

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON STATE COUNCIL OF	)	CASE 20692-E-06-3186
COUNTY AND CITY EMPLOYEES	)	
	)	DECISION 9824 - PECB
Involving certain employees of:	)	
	)	
KING COUNTY	)	ORDER OF DISMISSAL
_____	)	

Washington State Council of County and City Employees, by  
*David M. Kanigel*, Attorney at Law, for the petitioner.

King County Corrections Guild, by *Jared C. Karstetter, Jr.*,  
Attorney at Law, for the incumbent.

*Gretchen Herbison*, Labor Negotiator, for the employer.

On October 6, 2006, the Washington State Council of County and City Employees (WSCCCE) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The petition sought certification as the exclusive bargaining representative of a proposed bargaining unit of corrections sergeants employed by King County (employer). The petitioned-for employees are included in a historical bargaining unit of corrections officers and sergeants currently represented by the King County Corrections Guild (KCCG). On October 20, 2006, the Commission verified a sufficient showing of interest allowing the petition to proceed. On October 25, 2006, the KCCG filed an objection to the petition based upon the ruling in *King County*, Decision 7053 (PECB, 2000). That case involved the same parties and identical issues as the present case: whether the sergeants are supervisors, and whether the sergeants should be severed from the existing bargaining unit. On October 27, 2006,

the Executive Director responded to the objection, stating that the result sought by the WSCCCE had been considered and rejected in the 2000 decision, and that the doctrine of *res judicata* applied to the petition, unless there had been a substantial change of circumstances since the 2000 decision was issued. The Executive Director ordered the WSCCCE to show good cause on or before November 13, 2006, as to why the Commission should not dismiss the petition.

On November 13, 2006, the WSCCCE responded with the declarations of thirteen sergeants within the bargaining unit, arguing that circumstances have substantially changed since the 2000 decision, and that sergeants now act as supervisors. The WSCCCE asserted that the declarations provided the necessary factual basis for an evidentiary hearing to determine whether an election should be held. On November 14, 2006, the KCCG disputed the declarations, arguing that no substantial changes have occurred since 2000 and asked the Executive Director to dismiss the petition. The case was set for a hearing to determine whether substantial changes in circumstances have occurred between 2000 and the present. Hearing Officer David I. Gedrose held the hearing on February 1, 2, 8, and March 5, 2007.

The Executive Director ruled in the 2000 decision that (1) the corrections sergeants shared a community of interest with the corrections officers and lacked the authority sufficient to create a conflict of interest warranting their exclusion from the bargaining unit, and (2) that severance of those sergeants from the existing bargaining unit would not result in an appropriate unit configuration. *King County*, Decision 7053.

The Executive Director rules in the present case that, with respect to supervisory functions, the WSCCCE failed to prove that substan-

tial changes have occurred in the duties of sergeants since 2000. Accordingly, the existing bargaining unit remains the most appropriate unit configuration, and the sergeants remain within the unit. The petition is dismissed.

### ISSUES

1. Are corrections sergeants employed by the King County Department of Adult and Juvenile Detention supervisors within the meaning of Chapter 41.56 RCW?
2. Is severance of correction sergeants from the existing bargaining unit appropriate?
3. Should the Executive Director order an election to determine the above noted questions?

### ANALYSIS

#### Applicable Standards

##### Supervisors

The Legislature has delegated to the Commission the determination of appropriate bargaining units. RCW 41.56.060. Regarding supervisors, WAC 391-35-340 codifies a long line of Commission precedents exercising that authority:

WAC 391-35-340 UNIT PLACEMENT OF SUPERVISORS-- BARGAINING RIGHTS OF SUPERVISORS. (1) It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

(2) It shall be presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

*See also Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977); and City of Richland, Decision 279-A (PECB, 1978), aff'd, 29 Wn. App. 599 (1981), review denied, 96 Wn.2d 1004 (1981).*

In the public sector, where the "appointing authority" is often vested at a high level in employer organizations, and in the absence of a definition of "supervisor" within Chapter 41.56 RCW, the Commission has looked to the Educational Employment Relations Act, at RCW 41.59.020(4)(d), which defines a supervisor as:

[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 Commission has distinguished supervisors from "lead workers," who merely direct the work of other employees, 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. *City of Richland, Decision 279-A; University of Washington, Decision 6659 (PECB, 1999).*

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*, Decision 4735-A (PECB, 1995). It is the possession and exercise of employer authority over subordinate employees that warrants an exclusion of supervisors from a rank-and-file unit.

#### Change in Circumstances

A question in the 2000 decision was whether the duties of corrections sergeants had substantially changed since the unit's certification in 1996. The central question in the present case is whether those duties have substantially changed since 2000. Thus, even if there were some changes in the duties of corrections sergeants between 2000 and 2007, the determinative question in the present case is whether the changes were substantial enough to confer upon the sergeants the possession and exercise of employer authority over subordinate employees and so warrant the sergeants' exclusion from the existing bargaining unit.

#### Application of Standards

##### The Bargaining Unit

King County corrections sergeants have been represented for the purposes of collective bargaining since the 1970's. The Commission certified the current unit configuration on September 10, 1996, when the KCCG was designated as the exclusive bargaining representative of a unit comprised of corrections officers and sergeants. The question of whether the sergeants were supervisors did not come

before the Commission at that time. The historical bargaining unit description is:

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.

At the time the WSCCCE filed its petition, the employer and the KCCG were parties to a collective bargaining agreement set to expire on December 31, 2006. The agreement expired; the employer and the KCCG are currently negotiating a successor agreement.

#### The Status of Sergeants

The Commission has ruled on the status of corrections sergeants in several cases: *Pierce County*, Decision 3870 (PECB, 1991); *Franklin County*, Decision 5192, 5193 (PECB, 1995); *Snohomish County*, Decision 5375 (PECB, 1995), and *King County*, Decision 7053. In all of the cases except the *Snohomish County* case, the issue was whether sergeants were supervisors. In the *Snohomish County* case, the sergeants had previously been included in a supervisory unit. The question of the sergeants' supervisory status was not an issue. The Commission found in all the remaining cases that sergeants were not supervisors.

In the *Pierce County* case, the Executive Director ruled that, although the sergeants occupied responsible, front-line roles in the employer's operation, they did not have the authority to act on behalf of the employer in personnel matters. That authority was vested in lieutenants and captains. *Pierce County*, Decision 3870. In the *Franklin County* case, a central issue was whether the ability of sergeants to make recommendations concerning other employees and to make on-the-spot disciplinary decisions, subject

to the approval of a superior officer, were sufficient reasons to create a conflict of interest between corrections officers and the sergeants. The Executive Director ruled that personnel recommendations could be done in a peer review format as well as in a supervisory relationship; further, that on-the-spot disciplinary decisions were consistent with lead worker or foreman positions. Those alleged areas of conflict were not sufficient to remove the sergeants from the corrections officer bargaining unit. *Franklin County*, Decision 5192, 5193.

In the *King County* case, the Executive Director ruled on the following claims by the WSCCCE regarding the supervisory status of sergeants: sergeants responded to grievances at the first step of the process,<sup>1</sup> they attended management meetings, they scheduled the work of corrections officers, and they approved leave and overtime requests. A sergeant was assigned to revise a standard operating procedures manual. Sergeants served as acting captains, and they made recommendations concerning the retention of probationary employees. The Executive Director found that these activities were not sufficient to show that the sergeants were supervisors. *King County*, Decision 7053.

The Commission has more often ruled on the status of police sergeants: *City of Sunnyside*, Decision 1178 (PECB, 1981); *City of Snohomish*, Decision 1557 (PECB, 1983); *City of Redmond*, Decision 2269-B (PECB, 1985); *Washington State Patrol*, Decision 2806-A (PECB, 1988); *Adams County*, Decision 6005-B (PECB, 1998); *Skamania*

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<sup>1</sup> Sergeants no longer respond to first step grievances involving corrections officers. The two most recent collective bargaining agreements between the employer and the KCCG, covering the period 2001-2006, designate majors as responders at the first step of the grievance process.

*County*, Decision 6511-A (PECB, 1999); *City of Moses Lake*, Decision 7008 (PECB, 2000); *City of Union Gap*, Decision 8619-A (PECB, 2003).

In the police cases, sergeants were included in the same bargaining units with patrol officers, with the exception of the sergeants in the *City of Sunnyside* and *City of Snohomish* cases. In the *City of Sunnyside* case, there were no intervening ranks between the sergeants and police chief. The sergeants reported directly to the chief. The sergeants had the authority to discipline employees and adjust employee grievances. The sergeants trained and evaluated employees. The Executive Director ruled that the record demonstrated that leaving the sergeants in the same bargaining unit with rank-and-file employees would pose a potential conflict of interest within the bargaining unit. *City of Sunnyside*, Decision 1178.

In the *City of Snohomish* case, as in the *City of Sunnyside*, there were no intervening ranks between sergeants and the police chief. The sergeants had authority to act for the employer to schedule, evaluate, approve, assign, hire, and discipline rank-and-file employees. The Executive Director found that the sergeants had duties, skills, and working conditions distinct from their subordinates and were properly excluded from the rank-and-file bargaining unit. *City of Snohomish*, Decision 1557.

However, since the early 1980's, the Commission has consistently found, in both corrections and police cases, that employers have not given sergeants the authority required to act as supervisors under the relevant statutes and Commission precedent. The rulings echo that rendered in the Washington State Patrol case, "sergeants are akin to 'working foremen,' directing work crews in their assignments without possessing authority to make meaningful changes in the employment relationship." *Washington State Patrol*, Decision



2806-A. The rank title is not controlling, nor is the appellation of "supervisor." The actual duties of sergeants are the keys to evaluating whether sergeants are supervisors.

The standard used by the Commission in determining supervisory status is based upon the criteria in RCW 41.59.020(4)(d), and outlined in Commission cases: Do the proposed supervisors have employer-granted authority to hire, assign, promote, transfer, lay off, recall, suspend, discipline, discharge, and adjust grievances, or to effectively recommend such action? The fact that sergeants may perform some of these duties is in itself not sufficient to find that they are supervisors. RCW 41.59.020(4)(d) provides that "[t]he term 'supervisor' shall include only those employees who perform a preponderance of the above-specified acts of authority." The Commission applies this preponderance test in its rulings. *Adams County*, Decision 6005-B; *Skamania County*, Decision 6511-A; *King County*, Decision 7053; *City of Union Gap*, Decision 8619-A.

#### The Employer's Organization

The corrections sergeants are part of a bargaining unit consisting of about 560 corrections officers and approximately 40 sergeants. They are employed within the King County Department of Adult and Juvenile Detention (Department). The Department has five divisions: Juvenile, Community Corrections, Administration, and two Adult Detention divisions. The corrections officers and sergeants serve in the Adult Detention divisions, consisting of the King County Correctional Facility in downtown Seattle (Seattle), and the King County Regional Justice Center in Kent (Kent).

A director heads the Department. The Department has one deputy director, who is responsible for the Juvenile, Seattle, and Kent divisions and reports to the director. The Department has its own human resources section reporting to the director. An internal

investigations unit (IIU), commanded by a captain, also reports to the director. The Seattle and Kent divisions each have a facility commander. Seattle and Kent have one major and four shift captains in each facility. Other than the addition of the deputy director, this is substantially the same organizational structure existing in 2000.

Captains and sergeants occupy the ranks between majors and corrections officers (there is no rank of lieutenant). There are thirteen captains. Captains not only command the shifts within the detention facilities, but in addition to the IIU captain noted above, there is an administrative captain and captains who command the court detail unit, as well as the intake, transfer, and release unit (ITR).

There are nineteen shift sergeants working at Seattle and Kent. There are eight court detail sergeants and three ITR sergeants. The IIU has four sergeants. There is also a Special Investigations Unit (SIU), with two sergeants. The remainder of the sergeants are assigned to administration, maintenance and supply, and work release (administrative).

#### King County Corrections Sergeants

##### Job Description

In *King County*, Decision 7053, the Executive Director found an employer-supplied job description inconclusive in determining whether the sergeants were supervisors. In the present case, the employer provided a current "classification specification" for "Corrections Sergeant," from May 2004. The Executive Director gives little weight to this document. The employer declined to identify it as a job description and also stated that it is not a job posting. Testimony in the record concerning its function and

importance is sparse. The document is at least three years old. Testimony failed to establish that it accurately reflects the sergeants' job duties. As with the 2000 job description, the 2004 classification specification is inconclusive.

#### Role of sergeants

A distinction exists between the sergeants' responsibility within-- and importance to--the Department and the sergeants' authority. Dwight Eisenhower once remarked that "the sergeant is the army." This is no less true in police departments and correctional facilities. In the 2000 *King County* case, an employer representative testified that the sergeants were the "backbone of the organization" and that the employer "couldn't operate without them." The Department director echoed this belief in the present case by stating that the sergeants are the "key to the success of the [detention] facility."<sup>2</sup> In spite of these verities, the Commission is restricted to determining the narrow question of whether corrections sergeants are supervisors within the meaning of Chapter 41.56 RCW. The question presented in this case is whether the employer has granted sergeants the authority to act on its behalf to make meaningful changes in the employment status of corrections officers.

#### Differing Units

King County corrections sergeants work in several environments. There are two major groupings: (1) shift, court detail, ITR, and administrative sergeants; and (2) investigative sergeants (SIU and IIU). The first question before the Executive Director is, do these sergeants have authority from the employer to hire, assign, promote,

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<sup>2</sup> The Department director further testified that the Department is growing, and he wants to give sergeants more authority to correspond with that growth.

transfer, layoff, recall, suspend, discipline, or discharge other employees, and adjust their grievances, or to recommend effectively such action? The second question is, do the sergeants perform a preponderance of these duties?

Shift, Court Detail, ITR, Administrative Sergeants

The record reveals only minor and inconclusive evidence concerning the administrative sergeants. The bulk of evidence concerned the sergeants working directly with corrections officers on shifts, court detail, and ITR. Those sergeants' duties include: taking charge in emergencies, ordering the restraint of inmates and overseeing the "extraction" of inmates from their cells, and directing corrections officers in their work. Sergeants can also place corrections officers on administrative leave; however, this is not considered disciplinary action and is subject to review by the unit or shift captain. Sergeants may schedule the daily work of corrections officers and can approve overtime.<sup>3</sup> Sergeants can recommend whether probationary corrections officers should be retained. Corrections officers are charged with obeying the sergeants' orders. Sergeants do not do the work of corrections officers. Sergeants may have to make on-the-spot decisions without the ability to immediately check with their captains. The Department assigns sergeants to work on various projects in conjunction with management, including developing Department policies. Sergeants are also involved with King County emergency response services. The record confirms the importance of the sergeants to the Department's operations.

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<sup>3</sup> There was testimony that sergeants "assign" the work of the corrections officers. This appears to confuse the scheduling and directing of officers with assignment. Evidence did not establish that sergeants ultimately decide which corrections officers will be assigned to a particular unit or shift.

However, the record does not show that corrections sergeants perform the duties required to qualify as supervisors. As important as the sergeants' jobs are, the record fails to demonstrate supervisory duties assigned by the employer to corrections sergeants. The sergeants' actions remain under the supervision and review of the captains in charge of the units. The Commission has already rejected as supervisory duties the claims regarding sergeants scheduling work, approving overtime, and effectively recommending the retention of probationary employees. *King County*, Decision 7053.

The Commission has distinguished corrections sergeants from police sergeants by the fact that corrections sergeants work within a confined space, more amenable to supervisory oversight than police officers working the streets. *Franklin County*, Decision 5192, 5193. While corrections sergeants make important decisions and may have to make them without the immediate input of a commanding officer, the work environment provides a setting for their superior officers' (captains, majors, facility commanders) oversight in a reasonable amount of time.

In any case, the use of independent judgment in tactical situations involving normal operations, e.g., on-the-spot decisions, and even in minor personnel matters, e.g., sending an employee home on administrative leave, are functions of a lead worker. Such actions do not confer supervisory status. *City of Redmond*, Decision 2269-B; *Franklin County*, Decision 5193, 5193; *Adams County*, Decision 6005-B.

#### Acting Captains

Sergeants serve as acting captains on the weekend third shift at Kent and intermittently on other occasions in both Seattle and Kent when captains are not available. Although there was testimony in

2000 of this activity, the Executive Director found at the time that the record did not indicate the amount of work done by sergeants serving as acting captains. In the present case, there was evidence that sergeants may fill this role up to twenty to twenty-five percent of the time. There was also testimony that it is probable that all or most of the sergeants have served as acting captains at one time or another. There was general testimony that acting captains have the full authority of captains, an assertion confirmed by the collective bargaining agreement. Sergeants serving as acting captains are considered captains and paid according the captains' wage scale.

The WSCCCE has made the acting captain issue a major aspect of its case. The Department director testified that he believes that the sergeants have an important role as acting captains and that it raises the sergeants to the level of supervisors. This proposition raises a question concerning the relationship of sergeants to captains: At what point do the duties of sergeants and captains become intertwined? The WSCCCE and the Department director assert that--in major part--it is at the twenty to twenty-five percent level of sergeants serving as acting captains. The Executive Director ruled in 2000 that "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." *King County*, Decision 7053. The burden on WSCCCE in the present case is to show that the Executive Director should change this ruling regarding acting captains.

In this light, the record should contain evidence of sergeants actually performing supervisory tasks assigned to captains while serving as acting captains. Yet, there was no specific evidence that acting captains perform a preponderance of the ten supervisory functions necessary to qualify as a supervisor. General assertions of authority do not constitute persuasive evidence of actual

authority. The Executive Director takes note that the petitioner presented a well-organized, professional, and extensive case. The absence of specific evidence regarding acting captains and supervisory duties invites the conclusion that it does not exist.

Related to this position is other testimony in the record stating that sergeants now do tasks once performed by captains, and that captains now perform primarily administrative jobs, leaving day-to-day operations to the sergeants. This is an argument revolving around responsibility. There is no issue in this case over the high level of responsibility accorded sergeants. The particular issue presented here is whether the employer has transferred supervisory duties from captains to sergeants. There is no convincing evidence of that in the record.

The testimony noted above further implies a relationship between the duties of sergeants and captains. However, the question before the Commission in this case is not whether a community of interest exists between the sergeants and captains, but whether the sergeants are supervisors.<sup>4</sup>

Based upon the record, there has been no change in the job duties of the shift, court detail, ITR, and administrative sergeants between 2000 and 2007 showing a transition from lead workers to supervisors. The sergeants remain lead workers who perform vital and responsible duties, but do not have authority on behalf of the employer to affect the employment status of subordinates.

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<sup>4</sup> There was testimony and argument that captains have no more supervisory authority than sergeants. This matter is decidedly not before the Commission in this case.

SIU

The sergeants in the special investigations unit perform duties that include conducting background checks on prospective Department employees. The reports are channeled up the chain of command and routed through the human resources department. The WSCCCE maintains that the SIU sergeants are integral to the hiring process, because if their reports are negative, then prospective employees will most likely not be hired. However, after SIU completes its investigation, the report goes through multiple levels of review. Majors make the hiring decisions. The human resources unit also has involvement in the hiring process. Even given that a negative report from SIU will probably end the hiring process, that is only one aspect of hiring. Despite the WSCCCE's argument that SIU sergeants effectively recommend hiring, a positive SIU report does not guarantee employment, and SIU does not participate in the broader process of hiring, as determined by the command staff and human resources. SIU plays only a limited, if necessary, part in the hiring process. This role, limited to effectively recommending that a person not be employed, does not meet the preponderance of duties test.

IIU

A good part of the WSCCCE's case was focused on evidence involving the internal investigations unit. The IIU unit investigates complaints against corrections personnel for misconduct. The complaints can come from citizens, inmates, or other Department employees, and can involve all ranks; however, the vast majority involve complaints against corrections officers. There are four sergeants assigned to the unit, which is commanded by a captain. As noted, this unit answers directly to the Department director. Over the past six years, approximately ten sergeants have served in both this unit and SIU. Sergeants serve three-year terms in the unit, and theoretically, all sergeants in the bargaining unit could



serve a term in IIU. However, of IIU sergeants serving over the past several years, only one has returned to duty as a shift sergeant. Several other graduates of IIU have been promoted to higher rank.

The IIU unit has developed its own identity over the past several years, and this identity has changed since 2000. The IIU sergeants are now part of a two-year old program within the Department called the external review group (ERG). The ERG reviews the complaints investigated by IIU to determine the course of action by the Department. The ERG consists of the deputy director, facility commanders, majors, the IIU commanding captain, the investigating IIU sergeant, a deputy prosecutor, the human resources unit manager, and an employer labor negotiator. The ERG reviews the investigative file compiled by IIU to determine if action should be taken, and if so, what kind. This is a collaborative effort, and the IIU sergeant is an integral part of the process. For example, if the group decides on action against a bargaining unit member, and a Loudermill hearing is in order, the IIU sergeant will write up the Loudermill statement. Evidence shows that the vast majority of the IIU investigative findings on cases are accepted by the ERG.

On the other hand, once IIU completes its reports, the facility commanders determine whether the case will go to the ERG for further consideration. Ultimately, only the Department director can make the final decision on whether to impose discipline, and if so, at what level.

The record shows a high level of conflict between the IIU sergeants and the rest of the bargaining unit. Two areas of friction raised by the employer regard the subjects of confidentiality and impartiality. The employer asserts that, because the IIU sergeants are part of ERG and also must investigate other officers in the

bargaining unit, this situation could lead to clashes between the IIU sergeants' duties and their relationships within the bargaining unit. The employer believes these contests could compromise not only confidential information obtained by IIU, but also the impartiality necessary to a fair investigation. The employer cited two examples of these problems occurring in recent years.

In addition, testimony established that strife exists between the IIU sergeants and their own bargaining unit regarding IIU investigations. The IIU sergeants must square off against not only members of their bargaining unit, but also their own bargaining representative when conducting interviews and presenting their case to the employer. The IIU sergeants feel effectively cut off from union representation, as well as alienated from other bargaining unit members, who they must investigate with potential employment and even life altering consequences. Testimony established that some sergeants who have recently served in IIU (and now have other duties) retain this sense of alienation. However, these sergeants are no longer involved in the direct conflict experienced by active IIU sergeants.

The IIU sergeants' testimony reflected a high degree of integrity, which greatly diminishes the employer's concern over a struggle between the IIU sergeants' performance of their duties and their membership in the bargaining unit.<sup>5</sup> The demeanor of the witnesses convinces the Executive Director that the opposite is the case: The IIU sergeants are in strife because they are committed to accuracy in their investigations and would not compromise an investigation based upon membership in the bargaining unit.

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<sup>5</sup> The low incidence of cited problems further mitigates the employer's concerns.

The record establishes the reality of conflict regarding the IIU sergeants. However, the question before the Commission is one concerning the representation of all sergeants in the Department, and more specifically, whether those sergeants are supervisors. The WSCCCE presented sufficient evidence showing that because of their investigative role and their participation in the ERG, the IIU sergeants effectively recommend whether disciplinary action should be taken. However, because of the multiple levels of command, as well as the involvement of the human resources unit and the county prosecutor, the WSCCCE did not show that IIU sergeants can effectively recommend the level of discipline. This conclusion is reinforced by the facts that the facility commanders act as gatekeepers to the ERG, and that only the Department director has final authority in disciplinary matters. Although the IIU sergeants are vital to the disciplinary process, this is only one aspect of supervisory duties. They gather information during investigations, but do not perform any of the other required supervisory tasks. Their jobs do not satisfy the preponderance of duties test.

The strife within the bargaining unit is not the classic conflict scenario between supervisors and subordinates in the same unit. WAC 391-35-340(1); *Skamania County*, Decision 6511-A; *City of Union Gap*, Decision 8619-A. The conflict is between investigators, those investigated, and the KCCG as it represents its members who are under investigation. This genuine area of concern cannot be solved by this representation petition. The question before the Commission is not whether a unit of investigators should be carved out and given its own bargaining unit, or none at all. The issue is whether the WSCCCE has made a convincing case that because the four IIU sergeants are in a contentious situation regarding their status in the bargaining unit, all sergeants should be removed from the unit as supervisors. The answer must be no.

Levels of Authority

In the two cases in the past (nearly) thirty years where the Commission has found sergeants to be supervisors, both came where no intervening levels of authority existed between sergeants and the ultimate decision-maker--in those instances, the police chiefs. *City of Sunnyside*, Decision 1178; *City of Snohomish*, Decision 1557. The issue of multiple levels of authority between sergeants and ultimate decision-makers is a determining factor in evaluating whether sergeants are supervisors. *Washington State Patrol*, Decision 2806-A; *Pierce County*, Decision 3870; *City of Moses Lake*, Decision 7008.

In the present case, four levels of authority exist between corrections sergeants and the director: captains, majors, facility commanders, and the deputy director. In matters pertaining to hiring, the human resources unit adds another level.<sup>6</sup> The sergeants occupy the next-to-last rung on the employer's organization chart, as it pertains to para-military rankings. Based upon the record, it is clear that the employer has given supervisory authority only to the ranks of captain and above.

Conclusion

Although the WSCCCE presented evidence of changes in sergeants' duties, primarily involving the IIU unit, those changes do not constitute the substantial alteration necessary to justify the sergeants' exclusion from the existing bargaining unit. None of the sergeants' assigned duties satisfy the preponderance test regarding supervisory functions. The friction existing in the bargaining unit

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<sup>6</sup> The exception to this is the IIU unit, with only one level of authority between the sergeants and director. As discussed above: (1) the IIU sergeants' limited role in discipline does not qualify them as supervisors; and (2) conflict involving four sergeants does not alter the status of the remaining thirty-six sergeants.

is limited primarily to the IIU unit, comprising at any one time approximately ten percent of the total number of sergeants.

The Department director testified that the Department is growing and that sergeants are an important element of that growth. The Department wants to give sergeants more responsibility to coincide with this growth. In order to qualify as supervisors under the current law, the employer would need to grant sergeants the actual authority to perform a preponderance of supervisory duties. It has not done so.

The sergeants employed by the King County Department of Adult and Juvenile Detention are not supervisors and should not be severed from the existing bargaining unit. No election is necessary.

#### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(1). Among other services, the employer operates and maintains adult corrections facilities in two locations (Seattle and Kent). The table of organization of the King County Department of Juvenile and Adult Detention (Department) includes a staff organized in a para-military structure and consists of the director, a deputy director, two facility commanders, two majors, and thirteen captains. A human resource unit is part of the organizational chart and reports to the director. Captains supervise the shifts at the two detention facilities. Captains also supervise the following separate units: internal investigations and special investigations; court detail; intake, transfer and release (ITR); and administration. There is no lieutenant rank. For the purposes of this decision, sergeants and corrections officers

complete the table of organization and comprise the bargaining unit at issue.

2. The King County Corrections Guild (KCCG), a bargaining representative within the meaning of RCW 41.56.140(3), is the certified exclusive bargaining representative of employees in the King County Department of Juvenile and 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 600 employees in the bargaining unit, including about 40 sergeants. The KCCG is a viable organization and continues to represent the bargaining unit.

3. The Washington State Council of County and City Employees, Council 2 (WSCCCE), 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 corrections sergeant. The petition proposes to sever the approximately forty sergeants from the existing bargaining unit represented by the KCCG.
4. Shift sergeants and sergeants in the court detail and ITR units exercise independent judgment in normal operations and take minor personnel actions. They can make recommendations regarding the retention of probationary employees. Sergeants can schedule the work of corrections officers, but do not assign corrections officers to specific units. Sergeants approve overtime. Sergeants can place corrections officers on

non-disciplinary administrative leave, subject to the review of commanding officers. Sergeants report to their respective captains, and their actions are subject to review by the captains. The sergeants in this category cannot hire, assign, transfer, promote, lay-off, recall, suspend, discharge, discipline employees, or adjust their grievances. There is no persuasive evidence that administrative sergeants have duties sufficient to establish that they are supervisors.

5. Sergeants may serve as acting captains on a regular basis for one weekend shift at the Kent facility, and intermittently on other shifts in Seattle and Kent. Service as an acting captain is for a limited time and is open to all sergeants in the bargaining unit. Acting captains are considered captains and paid as captains. The sergeants serving as acting captains do not perform a preponderance of supervisory duties.
6. Captains supervise sergeants. In addition, there are multiple levels of authority beyond the rank of captain: majors, facility commanders, the deputy director, and director.
7. Sergeants in the special investigations unit can effectively recommend that applicants for positions in the Department not be hired, but have no other supervisory duties.
8. Sergeants in the internal investigations unit have only one level of authority between them and the director. They effectively recommend discipline, but do not effectively recommend the level of discipline. Only the department director has the final authority in disciplinary matters. The internal investigations sergeants have no other supervisory duties.

9. Conflict exists in the bargaining unit to the extent that the sergeants assigned to the internal investigations unit are alienated from their bargaining unit representative and those corrections officers subject to investigation. Several other sergeants who have worked in internal investigations retain this sense of alienation, but now have other duties and are not in direct conflict with their bargaining representative or other unit members.

#### 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. Based upon Findings of Fact 1, 4, 5, 6, 7, and 8, the employer has constructed multiple layers of authority between the director and approximately ninety percent of the sergeants and has not granted any of the sergeants the preponderance of authority necessary to make meaningful changes in the employment status of corrections officers.
3. Based upon Finding of Fact 9, the conflict existing in the bargaining unit is not a result of supervisors improperly placed in a rank-and-file unit, but is a result of an internal investigations unit situated within the bargaining unit.
4. The corrections sergeants employed by King County in its Department of Juvenile and 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 Finding of Fact 2. The sergeants are lead workers and do not perform the preponderance of supervisory duties sufficient to



create a potential for conflicts of interest warranting their exclusion from that bargaining unit under RCW 41.56.060.

5. Based upon the history of bargaining described in Finding of Fact 2, and the ongoing community of interest described in Conclusion of Law 4, 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.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, no election is necessary to determine the bargaining representative of the bargaining unit described in Finding of Fact 2.

ORDER

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

Issued at Olympia, Washington, on the 25<sup>th</sup> day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

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

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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## RECORD OF SERVICE - ISSUED 07/25/2007

The attached document identified as: **DECISION 9824 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BJS/ ROBBIE BUFFIELD

CASE NUMBER: 20692-E-06-03186 FILED: 10/06/2006 FILED BY: PARTY 2  
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BAR UNIT: JAILERS  
DETAILS: Adult/ Juv Detention  
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