. That oversight is directed, however, at the overall work performance of the unit or detail. Personnel actions affecting members of the bargaining unit represented by Local 6 are the province of higher ranks.

Absence of Changed Circumstances

The Executive Director concludes that the evidence in this record does not support either the existence of a change of circumstances needed to trigger a change of unit configuration under *City of Richland*, Decision 279-A, or a severance under *Yelm School District*, Decision 704-A.

¹⁵ Unresolved grievances advance to the chief, the city manager, and then to arbitration.

Even if it were to be concluded that the sergeants possess and exercise supervisory authority, a substantial question would exist in this case as to whether it is appropriate to effect a change of their unit status at this time. There is no evidence establishing any recent change of the duties, skills, working conditions, or authority of the police sergeants in Tacoma. Although it was a party to the proceeding from which the current treatment of supervisors devolved, this employer thereafter added the captains to the bargaining unit represented by Local 6 (by the voluntary recognition in 1979), and it apparently did not take steps to obtain a separation of its law enforcement supervisors from its rank-and-file law enforcement officers until 1999 (when it filed a unit clarification petition seeking removal of only the lieutenants and captains from the unit represented by Local 6).

The TPSA alleges a conflict of interest with lower-ranked employees and a lack of fair representation as its primary motivation for severance from the existing bargaining unit, but this is not a circumstance unique to the Tacoma Police Department. Many labor organizations are faced with internal conflicts between members, and have developed procedures to provide unbiased representation to all members of the bargaining unit. Moreover, there is no evidence that sergeants have been called upon to serve as employer witnesses in a significant number of grievance or arbitration proceedings, or that such situations have increased so significantly in recent times as to constitute a change of circumstances.

Propriety of Separate Unit

Because of the conclusion that this record does not warrant a separation of the sergeants from the bargaining unit represented by Local 6, it is not necessary for the Executive Director to fully decide the propriety of the separate unit of sergeants proposed by

the TPSA in this case. It suffices to say that the proposal to create a third Commission-sanctioned bargaining unit among the law enforcement officers of this employer appears to contravene a long line of Commission precedents which have rejected rank-for-rank unit configurations in paramilitary organizations. Taking into consideration the relevant arguments raised in numerous cases, the Commission has consistently sought to avoid a proliferation of bargaining units. Nothing in this record expressly contradicts a finding that the integrated operation among various paramilitary ranks is essential to the overall discharge of the primary public safety mission of the Tacoma Police Department, or that such integration is appropriately dealt with as a unit.

Finally, a substantial procedural problem is presented in this case, due to the evident failure of the TPSA to serve the TPMA and to directly address the bargaining unit represented by the TPMA. The use of job titles in the unit description was stipulated by the TPMA and employer in the proceedings which led to the certification of the TPMA, but: (1) Stipulated unit descriptions lack the same weight as unit descriptions ordered by the Commission in a decision; (2) Commission practice generally avoids the use of current job titles in unit descriptions, whenever possible; and (3) unit descriptions are subject to further scrutiny if they are later found to be ambiguous or contrary to Commission policy.¹⁶

The bargaining unit represented by the TPMA draws its propriety from the "separate unit of supervisors" concept that dates back to *Packard Motor Car Co. v. NLRB, City of Tacoma*, Decision 95-A, *METRO*, and *City of Richland*, Decision 279-A, all discussed above.

¹⁶ In *Kennewick General Hospital*, Decision 4815-B (PECB, 1996), an argument about the identity of the employer was resolved, in part based on a stipulation in an earlier representation proceeding.

METRO, and *City of Richland*, Decision 279-A, all discussed above. It thus appears that the TPMA would be a necessary party to any discussion of there being additional supervisors in the Tacoma Police Department.

FINDINGS OF FACT

1. The City of Tacoma is a "public employer" within the meaning of RCW 41.56.030(2). Among other services, the employer maintains and operates a police department.
2. The Tacoma Police Sergeants Association (TPSA) is an organization created by and among employees of the City of Tacoma, with a primary purpose of collective bargaining. The organization has been formalized by the filing of articles of incorporation under the laws of the state of Washington, and it has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of a bargaining unit limited to approximately 43 sergeants employed in the Tacoma Police Department.
3. Tacoma Police Union, Local 6, a bargaining representative within the meaning of RCW 41.56.030(3), is the incumbent exclusive bargaining representative of certain law enforcement employees of the City of Tacoma, including employees in the rank of sergeant. There are approximately 273 employees in that bargaining unit, and Local 6 continues to be a viable organization and continues to represent the bargaining unit.
4. The Tacoma Police Management Association (TPMA), a bargaining representative within the meaning of RCW 41.56.030(3), is the incumbent exclusive bargaining representative of supervisory

law enforcement employees of the City of Tacoma, including at least employees in the ranks of lieutenant and captain.

5. The employer and Local 6 have been parties to a series of collective bargaining agreements that detail personnel rules and standards, and that closely regulate the terms and conditions of employment of the bargaining unit represented by Local 6.
6. The employer maintains a manual of rules and procedures (MRP) for the Tacoma Police Department that contains instructions regarding all phases of the operation of the department.
7. The sergeants do not have or exercise independent authority with regard to hiring, promoting, transferring, laying off, recalling, suspending, disciplining or discharging employees or adjusting their grievances. Authority to make substantive decisions concerning all such matters is retained by the chief of police or his designee.
8. The sergeants have limited authority to relieve an employee who is unfit for duty, but any such action is reported to and independently reviewed by higher-ranking employees.
9. The sergeants have limited authority to impose corrective action at the lowest level of discipline, limited to oral warnings and reprimands.
10. The sergeants have limited authority to adjust personnel issues at the lowest level. The sergeants are omitted from any role in formal grievance processing, inasmuch as Step One of the grievance procedure contained in the contract between the employer and Local 6 calls for submission of grievances to

an assistant chief, Step Two of that procedure advances the grievance to the chief, Step Three of that procedure advances the grievance to the city manager, and Step Four of that procedure advances the grievance to arbitration.

11. The sergeants exercise administrative or ministerial functions within the confines of the collective bargaining agreement and MRP in regard to the assignment of employees, granting leaves, and imposition of minor disciplinary warnings upon employees.
12. A history of bargaining exists for the police sergeants as part of the existing bargaining unit represented by Local 6. There has been no recent, substantial change of circumstances warranting removal of the sergeants from that bargaining unit.
13. In proposing a separate unit of supervisors in this case, the TPSA neither served the TPMA nor addressed the evident intrusion of the unit it proposed on the unit represented by the TPMA as described in paragraph 4 of these findings of fact.

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 Tacoma Police Sergeants Association is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The petitioned-for bargaining unit limited to sergeants in the Tacoma Police Department is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, so that

no question concerning representation currently exists under RCW 41.56.060 and 41.56.070.

ORDER

The petition for investigation of a question concerning representation filed in the above-captioned matter is DISMISSED.

DATED at Olympia, Washington, this 29th day of January, 2003.

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.