

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
SEATTLE MUNICIPAL COURT MARSHAL'S )  
GUILD ) CASE 14080-E-98-02353  
 )  
Involving certain employees of: ) DECISION 6436-A - PECB  
 )  
CITY OF SEATTLE ) ORDER DETERMINING  
 ) ELIGIBILITY ISSUES  
 )  
\_\_\_\_\_ )

Jared C. Karstetter, Jr., Attorney at Law, appeared on behalf of the petitioner.

John McArty, Labor Negotiator, appeared on behalf of the employer.

On August 8, 1998, the Seattle Municipal Court Marshal's Guild (union) filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the City of Seattle (employer). The petitioned-for unit encompassed 19 employees working under titles of "municipal court marshal" and "senior marshal". During the initial processing of the petition, the employer asserted that the two employees in the "senior marshal" classification should be excluded from the bargaining unit as supervisors. The Commission proceeded with the determination of the question concerning representation by a cross-check, with the senior marshals taken under challenge. The union prevailed by a majority that was unaffected by the eligibility challenges, and an interim certification was issued on September 23, 1998, naming the union as exclusive bargaining representative of the bargaining unit. City of Seattle, Decision 6436 (PECB, 1998). A hearing on

the eligibility issue was held on December 17, 1998, before the undersigned Hearing Officer. The parties filed post-hearing briefs to complete the record. Authority to decide the eligibility issues reserved in this case has been delegated by the Executive Director to the Hearing Officer, under WAC 391-25-390(2).

From the evidence presented and the written documentation, the Hearing Officer rules that the employees working under the senior marshal (sergeant) title are leadworkers responsible for directing the staff on a day-to-day basis, but lack the independent authority necessary to warrant their exclusion, as supervisors, from the bargaining unit certified in this proceeding.

#### BACKGROUND

Under state law, the City of Seattle operates a municipal court with jurisdiction to rule on and collect fines and forfeitures arising out of violations of city ordinances. See, Chapter 35.20 RCW. The overall administration of the court is the responsibility of a court administrator. Gail Tajima was the acting court administrator at the time of the hearing in this case. The operation is divided into several divisions, including court services, customer services, human resources, financial services, court technology, probation services, and court security.

The court security division provides law enforcement and security functions for the municipal court. This includes arresting and processing defendants, escorting defendants from and to jail, intervening directly in potentially violent incidents, and providing security within the buildings and courtrooms where the municipal court sessions are held. The administrative head of the

security division is Supervising Marshal Raymond Paik. The division is divided into two sections headed by senior marshals: Prisoner Transport, and Screening.

The senior marshals carry an operational title of "sergeant". The employer's position description for that class is as follows:

Municipal Court Marshal  
Senior - Marshal Sergeant - Screener

Position Description

This position supervises the activity of the Court Marshal Screeners (including Intermittent Marshals), who provide 24-hour building security and weapons screening. Schedules, plans and coordinates their work: plans and directs personnel activities including payroll, training, performance evaluation, disciplinary action, and problem solving. Develops policies and procedures.

Duties of Marshal Sergeant include:

- \* Supervise the Court Marshal Screeners and the 24-hour building security.
- \* **Insures all screening stations are covered and arrange relief** as needed.
- \* **Provide assignments and plan daily work schedules**, including lunch and break coverage.
- \* **Prepare semi-annual performance reports.**
- \* Work with the Supervising Marshal and ESD on security issues.
- \* Develop policies and procedures related to Weapons Screening Program.
- \* Prepare payroll.
- \* Assist the Jail Transport Marshal Sergeant as needed.
- \* Act as Supervising Marshal during absences.
- ...

[Emphasis by **bold** supplied.]

The employer's position description for the senior marshal responsible for jail transport reads exactly the same as the above, except that the references to screening are replaced with:

- \* Supervise Court Marshals who provide law enforcement and prisoner transport functions.
- \* Develop policies and procedures related to Court Security and Prisoner transport.

Each of the sections headed by those senior marshals is staffed by 7 to 10 marshals.

#### Hiring Responsibilities

Through its general personnel policies, the City of Seattle delegates the authority to hire, suspend, demote, and discharge employees to the department head. In this instance, the court administrator has delegated these responsibilities to the Human Resources Director. Dean Barnes was the human resources manager for the municipal court from January 1997 through October 1998; John Cunningham was the interim human resources manager thereafter.

The employer has used interview panels to interview candidates for new or vacant positions. The interview process for full-time positions includes two panels: (1) A screening panel which includes two members employed in court security in another public agency such as King County or the Port of Seattle and one of the senior marshals; and (2) a panel which consist of the chief marshal and one or two other persons, who interview the candidates who successfully passed the initial screening.

### Disciplinary Responsibilities

The employer distinguishes between two disciplinary processes that it utilizes with employees. The first, termed the "corrective action policy", deals with minor offenses and involves problem solving and counseling. The second is the familiar progressive discipline process, successively invoking stronger disciplinary responses up to and including suspension and discharge. The senior marshals are expected to be integrally involved in the first of those processes, and are often the person doing the counseling in that process. As to the progressive discipline process, the senior marshals are expected to administer oral warnings and written reprimands and to be involved in making recommendations, but it appears that decisions regarding higher levels of discipline are made by the supervising marshal or even more-senior official(s).

### General Supervision Responsibilities

The senior marshals assign duties to the marshals, but in the context of permanent duty stations assigned by the supervising marshal. The senior marshals act on requests for vacations and time off, but in the context that any requests for extended vacations must be approved by the chief marshal and even lesser requests are discussed with the supervising marshal to assure that the unit has appropriate coverage. The senior marshals assist in developing, but do not take final action on, departmental policies.

The senior marshal responsible for the screening unit testified that 75% or more of his work time was spent performing the same tasks as the marshals in his section. He does not have a permanent duty station, and is responsible for finding appropriate coverage when employees in his section are absent due to vacations,

unanticipated absences, or even routine breaks. Along with a relief marshal, the senior marshal routinely fills in during such absences. He testified that he has frequently worked an entire 8-hour shift as a marshal, because of lack of staff. He also elaborated that filling in for breaks takes more time than might usually be expected, because the marshals monitoring the doors are allowed four or five breaks each shift, plus a lunch period.

Concerning the remaining 25% or less of his work time, the senior marshal responsible for the screening section described his role as making sure that other staff members were at their posts, and that rules concerning department were followed. He acknowledged that he had been a member of a screening panel for a full-time position, but described his role as merely providing experienced-based input. He acknowledged that he could be involved in corrective action procedures or disciplinary actions, but testified that he had not done so in the year he had held the senior marshal position. With regard to the performance evaluation responsibility specified in the position description, he testified that he had just begun to work on that task, having been given evaluation materials and instructions just three weeks prior to the hearing in this case.

#### POSITIONS OF THE PARTIES

The union argues that the senior marshals are not supervisors, but instead fulfill the responsibilities of leadworkers. As such, it contends the positions should be placed in the newly-certified bargaining unit. It compares the senior marshals to sergeants in paramilitary organizations, and it asserts that the employer has many bargaining units (including another unit in the municipal court), where employees with "senior" titles are included in the same bargaining units with rank-and-file employees.

The employer asserts that the senior marshals are first-line supervisors, and that these positions carry with them an "inherent conflict of interest" which should prevent them from being placed in the same bargaining unit as the rank-and-file employees. It argues that the senior marshals have been involved, since 1998, in making recommendations on hiring and in implementing the employer's corrective action policy and progressive discipline. Further, the employer urges that the senior marshals assign duties to subordinates, make decisions concerning vacation schedules, and conduct performance evaluations.

#### DISCUSSION

Different from the situation under provisions of the National Labor Relations Act (NLRA) in effect since enactment of the Labor-Management Relations Act of 1947 (LMRA), supervisors have bargaining rights under Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), citing Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947) interpreting the NLRA as it existed prior to the adoption of the LMRA. See, also, City of Tacoma, Decision 95-A (PECB, 1977).

#### Appropriate Bargaining Units

The determination of appropriate bargaining units under Chapter 41.56 RCW is a function delegated by the Legislature to the Public Employment Relations Commission:

RCW 41.56.060. DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining

representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives, the extent of organization among the public employees, and the desire of the public employees. ...

The Commission has described the unit determination function in the following fashion:

[T]he purpose [of unit determination] is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. The statute does not require determination of the "most" appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination.

City of Winslow, Decision 3520-A (PECB, 1990), citing City of Pasco, Decision 2636-B (PECB, 1987).

The Commission has, however, generally exercised the unit determination authority conferred by RCW 41.56.060 to exclude supervisors from bargaining units containing their subordinates, in order to avoid a potential for conflicts of interest. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). That is the type of concern raised by the employer in this case.



The term "supervisor" is not defined in Chapter 41.56 RCW, but the Commission has looked to the definition found in Chapter 41.59 RCW and has developed a long line of precedent for how the appropriate unit placement for claimed supervisors should be determined. The decision in Yakima County, Decision 4672 (PECB, 1994) included:

In evaluating a claim of supervisory status, the scope of the disputed individual's employment relationships with other employees is taken into consideration. Factors such as hiring, discharge, evaluation, the approval of leave requests, and the authority to recommend actions affecting subordinate employees are pivotal in assessing the existence of supervisory status.

In distinguishing between supervisors and leadworkers, the Commission particularly looks for authority to hire, suspend without pay, or discharge subordinates, or to make effective recommendations on such actions. Where there are multiple levels of supervision between the disputed individual and the ultimate employer authority, the potential for conflicts of interest will likely attach at a higher level. Authority in less-critical areas, such as assigning work, making work schedules, granting time off, authorizing overtime, issuing oral or written reprimands, training employees, and directing day-to-day activities, inherently produce less potential for conflicts within a bargaining unit, and so will not be a basis for exclusion unless it is the major or exclusive task of the individual. See, Adams County, Decision 6005-B (PECB, 1998); Franklin County, Decision 5192 (PECB, 1995); Washington State Patrol, Decision 2806-A (PECB, 1989); City of Redmond, Decision 2269-B (PECB, 1986).

Job titles and paramilitary ranks are not controlling. In Franklin County, Decision 5192 (PECB, 1995), it was noted:

Clearly, the mere existence of a paramilitary structure of the type found in this and other public safety organizations does not warrant a conclusion that all persons holding rank titles are supervisors.

The focus of the analysis is on the specific facts of each situation. For example, the decision in City of Marysville, Decision 4854 (PECB, 1994) included the following analysis of actual duties and responsibilities:

While the sergeants may not have the final word on hiring or severe disciplinary action against the members of their squads, it is apparent from this job description that they are expected to supervise and evaluate the members of their squads and assigned non-commissioned personnel. Further, they are required to maintain incident files on the members of their respective squads and recommend disciplinary and commendation responses.

While police sergeants have been included in rank-and-file bargaining units in numerous cases, the sergeants were excluded from the rank-and-file bargaining unit in Marysville because of their being more formally involved in hiring, discipline, and evaluation of their subordinates.

#### Application of Precedent

In this case, the senior marshals share basic responsibilities with, and spend the vast majority of their work time performing the same work, as the rank-and-file employees in the newly-certified bargaining unit. The absence of permanent work stations and the fact they do not perform those functions on a regularly-scheduled basis are not controlling, where the employer's break policies and other practices build in an expectancy that the senior marshals

will be filling in routinely for the absences of others. The focus of the employer's current position description is that the senior marshals work closely with the marshals. Thus, the duties, skills and working conditions of the senior marshals are such that they share a community of interest with the members of the rank-and-file bargaining unit.

In contrast to the situation described in Marysville, supra, the senior marshals do not have as defined or sophisticated a role in employee discipline or evaluations. The position descriptions promulgated by the employer do not even mention hiring or discipline of subordinates under the "Duties" heading, and their very limited responsibilities in those areas can only be gleaned from the general "... directs personnel actions" language of the employer's document. The evidence indicates their actual role in the hiring process is limited to preliminary screening of applicants. While the employer may intend to develop a sharper, more supervisory, definition for the role of the senior marshals in the future, this decision must be based upon the employment situation as it exists at the time of the hearing. Skamania County, Decision 6459 (PECB, 1999).

A conclusion that the "lead" responsibilities of the senior marshals do not warrant their being placed in a separate bargaining unit is also consistent with the result reached in City of Redmond, supra. As here, the actions taken by the sergeants at issue in that case were subject to independent review by superior officers. The facts in Redmond were not sufficient to place the sergeants in a position of potential conflict of interest. See, also, King County Fire District 16, Decision 2279 (1986) [fire department lieutenants not excluded as supervisors]; and State of Washington (Washington State Patrol), supra [sergeants not excluded as supervisors].

It is worth reiterating that leadworkers are not to be barred from bargaining units where, as here, they clearly share a community of interest with rank and file employees. The record here establishes senior marshals are leadworkers who serve as a conduit for the chain-of-command authority of the supervising marshal and the personnel director. No evidence yet establishes that they have a community of interest separate from the marshals, or that a significant potential for conflicts of interest presently exists between the two groups. The inclusion of the senior marshals in the petitioned-for bargaining unit will result in an appropriate unit for purposes of collective bargaining under RCW 41.56.060. The employer's challenges to the eligibility of the senior marshals must be DENIED.

#### FINDINGS OF FACT

1. The City of Seattle is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.020 and RCW 41.56 030(1).
2. The Seattle Municipal Court Marshal's Guild, a bargaining representative within the meaning of RCW 41.56.030(3), has been certified as the exclusive bargaining representative of non-supervisory employees providing security functions for the Seattle Municipal Court.
3. The senior marshals in the Seattle Municipal Court share responsibility with the rank-and-file marshals for the completion of the specific job assignments on a day-to-day basis. The senior marshals routinely fill in for marshals who are absent from their posts due to vacations, unanticipated absences or scheduled breaks within work shifts.

4. The senior marshals do not have or exercise independent authority with regard to the hiring of marshals, and only sit in from time to time as members of panels assigned to initial screening of applicants. On the basis of the record made here it appears that the authority concerning hiring remains with the supervising marshal or other employer officials.
5. The senior marshals do not have or exercise independent authority with regard to the suspension or discharge of marshals, and only take part in counseling and warning of the employees in the work units they head. On the basis of the record made here it appears that the authority concerning suspension and discharge remains with the supervising marshal or other employer officials.
6. The senior marshals spend a small proportion of their work time performing functions such as scheduling work and time off, assigning work in the context of permanent assignments made by the supervising marshal, and monitoring the attendance and department of the employees in the units they head.
7. Although their position description calls for the senior marshals to conduct performance evaluations on a semi-annual basis, the evidence in this record indicates that aspect of the position description had not been implemented as to one of the senior marshals until just prior to the hearing in this case.
8. The senior marshals are leadworkers, rather than supervisors with duties and responsibilities that present an ongoing potential for conflicts of interest with the employees in the units they head.

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 senior marshals employed by the City of Seattle in the Seattle Municipal Court are properly included, under RCW 41.56.060, in the bargaining unit of rank-and-file employees certified in this proceeding.

ORDER

1. The employer's challenges to the eligibility of the senior marshals for inclusion in the bargaining unit in this proceeding are DENIED.
2. The bargaining unit certified in this proceeding is clarified to include all the employees holding the rank of senior marshal.

Issued at Olympia, Washington, on the 3rd day of June, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Hearing Officer

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.