

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
REDMOND POLICE OFFICERS)	CASE NO. 5502-E-84-989
ASSOCIATION)	
)	DECISION NO. 2269-B - PECB
Involving certain employees of:)	
CITY OF REDMOND)	ORDER DETERMINING
)	ELIGIBILITY ISSUES
)	
)	

Will Aitchison, Attorney at Law, appeared on behalf of the petitioner.

Douglas E. Albright, Attorney at Law, appeared on behalf of the employer.

Bruce E. Heller, Attorney at Law, appeared on behalf of the intervenor.

On October 16, 1984, the Redmond Police Officers Association filed a petition with the Public Employment Relations Commission, seeking investigation of a question concerning representation involving an existing bargaining unit consisting of all commissioned police officers and sergeants employed by the City of Redmond. Teamsters Local 763 was identified as the incumbent exclusive bargaining representative.

A pre-hearing conference was held on November 27, 1984, at which the parties failed to execute an election agreement but stipulated the following matter to be resolved by hearing:

Whether the police sergeants who are included in the present bargaining unit should be included in the petitioned unit of police officers.

A hearing was conducted December 18, 1984 at Redmond, Washington, before Jack T. Cowan, Hearing Officer. The parties submitted post-hearing briefs.

A Direction of Election was issued on July 8, 1985, permitting the sergeants to vote by challenged ballot and reserving the eligibility issues concerning the sergeants for a post-election ruling. City of Redmond, Decision 2269 (PECB, 1985). A representation election was conducted on August 6, 1985 and the challenged ballots were not sufficient in number to affect the result. An interim certification was issued on August 21, 1985 designating the Redmond Police Officers Association as exclusive bargaining representative of the petitioned-for unit, subject to the ruling on the sergeants. City of Redmond, Decision 2269-A (PECB, 1985).

The Executive Director has delegated authority to the Hearing Officer to determine the remaining eligibility dispute, pursuant to WAC 391-25-390.

BACKGROUND

There were thirty-three (33) persons in the petitioned-for police bargaining unit, including seven (7) sergeants. The collective bargaining agreement for the period January 1, 1983 through December 31, 1984 defined the unit as:

All regular full-time members of the City of Redmond Police Department, classified as sergeant, detective sergeant, detective and police officers.

Prior to April, 1983, the organizational structure of the police department consisted of four units including:

1. Support - one (1) lieutenant and six (6) dispatchers
2. Patrol - three (3) shift sergeants, one (1) relief sergeant, and seventeen (17) officers
3. Traffic - one (1) sergeant and three (3) officers

4. Investigations - one (1) sergeant and five (5) detectives

The command structure included a total of six (6) sergeants and one (1) lieutenant, all of whom reported directly to the chief.

The sergeant's job description as of December, 1980, summarized their job duties as follows:

Serve as officer-in-charge on a designated shift or assigned unit; direct and instruct assigned police officers and clerical personnel; develop shift work schedules, make assignments of officers, and assure coverages for absences; monitor performance of individuals to assure effectiveness. Perform the duties as described in Police Officer job description to maintain public peace and order, to protect life and property, to prevent crimes, to make investigations, to apprehend violators of the law and otherwise to assure the proper enforcement of laws and ordinances of which the Department takes cognizance. Act as Lieutenant or head of the Department as authorized and in the absence of either.

A job description for the sergeants dated September, 1982 defined their duties as follows:

Description of Work

General Statement of Duties: Performs supervisory law enforcement work.

Supervision Received: Works under the general supervision of a higher ranking officer.

Supervision Exercised: Exercises full supervision over assigned personnel as significant part of the duties.

In April, 1983, the organizational structure was revised. Two new commander positions were created. Under the new structure, only the two commanders report directly to the chief. Responsibilities were defined as follows:

Operations - Commander Robert W. Sheehan:

Patrol - four-and-one-half (4-1/2) shift sergeants and eighteen (18) officers

Investigations - one (1) sergeant, three (3) detective and (1) officer

Traffic - one (1) sergeant and three (3) officers

Administration - Commander Robert M. Morton:

Staff/Support - one-half (1/2) sergeant and miscellaneous non-uniformed staff

Civilian Supervisor -

Records - miscellaneous non-uniformed staff

Communication - six (6) dispatchers

The current position description for police sergeant states, under "general statement of duties":

The rank of Sergeant combines first-line supervision of officers with significant administrative responsibilities.

Dated December 1, 1984, the description elaborates supervision received:

Works under the general guidance of higher ranking officers ... but is expected to independently carry out assignments

The description also sets forth a number of representative tasks to include, among others; schedules and assign officers, approves vacations and sick leave requests and approves hours worked. He/she provides written biennial evaluations of officer performance. In the area of budgets, the sergeant:

Monitors expenses for a division or squad; approves routine expenditures for equipment or overtime; justifies overruns to the chain of command; researches equipment and personnel costs, develops alternatives and recommends

budgeting levels for various department programs and activities.

No issue was raised by the employer or the incumbent during the most recent round of bargaining.

POSITIONS OF THE PARTIES

In response to the filing of the petition in this case, Teamsters Local 763 took the position that, because of a change in circumstances, the sergeants were supervisors and should be excluded from the bargaining unit. The incumbent contends the amount of discretionary authority exercised by the sergeants has increased dramatically since the early 1980's, causing the sergeants to become supervisors. Because of their supervisory duties and responsibilities, it contends that the sergeants should be separated from the patrol officers and placed in their own unit.

The petitioner argues that, although the command structure has changed, the duties assigned to sergeants have not changed significantly, and that the sergeants are not supervisory employees.

The city contends that, despite the increase in administrative responsibility, there is no conflict of interest created by retaining sergeants in the bargaining unit. Additionally, the city contends the community of interest is the same between the sergeants and patrol officers.

DISCUSSION

The incumbent's contention that substantial change has occurred within the command structure of the department since 1980 is well documented by testimony and other evidence. Whether the changes which have occurred are adequate to justify changing the sergeants to an excluded supervisory status

remains in question, as does the means for accomplishing such an exclusion. The attempt in the instant case to have them excluded from the existing bargaining unit comes not at mid-term of a contract, but rather in the final month of an existing collective bargaining agreement and following an extended period of negotiation during which the issue was not raised.

Teamsters Local 763 stresses that, while the sergeants were historically "lead" men, they have now become supervisors having authority to hire or fire, attend staff meetings, participate in budget formulation, call officers to work as needed, and transfer officers between divisions. Additionally, it is asserted that sergeants exercise independent judgment with regard to deployment of officers, authorizing overtime and handling of public relations matters. Sergeants are involved in disciplinary matters which, in the opinion of the incumbent, creates a conflict of interest necessitating their exclusion from the bargaining unit. Under City of Snohomish, Decision 1557 (PECB, 1983) police sergeants were excluded where:

The sergeants have authority, on behalf of the employer, with respect to evaluation, scheduling, assignment, hiring and recommending merit increases. They are authorized to act as supervisors and have duties, skills and working conditions which are distinct from those of their subordinates. Their duties and responsibilities place them in a position of potential conflict of interest with respect to their inclusion in the same bargaining unit with their subordinates.

Foremen have been excluded from bargaining units where it was found they clearly exercised independent judgment in numerous personnel matters including hiring, assignment, promotion, transfer discipline and work performance. Whitman County, Decision 1697 (PECB, 1983). In Mason County, Decision 1649 (PECB, 1983) supervisors who clearly exercised substantial independent judgment on numerous personnel matters were excluded out of concern that their continued inclusion in the same bargaining unit with the employees they supervise would create a potential for conflicts of interest.

The titles are not controlling, however. While the sergeants at issue authorize overtime or grant compensatory time, contractual seniority provisions govern work scheduling, vacation and compensatory time. Sergeants perform regular patrol duties. Both sergeants and patrol officers attend staff meetings, do evaluation of trainees, and recommend policy changes. Commander Morton reviews their recommendations and evaluations.

Sergeants have a participatory role in the hiring process, as do the patrol officers. Although both ranks are included on oral boards, neither has individual authority to hire.

Sergeants do not possess authority to suspend or discharge patrol officers. All recommendations concerning discipline are independently reviewed by the officers in the commander rank.

Independent judgment relates primarily to the sergeants' decisions in solving tactical problems, minor personnel problems and conducting normal operations.

There has been a structure change in the department which has occurred gradually over a five-year period of time. In City of Sunnyside, Decision 1178 (PECB, 1981) sergeants were excluded from a bargaining unit where they reported directly to the chief, as the sergeants in the instant case did formerly. Now, however, the sergeants at Redmond report to a commander, removing the former direct line of reporting relationships and thereby lessening the degree of responsibility. It is thus concluded that the alleged conflict of interest has not been substantiated by the evidence. In City of Redmond, Decision 1367 (PECB, 1982) a bargaining unit composed of regular full-time uniformed firefighter employees of this same employer was found to be appropriate, and positions titled "supervisor" were included in that bargaining unit where the duties, skills and working conditions of "supervisors" did not differ substantially from those of rank and file firefighters. Changes in the organizational structure have not been sufficient to justify an exclusion. Sergeants will remain in the existing unit of police officers now represented by Redmond Police Officers Association.

FINDINGS OF FACT

1. City of Redmond is a municipality located in King County, Washington, and is an employer within the meaning of RCW 41.56.030(1).
2. Public Professional and Office-Clerical Employees and Drivers, Local 763 is an employee organization within the meaning of RCW 41.56.030(3) which has been the exclusive bargaining representative of certain law enforcement officers employed by the City of Redmond.
3. Redmond Police Officers Association is an employee organization within the meaning of RCW 41.56.030(3) which has filed a timely and properly supported petition for investigation of a question concerning representation involving the law enforcement officers of the City of Redmond heretofore represented by Teamsters Local 763.
4. The collective bargaining agreement between the City of Redmond and Teamsters Local 763 for the period January 1, 1983 through December 31, 1984, included the rank of sergeant in the bargaining unit.
5. The duties, skills and working conditions of the police sergeants do not differ substantially from those of the rank and file police officers who are their subordinates in a para-military rank structure. The supervision of both sergeants and patrol officers is vested in the higher rank of commander, which has been added to the organizational structure of the department, thereby ending a practice of direct reporting relationships between the sergeants and the Chief of Police. The duties and responsibilities of the sergeants are performed subject to independent review by the officers holding the rank of commander, and do not place the sergeants in a position of potential conflict of interest with respect to their inclusion in the same bargaining unit with their subordinates.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The sergeants are public employees within the meaning of RCW 41.56.030(2) who are properly included in the bargaining unit described as:

All full-time and regular part-time non-supervisory law enforcement officers employed by the City of Redmond, excluding elected officials, officials appointed for fixed terms, confidential employees and supervisors.

ORDER

The classification of police sergeant is included in the bargaining unit described in paragraph 2 of the foregoing conclusions of law.

DATED at Olympia, Washington, this 30th day of January, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Hearing Officer

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.