

Skamania County, Decision 6511-A (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SKAMANIA COUNTY LAW ENFORCEMENT	)	CASE 14172-E-98-2365
GUILD	)	
	)	DECISION 6511-A - PECB
Involving certain employees of:	)	
	)	ORDER DETERMINING
SKAMANIA COUNTY	)	ELIGIBILITY ISSUE
	)	
	)	

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Garrettson, Goldberg, Fenrich & Makler, by Jaime B. Goldberg, Attorney at Law, appeared for the union.

Gordon, Thomas, Honeywell, by Warren E. Martin, Attorney at Law, appeared for the employer.

This case is before Hearing Officer Rex L. Lacy under WAC 391-25-390(2), for a ruling on eligibility issues reserved at the time of the investigation conference held in the matter. A hearing was held on April 6, 1999, before the Hearing Officer. Both parties filed post-hearing briefs.

Based on the evidence and the arguments advanced by the parties, the Hearing Officer rules that the disputed sergeants are properly included in the bargaining unit of rank-and-file employees.

BACKGROUND

The Skamania County Sheriff's Department is headed by an elected sheriff, Charles R. Bryan. Other staff members historically excluded from the rank-and-file bargaining unit (and also stipu-

lated as excluded in this proceeding) are an appointed undersheriff, two chief deputies, and a chief civil deputy.

Two sergeants are in charge of the jail and its employees. They report to the undersheriff, who serves as the jail administrator.

Two sergeants are responsible for the basic patrol functions in their assigned districts, including assuring that adequate patrol officers are available to patrol the county, changing the work schedules of patrol deputies when there are insufficient employees to provide patrol coverage, assigning patrol deputies to their beats, and issuing oral and written warnings to the patrol deputies. These sergeants are supervised by the chief deputy responsible for patrol and operations.

On October 5, 1998, the Skamania County Law Enforcement Guild (union) filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking to replace Office and Professional Employees International Union, Local 11, (OPEIU) as exclusive bargaining representative of all employees of Skamania County (employer) in the Sheriff's Department. On October 12, 1998, the OPEIU disclaimed the petitioned-for bargaining unit.

Representation Coordinator Sally Iverson conducted an investigation conference, by telephone conference call, on November 3, 1998. The parties stipulated all matters except the eligibility of three sergeants for inclusion in the bargaining unit.<sup>1</sup> A corrected

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<sup>1</sup> The processing of this case has been guided by population estimates issued by the Office of Financial Management, indicating Skamania County has a population of less than 10,000. Accordingly, the law enforcement officers involved are not "uniformed personnel" under RCW 41.56.030(7), and WAC 391-35-310 is not invoked.

investigation statement issued on November 9, 1998 became binding, in the absence of objections from any party.

A representation election was conducted by mail ballot. The tally issued on December 1, 1998, indicated that the union was entitled to certification without regard to two challenged ballots. An interim certification was issued on December 14, 1998, designating the petitioner as exclusive bargaining representative.<sup>2</sup>

#### POSITIONS OF THE PARTIES

The union points to at least two levels of supervision above the sergeants, and it contends the sergeants do not perform a preponderance of the traditional responsibilities that are indicia of supervisory authority. While it acknowledges that the sergeants schedule their subordinates and have authority to impose discipline up to and including written warnings, it argues that they have no authority with regard to hiring, promotion, transfer, layoff, recall, suspension, discharge, or adjusting grievances. It further argues that recommendations made by the sergeants have not been "effective" in the past. The union urges that the evidence does not establish a potential for conflicts of interest in a bargaining unit which includes the disputed sergeants.

The employer contends the sergeants schedule, assign, and evaluate rank-and-file employees, that they investigate complaints against and take disciplinary actions against rank-and-file employees, and that they possess other indicia of supervision warranting their exclusion from the bargaining unit. The employer particularly relies upon arguments the sergeants advanced in connection with a

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<sup>2</sup> Skamania County, Decision 6511 (PECB, 1998).

classification appeal prior to this representation case, and argues that the employees cannot have it both ways. The employer would have the historical inclusion of sergeants in the bargaining unit disregarded, on the basis that this record contains no evidence of a certification of the former exclusive bargaining representative.

## DISCUSSION

### Applicable Legal Standards

The task before the Hearing Officer in this case is to apply well-established principles.

#### Bargaining Rights of Supervisors -

While supervisors are excluded from the coverage and rights of the National Labor Relations Act (NLRA), 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). In reaching that decision, the Supreme Court of the State of Washington made reference to a brief filed by the Public Employment Relations Commission after it reached the same conclusion in City of Tacoma, Decision 95-A (PECB, 1977), and it cited Packard Motor Car Co. v. National Labor Relations Board, 330 U.S. 485 (1947) where the Supreme Court of the United States ruled that supervisors were employees within the meaning and coverage of the NLRA as originally enacted in 1935.

#### Separate Units of Supervisors -

The Legislature has delegated authority to the Public Employment Relations Commission to determine appropriate units for the purposes of collective bargaining:

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).

In City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), the Commission established the principle that the unit determination authority conferred by RCW 41.56.060 should be exercised to exclude supervisors from bargaining units containing their subordinates, in order to avoid a potential for conflicts of

interest which would otherwise arise, and to recognize the fundamentally different communities of interest between supervisors and their subordinates.<sup>3</sup> That policy of separating supervisors from their subordinates has been reiterated frequently, and in a variety of industrial settings. See, for example, Seattle School District, Decision 2830-A (PECB, 1988).

Titles Not Controlling -

The employer acknowledges that disputes of this type are decided on a case-by-case basis, according to the facts presented. Eligibility disputes have arisen frequently in organizations where paramilitary rank structures are used (such as police departments, fire departments, sheriff's departments, and jails), but rank titles such as "sergeant", "lieutenant", and "captain" do not have a fixed meaning across the state. Thus, police sergeants were excluded from a small rank-and-file bargaining unit in City of Sunnyside, Decision 1178 (PECB, 1981), where there were no intervening ranks between them and the chief of police, while sergeants were included in a large rank-and-file bargaining unit in Washington State Patrol, Decision 2806-A PECB, 1988), where their authority was filtered through multiple layers of superior officers. Franklin County, Decision 5192 (PECB, 1995), included a statement more directly related to public safety bargaining units:

Clearly, the mere existence of a paramilitary structure of the type found in this and other public safety organizations does not warrant a

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<sup>3</sup> When those same battalion chiefs sought to organize a separate unit of supervisors, their right to select a representative of their own choosing prevailed over concerns about potential conflicts of the supervisory unit and the rank-and-file unit were represented by the same local organization. IAFF Local 1052 v. PERC (City of Richland), 45 Wn.App 686 (Division III, 1986).

conclusion that all persons holding rank titles are supervisors.

Because the community of interest among the employees in a separate unit of supervisors is that they all exercise supervisory authority over the non-supervisory employees in the enterprise, persons holding a variety of paramilitary ranks may be included in a single unit of supervisors. City of Seattle, Decision 1797 (PECB, 1995).<sup>4</sup>

Indicia of Supervisory Authority -

The Educational Employment Relations Act (EERA), Chapter 41.59 RCW, contains a definition of "supervisor" at RCW 41.59.020(4)(d):

[A]ny 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 .... **The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.**

[Emphasis by **bold** supplied]

The Commission has used that definition in implementing unit determinations in City of Richland, supra.

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<sup>4</sup> The recent decision in Kitsap County, Decision 6805 (PECB, 1999) points out the danger of a piecemeal approach. Whenever a separate bargaining unit is sought, it is necessary to consider a "global" determination would be necessary to consider all paramilitary ranks not excludable as "elected", "appointed", or "confidential" under RCW 41.56.030(2).

Application of Standards

The patrol sergeants at issue in this case have no independent authority to hire, assign, transfer, lay off, recall, suspend, or discharge employees. That degree of authority is reserved to the sheriff and the county commissioners.

The sergeants are the senior officers on their respective shifts, and the sheriff has assigned them the role of a "lead worker". In addition to patrolling their own beat, they assist other employees with situations that require their level of experience and expertise.

The sergeants do have limited authority to discipline employees; they can, and have, issued oral and written reprimands. When called upon to investigate complaints by citizens regarding misconduct of departmental personnel, the sergeants merely report the results of their investigation to their superiors for a final determination concerning the incident.

The sergeants have participated in the resolution of grievances only at the lowest level of adjustment.

The disputed employees do not perform a preponderance of the indicia of supervisory duties and responsibilities set forth above. Their "lead worker" responsibilities do not create a different community of interest, and do not justify their exclusion from the rank-and-file bargaining unit. A conclusion here that the "lead worker" responsibilities of the disputed sergeants do not warrant their being placed in a separate bargaining unit is consistent with the result reached in City of Redmond, Decision 2269-B (PECB, 1986), where actions by sergeants there also subject to independent



review by superior officers, and therefore were not judged 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 [state patrol sergeants not excluded as supervisors]. Finally, these employees are similar to the sergeants in Adams County, Decision 6005-B (PECB, 1998) who were included in the bargaining unit because they were determined to also be lead workers.

#### FINDINGS OF FACT

1. Skamania County is a "public employer" within the meaning of RCW 41.56.030(2). Among the services provided, the employer operates and maintains a sheriff's department.
2. The Skamania County Law Enforcement Guild, 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.
3. As the result of proceedings under Chapter 391-25 WAC, the Skamania County Law Enforcement Guild has been certified as exclusive bargaining representative of employees of the Skamania County Sheriff's Department, in a bargaining unit described as follows:

ALL FULL-TIME AND REGULAR PART-TIME EMPLOYEES OF THE SKAMANIA COUNTY SHERIFF'S OFFICE, EXCLUDING THE SHERIFF, UNDERSHERIFF, CHIEF CRIMINAL DEPUTY, CHIEF CIVIL CLERK JAIL SUPERINTENDENT, SUPERVISORS, AND ALL OTHER EMPLOYEES.

The proceedings were held open for resolution of a dispute concerning the eligibility of certain sergeants for inclusion in the bargaining unit.

4. The patrol sergeants engage in routine law enforcement functions on a regular basis, and they function as the lead workers on their respective shifts.
5. The patrol sergeants have limited authority to schedule and assign employees, to impose discipline at the lowest level, and to adjust grievances at the lowest level, but they do not have or exercise independent authority with regard to hiring, promotion, transfer, lay off, recall, suspension, or discharge of subordinate employees. The results of their investigations into alleged employee misconduct are forwarded to their superiors for independent review and action.
6. In addition to the elected sheriff, the table of organization of the Sheriff's Department includes an undersheriff and two chief deputies who are superior in rank to the sergeants.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 RCW.
2. The patrol sergeants employed by Skamania County in its Sheriff's Department are public employees within the meaning of RCW 41.56.030(2) who share responsibilities and a community of interest with employees in the bargaining unit described in paragraph 3 of the foregoing Findings of Fact, and who lack

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

ORDER

1. Employees of Skamania County holding the rank of sergeant are included in the bargaining unit involved in this proceeding.
2. The interim certification issued in Skamania County, Decision 6511 (PECB, 1998) is hereby made the final certification in the instant representation matter.

Issued at Olympia, Washington, this 16<sup>th</sup> day of November, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "Rex L. Lacy". The signature is written in a cursive, flowing style.

REX L. LACY, 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.